

A REF: SMT. SAYALEE SANJEEV JOSHI, MEMBER, MAHARASHTRA
PUBLIC SERVICE COMMISSION

MAY 17, 2007

B [B.P. SINGH, TARUN CHATTERJEE AND
P.K. BALASUBRAMANYAN, JJ.]

Constitution of India, 1950:

C *Article 317—Reference—Member of Public Service Commission—
Malpractices in respect of certain Examination—Arrest of the Member—
Subsequently released on bail—Suspended by President of India—On a
Reference to Supreme Court, HELD: Non-disclosure of her daughter being a
candidate in the Examination amounts to misconduct and thus the charge
answered in the affirmative—On another charge certain observations made—
D Thus she did not behave in a manner befitting a member of a constitutional
body like the Public Service Commission.*

The reference under Article 317 of the Constitution of India relates to
the conduct of the respondent, a member of the Maharashtra Public Service
Commission and as to whether she is liable to be removed from office on the
E ground of misbehaviour.

Respondent joined the Maharashtra Public Service Commission as a
member on 8.5.2001. She was arrested on 8.6.2003 in a crime registered in
connection with a complaint lodged by the Public Service Commission relating
to mal-practices in respect of an examination conducted in the year 1999.
F Twenty one others were also arrested. The respondent was lodged in jail. The
Governor of Maharashtra requested the President of India to initiate action
under Article 317 of the Constitution of India for her removal. He also
suspended her from office until an order had been passed by the President
under clause (1) of Article 317 of the Constitution. The respondent was
G subsequently released on bail.

Thus, the reference came to be made to this Court under Article 317(1)
of the Constitution of India.

The following were the charges framed by this Court based on the
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suggestions of the Attorney General for India on examination of the relevant materials.

Charge-I

Whereas Ms. Sayalee Joshi has, directly or indirectly, tried to protect the interests of 24 candidates who appeared in an examination conducted by the MPSC and has also attempted to influence an officer of the Commission to do such illegal actions in the future in conjunction with one Mr. Nitin Sathe.

Charge-2

Whereas the respondent no.3, Ms. Sayalee Joshi committed an act of misbehaviour by interfering with an internal inquiry being conducted by the Secretary of MPSC regarding alleged malpractices in the examination for PSI/Asstt/STI conducted by the MPSC.

Charge-3

Whereas Ms. Joshi deliberately and in a *mala fide* manner omitted to disclose a very vital fact to the Commission, namely that her daughter was appearing for an examination being conducted by MPSC, which disclosure was mandatory as per Office Order No.4/1998 dated 5.5.1998 of the MPSC and hence sought to suppress vital and material information from the Commission, which affects her integrity and complete devotion to duty in an impartial manner, amounting to misbehaviour under Article 317(1) of the Constitution.

Charge-4

Whereas Ms. Joshi, in collusion with Mr. Nitin Sathe, attempted to sabotage lodging of a complaint by a candidate as regards malpractices in the examination conducted by the MPSC for the posts of PSI/Asstt/STI and hence abused her official position and acted contrary to the interest of the Commission and the candidates, and is guilty of misbehaviour under Article 317(1) of the Constitution.

Answering the Reference, the Court

HELD: 1.1. There is evidence to show that on 25.4.2002, P.W.15 Sarode visited the respondent at her flat. The visit is recorded in the visitors' book kept at Nilambari, the building in which the flat is situate. The respondent

A has also admitted this visit. It is the charge that, at this meeting, Nitin Sathe, a person who was involved in the 1996 examination scam and who was also arrested in connection with the 1999 examination scam was also present. The presence of Nitin Sathe is sought to be proved by the evidence of P.W.15 Sarode, supported by his previous statement, Exhibit 53, the confession made before P.W.14 and also by way of inference from the number of telephone calls the respondent had made to Nitin Sathe from her residential telephone, office telephone and her mobile phone. The respondent has admitted that she had contacted Nithin Sathe on a few occasions, but she has pretended ignorance of the fact that Nitin Sathe was an accused in the 1996 examination scam of M.P.S.C. and that the said fact was carried by various newspapers. Though the respondent admitted that she read a newspaper regularly, she took the stand that she did not remember having read about Nithin Sathe and his involvement in the 1996 scam. The number of phone calls made by her to Nitin Sathe during the relevant time is sought to be justified by the respondent by stating that Nitin Sathe was a land broker; that she and her mother jointly purchased a plot in Pune, which she wanted to sell after the death of her mother and that she had contacted Nitin Sathe for the purpose of helping her to sell that plot of land. According to her, nobody introduced Nitin Sathe to her, but someone at the Talathi, to which she was regularly going after the death of her mother for getting the land records changes, had told her about Nitin Sathe and given her his phone number. She could not remember the person who suggested Nitin Sathe to her. The respondent is an educated person. She had held a responsible position in the Indian Institute of Education from where she had come to the Public Service Commission as a Member. It is difficult to believe her story that she had no occasion to verify the antecedents of Nitin Sathe before getting in touch with him for the purpose of the sale of her plot of land, and that she had simply contacted him on the basis of some unknown at the Talathi telling her about him and giving her his telephone number. [Para 46] [169-H; 170-A-B, C, D, E, F]

G 1.2. It is not possible to believe her story that she was not aware of the antecedents of Nitin Sathe and that she was trying to get her plot of land sold through him without even having met him once and even without having gone to his office at any time or even without giving him at least the copies of the documents of title or sketch of the property to be sold. After all, in the normal course, a person takes care to ensure that the person she seeks the help for selling an item of property is a reliable person and has a good record as a broker before entrusting such a person with the task of finding out a purchaser for his or her own property. It is difficult to imagine that the

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respondent did not act as a prudent person in this matter. She relied upon the evidence of P.W.5 to show that Nitin Sathe was an estate broker. P.W.5 has stated in cross-examination that Nitin Sathe was an estate agent. From that alone one cannot infer that his activities were confined only to land broking. The evidence indicates that he was involved in other activities, particularly relating to the qualifying examination conducted by M.P.S.C. On the basis of the evidence read as a whole and in the circumstances, there is no hesitation is discountenancing the version of the respondent that she was not aware of the antecedents of Nitin Sathe and that she had never met him even though she had entrusted him with the task of finding out a purchaser for her property in Pune. The fact that she was also contacting dubious characters who were subject to prosecution like Moolani (a large number of times) and Jadhav who was running a coaching institute for M.P.S.C. Examinations also suggests that her innocent version about contacting Nitin Sathe cannot be accepted. It is also difficult to imagine that as a woman of the world, who had held a responsible position, she was not aware of the antecedents of Nitin Sathe and his involvement in the 1996 examination scam especially after she had become a member of the Commission in the year 2001.

[Para 46] [170-F, G; 171-A-D]

1.3. There is also the evidence of P.W.9 Aparna Dubey that she was approached by Nitin Sathe who claimed that he was close to the respondent, that he had threatened and coerced her to retract a complaint she had made regarding the conduct of the 1999 examination and the threat had been held out to her and her friend by Nitin Sathe presumably at the instance of the respondent. The attempt in the cross-examination was to show that Aparna Dubey was an unreliable person by suggesting that she had produced an inaccurate creamy layer certificate which was also outdated and, that she had also produced an experience certificate which was obtained from her father and it was a false one. Some attempt was also made to show the confusion about the address at which she was residing. All the same, the fact remains that Aparna Dubey originally made a complaint and then gave a second statement to the Commission, in essence withdrawing her earlier complaint which was one of the items that triggered as internal enquiry conducted by the Secretary to the Commission, Seema Dhamdhare and a copy of the second representation with the seal of the Commission was found in the residential premises of the respondent and it was recovered from her residence on a search. [Para 47] [171-D, E, F, G]

1.4. There is also the evidence of P.W.10 Jyoti Desai that Nitin Sathe had asked for money to get her selected in the examination and Nitin Sathe

A had claimed that he had the necessary contacts in the Commission. She has deposed that Nitin Sathe had approached her and told her that he could get her selected in the interview and final selection if she paid Rs.1,00,000/- to Rs.3,00,000/- as per the preference for the particular post. He had told her that he had necessary contacts and that if she did not believe him he would take her to the residence of respondent No.3 who was at that time staying in Pune and who according to him looked after the money matters for the interview and selection of candidates. He also told her that she could personally talk to respondent No.3. Of course, it is the evidence of P.W.10 that she refused the proposal since she refused to pay the amount demanded by Nitin Sathe on behalf of the respondent. On reading about the scam in the newspaper she had approached the High Court with an application addressed to the Chief Justice of the High Court, she had also approached the Anti-Corruption Bureau where her statement was recorded. In her cross-examination, it had been brought out that she had not secured the qualifying marks in the examination. The difference in her address was emphasized and it was suggested that she could not have met Nitin Sathe. She denied that she was in link with Aparna Dubey and one Kalpande and the Investigating Officer Poojari, P.W.17 in trying to incriminate respondent No.3. [Para 48] [171-H; 172-A-D]

E 1.5. P.W.12 Ohwal, a Peon in the office of the Commission who was promoted as a Naik was admittedly attached to the respondent as a Peon. He had accompanied her to Pune and to other centres where she held the interview. He has given evidence that at the time of interviews of the 1999 examination when he was at the circuit house at Pune along with respondent No.3, Nitin Sathe and one Kailash Jadhav used to come to the interview centre. In the year 2002, he had received a call at the office of respondent No.3 from Nitin Sathe who wanted to get in touch with the respondent and he had told **F** Nitin Sathe that respondent No.3 was busy in the meeting. Nitin Sathe had then told him to convey the information of his phone call to respondent No. 3. In his cross-examination, it was brought out that he continued in his position in the service of the Commission. He was attached to the establishment section. His statement was recorded by ACP and his statement was recorded for the purpose of this reference. He re-asserted that he did receive a telephone call **G** asking him to inform respondent No.3 that the caller had called. He could not remember the date, day, time and the year but he was sure that such a telephone call was received. [Para 49] [172-D-G]

H 1.6. P.W.17 was the investigating officer into the crime connected with the scandal. The different stages of the conspiracy were unfolded by him. He

admitted that originally, the respondent was shown as a witness in the charge sheet and the supplemental charge sheets. However, later on, getting evidence of the respondent having been a part of the conspiracy, she came to be arrested. Sanction for prosecution had been accorded both by the Governor and by the President. The respondent was arrayed as accused No.22. Her residential flat was searched prior to her arrest. The search had resulted in recovery of confidential M.P.S.C. documents including certain papers relating to a candidate Aparna Dubey. During the investigation, it was revealed that respondent No.3 was in regular contact with accused persons like Nitin Sathe, who had also been earlier arrested in connection with the crime relating to the 1996 scandal. It was also revealed that respondent No. 3 was in contact with other accused persons like Kailash Pandurang Jadhav who was conducting classes at Barshi, Solapur for competitive examinations conducted by the Commission. It was found that she had contacted Jadhav from her telephone. Jadhav had been arrested in connection with the crime. It was also found that the respondent was in regular contact with Mohd. Chand Moolani, father of a candidate Riaz Moolani. Mohd. Chand Moolani was an accused in the notorious Telgi Stamp Paper scam. The respondent was also in contact with the candidate Riaz Moolani. He also gave evidence about the confession made by Sarode P.W.15 and spoke about the confessional statement regarding the involvement of respondent No.3 being corroborated by the entry made in the visitors' book maintained at the residence of respondent No.3 at Nilambari building. He also gave evidence that the telephone printout received from service providers had revealed that respondent No.3 had contacted Nitin Sathe 8 times between 28.3.2002 to 25.9.2002 from her office phone and 20 times through her residential phone between 30.3.2002 to 20.5.2002. From her mobile, she had contacted Nitin Sathe four times between 18.5.2002 to 27.5.2002. He also spoke about the recording of the statement of Jyoti Desai and Aparna Dubey. He had also recorded the statement of others like that of Solunke P.W.8 and Ohwal P.W.12. In his cross-examination, it was brought out that the respondent was originally shown as a witness and only later on shown as an accused. It was suggested to him that he had not made a proper enquiry with the driver and the maidservant of the respondent. It was brought out that he had recorded the statements of more than 2000 candidates in respect of this crime. It was brought out that there were charges against him on various counts, but he asserted that no substance was found in any of them. Though originally, there were 22 charges proposed to this Court, only four charges had been framed ultimately. It was attempted to be suggested that his evidence in this Court was motivated. He denied the suggestion that the confession Exhibit 53 made by Sarode was inspired by him. He also denied

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A that the confessional statement was made by P.W.15 Sarode at his instance. The Panch witnesses proved the recovery and some of the papers from the residence of the respondent and from her cabin in the Commission office.
[Para 50] [172-H; 173-A-H; 174-A]

B 1.7. It is clear that he respondent was being in constant touch with Nitin Sethe over the telephone. That P.W.15 visited the respondent on 24.5.2002 is admitted. This is also corroborated by the visitors' register kept at Nilambari. Obviously, what transpired in her flat is something that is known only to her and P.W.15 Sarode and if Nitin Sathe was present there, also to Nitin Sathe. The evidence of Nitin Sathe is not before this Court but it is clear that he has been arrested in connection with the scam and he was also involved in the previous scam of the year 1996. [Para 51] [174-C, D, E]

C 1.8. The respondent joined the Commission only on 8.5.2001 and even before that, the conspiracy relating to permitting all students to take the final examination had been enacted. The alleged role of the respondent started only from the decision to rescan the answer-sheets on the pretext that the computer had become corrupted and the subsequent attempt of replacing the answer-sheets. It is after narrating all these facts that P.W.15 has stated in his prior statement that the respondent had called him to her residential flat and had introduced Nitin Sathe to him and had told him that the list sponsored by Nitin Sathe containing 24 names were her own candidates and further that in future he should work in conjunction with Nitin Sathe for the mutual benefit of all concerned. Though it may be part of a different phase, the fact remains that P.W.15 has also stated that he has been called to the office of the respondent subsequently and had been told not to reveal the name of Nitin Sathe at the internal enquiry that was ordered by the Acting Chairman of the Commission and that was being carried on by the Secretary Seema Dhamdhere. It is not possible to accept the argument advanced on behalf of respondent No.3 that the prior statement should be thrown out lock, stock and barrel for the purpose of this enquiry. What this Court is concerned with is the appreciation of the evidence of P.W.15 examined before this Court in the light of his cross-examination, the other evidence and in the light of his prior statement contained in Exhibit 53. So viewed, it is really a question of believing or disbelieving the evidence of P.W.15. This Court is not dealing with a prosecution and in that context the alleged confession of a co-accused, but on a fact finding enquiry based on the evidence before this Court and the probabilities of the case. [Para 52] [174-F-H; 175-A-D]

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1.9. P.W.15 is himself an accused in the case registered in connection with the scam and he is also a self confessed participant in the goings on in the Commission. In that situation, it will be appropriate to look for some corroboration of his version before entering a finding that the respondent has, in fact, said that 24 persons mentioned by Nitin Sathe were her own candidates and that P.W.15 should help them to qualify in the examination. This part of the case is not supported by the papers allegedly recovered either from her flat or from her office. There is also no clear evidence of a list of 24 persons. There is no adequate material to show that Nitin Sathe was in fact present when PW 15 met the respondent at her flat on 24.5.2002. In this situation the benefit of doubt must go to the respondent, especially, when the enquiry is to find out whether she is guilty of misbehaviour within the meaning of Article 317 of the Constitution. So in the absence of any other evidence to corroborate the evidence of P.W.15 and his prior statement Ext. 53 this Court is not inclined to find that charge No.1 is proved against the respondent.

[Para 53] [175-D, E, F]

2.1. The second charge is essentially on the footing that the respondent did not disclose the information to the Secretary of the Commission, Seema Dhamdhare who was conducting the internal enquiry about he request of Sorde not to make a criminal complaint and in that event, he was prepared to resign from his post and that the respondent influenced Aparna Dubey and her friend to withdraw their complaint made to the Commission and to file a fresh complaint implicating Seema Dhamdhare in the racket. The respondent did not disclose to the Commission that Sorde had made such an offer to her. She spoke about this in her evidence. She also does not deny that she did not inform the Chairman or the Commission as a body about the offer of Sarode. But her case is that she informed Varma, another member, who was an ex-Director General of Police. The Chairman of the Commission had requested Varma to oversee the enquiry conducted by Seema Dhamdhare. According to her, she thought that that was sufficient. There is nothing further to show that Varma was conveyed this information by the respondent. Therefore, to that extent, the respondent had not cooperated with the enquiry. Aparna Dubey has given evidence that Nitin Sathe had threatened her and compelled her to withdraw the first complaint made and to make a second complaint involving Seema Dhamdhare who was making the internal enquiry. Aparna Dubey further stated that according to Nitin Sathe, it was at the instane of respondent No.3 that he had approached her to retract her original complaint. Nitin Sathe had followed up this request with threats over the telephone. It is true that other than the statement of Aparna Dubey there is nothing to show that Nitin

A Sathe claimed that he was acting at the behest of the respondent or that he was acting on her behalf. Of course, her repeated contacting him over the telephone, does create a suspicion, a suspicion, that Nitin Sathe might have been acting on her behalf also. But, based on suspicion alone it would not be appropriate to enter a finding on that aspect. [Para 54] [175-G; 176-A-E]

B 2.2. But the fact remains that at least a copy of the second complaint/
statement said to have been made by Aparna Dubey which she claimed to have
C handed over to the respondent in person, was found in the possession of the
respondent. The evidence indicates that it was not a document that was
communicated to her by the Commission officially, and consequently, her
custody or possession of that paper should be considered unauthorized. But
D all said and done, the only fact that can be found as causing impediment in
the internal enquiry could be said to be her failure to disclose the statement
of PW 15 Sarode to the enquiry officer and the suggestion of a complaint
being got made against the investigating officer herself so as to impede the
internal enquiry. On these materials alone one would not like to enter a finding
that the respondent had committed an act of misbehaviour by interfering with
the internal enquiry. [Para 54] [176-E, F, G]

E 3.1. It is admitted that the daughter of the respondent had applied from
two places for appearing in the examination conducted by the Commission in
the year 2002. It is the case of the respondent that her daughter had not, as
a matter of fact, appeared in the examination. But the question is whether the
respondent had no obligation to inform the Commission that her daughter
was a participant in the examination conducted by the Commission in her
capacity as a Member of the Commission. The respondent did not deny that
she had not informed the Commission about the candidature of Poorva, her
F daughter. She also does not deny that there was a circular to the effect that
all employees and officers of the Commission should disclose if any of their
near relations were candidate in any examination conducted by the
Commission. Her stand is that since she was neither an employee nor an
G officer, but was a member of the Commission, the circular did not apply to
her and she had no legal obligation to inform the Commission of her daughter
appearing in an examination conducted by the Commission.

[Para 55] [177-A, B, C]

H 3.2. The respondent was holding the position of a member of a
constitutional body having a higher status. It is not possible to appreciate the
stand of the respondent that even while the employees and officers of the

Commission had an obligation to inform the Commission about the appearance of their near relations in any examination conducted by the Commission, no such obligation was attached to a member of the Commission. May be, a member of the Commission would not qualify as an employee or as an officer of the Commission, but that cannot absolve a member from the obligation of disclosing to the Commission that her daughter was to appear in the examination conducted by the Commission. Obviously, the object was to ensure that she did not participate in that particular selection process lest charges are raised of partiality in the process of selection. Normally, in such a situation the member or members are to be kept out of the particular process. Since, admittedly the daughter of the respondent had applied for appearing in the examination 2002 from two places and the respondent had failed to inform the Commission about the participation of her daughter in such an examination, it has to be held that she has misconducted herself by not making a disclosure to the Commission in that regard. The fact that the daughter later on did not actually appear in the examination would make no difference.

[Para 56] [177-D, E, F, G]

3.3. This charge has to be found against the respondent and it has also to be held that her conduct is not informing the Commission about the making of applications by her daughter for appearing in the examination 2002 conducted by the Public Service Commission amounts to misconduct.

[Para 57] [178-C, D]

4.1 Even while considering charge No.2, the evidence of Aparna Dubey to the effect that she was made to withdraw her complaint by Nitin Sathe by holding out threats to her and that she had to file a second complaint by handing over the same to the respondent implicating Sema Dhamdhare, the Secretary to the Commission has been referred to. An attempt was made to show that Aparna Dubey was not an honest person and that she and her friend were acting in concert to defame the respondent. Aparna Dubey had produced an incorrect experience certificate and she had not produced an accurate creamy layer certificate and she was unreliable. Of course, there is not enough evidence to show that Nitin Sathe had acted at the behest of the respondent while he is alleged to have threatened Aparna Dubey and her friend to withdraw their first complaint and compelling her to make a second complaint. But the fact remains that one of the copies of the complaint was found in the residence of the respondent when it was searched and according to the evidence the respondent was not authorized to keep such a copy of the alleged complaint since it had not been communicated to her officially. The explanation of the

A respondent is that she had found a copy of the complaint lying on her desk in her office and she had immediately affixed a seal on it and forwarded it. But that part of the story is belied by the fact that at least one copy was found in her premises when the search was made. [Para 58] [178-E-H; 179-A]

B 4.2. It is true that the respondent was in constant touch with Nitin Sathe. This Court has already discountenanced the story that she was contacting Nitin Sathe only in connection with the sale of her plot in Pune. But even then, it cannot be said that there is adequate evidence to show any collusion with Nitin Sathe as reflected by this charge. Therefore, though some suspicions are raised regarding the conduct of the respondent in this court in the light of her own evidence, it is not possible to say that the charge, as such, has been made out so as to hold that this charge is proved against the respondent. [Para 59] [179-A, B, C]

D 5. Based on the finding on charge No.3 and the observations on charge No.2, this Court is of the view that the respondent has not behaved in a manner befitting a member of a constitutional body like the Public Service Commission and under the circumstances, the reference made by Hon'ble the President of India to this Court is answered in the affirmative only as regards charge No.3. [Para 60] [179-C, D]

E *Special Reference No.1 of 1983, [1983] 3 SCR 639; Special Reference No. 1 of 1985 [1994] 2 SCR 37; Reference Case No. 1 of 1995, [1997] 3 SCC 216 and Special Reference No. 1 of 1997, [2000] 4 SCC 309, relied on.*

ADVISORY JURISDICTION : Reference No. 1 of 2004.

(Under Article 317 (1) of the Constitution of India)

F A. Sharan, ASG, Amit Anand Tiwari Gaurav Aggarwal, P. Parmeswaran (for Attorney General for India) Ajit Kr. Sinha, D. Patil, Dinesh Tiwari G.R. Pandey, Rakhi Suman, Ravindra K. Adsure, Makarand D. Adkar, Vijay Kumar, S.D. Singh and Vishwajit Singh for the appearing parties.

G The Report of the Court was delivered by

H **P.K. BALASUBRAMANYAN, J. 1.** This reference is made by the Hon'ble President of India under Article 317 of the Constitution of India in relation to the conduct of the respondent, a member of the Maharashtra Public Service Commission. The question is whether respondent No. 3 is liable to be removed

from office on the ground of misbehaviour. A

2. The said respondent joined the Maharashtra Public Service Commission as a member on 8.5.2001. She was arrested on 8.6.2003 in a crime registered in connection with a complaint lodged by the Public Service Commission relating to mal-practices in respect of an examination conducted in the year 1999. Twenty one others were also arrested. The respondent was lodged in jail. This led to His Excellency the Governor of Maharashtra to request His Excellency the President of India to initiate action under Article 317 of the Constitution of India for her removal. He also suspended her from office until an order had been passed by the President under clause (1) of Article 317 of the Constitution. It is seen that the respondent was subsequently released on bail though at least on three earlier occasions, her prayers for bail were rejected. Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution, the placing of the respondent under suspension under Article 317(2) of the Constitution was proper. Considering the nature of the scam that emerged and the constitutional position enjoyed by the Public Service Commission, the reference to this Court under Article 317(1) of the Constitution is seen to be the proper step to be taken. B
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3. The Governor made the request to the President by letter dated 5.8.2003 to initiate action under Article 317 of the Constitution. His Excellency made the reference by letter dated 13.12.2003. E

4. Article 317 of the Constitution reads as under:

*"317. Removal and suspension of a member of a Public Service Commission-(1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on enquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed. F
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(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the H

A Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other members, as the case may be,—

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- (a) as adjudged an insolvent; or
- (b) engages during his term of office in any paid employment outside the duties of his office; or
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- (c) is, in the opinion of the President.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.”

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E 5. The contours of enquiry when a reference is made by the President of India under Article 317 (1) of the Constitution of India has been clearly drawn by this Court in *Special Reference No. 1 of 1983* [1983] 3 S.C.R. 639. This Court therein has held that the President’s *prima facie* satisfaction based on available materials was enough for making a reference to this Court under

F Article 317(1) of the Constitution of India and that there was no need for the President to obtain the opinion of any fact finding body before making a reference. The enquiry which this Court is required to hold is not into the limited question whether, on the basis of facts found by the President, the charge of misbehaviour is made out and whether the misbehaviour is of such a nature as to warrant the removal of the person from his office. The inquiry

G contemplated by the Article is into the facts themselves so as to enable the Court to pronounce upon the question whether the allegations made against the member are proved. This Court also indicated the procedure that could be conveniently followed when this Court is called upon to answer a reference under Article 317(1) of the Constitution of India.

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7. In *Special Reference No. 1 of 1985* [1994] 2 S.C.R. 37, a Constitution Bench adopted the procedure indicated in Special Reference No. 1 of 1983. In Reference No.1 of 1985 the guidelines to be followed by the Court in recording evidence at the enquiry so as to enable this Court to answer the reference are also set down. A

7. The present reference was made by the President of India on 30.12.2003. This court issued notices to the Attorney General for India, the Advocate General for the State of Maharashtra, the Maharashtra Public Service Commission and the concerned member. After the preliminary steps were completed, on 13.12.2004, this Court requested the Attorney General for India to scrutinize the materials and file a statement setting out the ground or grounds of misbehaviour along with the statement of facts forming the basis thereof which is to be inquired into within the meaning of Article 317(1) of the Constitution of India. On 2.3.2005, the learned Attorney General for India filed a statement containing charges accompanied by the statement of facts, list of witnesses and list of documents. On 1.4.2005, this Court directed the Maharashtra State Government and the Maharashtra Public Service Commission, to assist the learned Attorney General for India by making available all the relevant documents accompanied by translations so that the learned Attorney General for India can form an opinion on the question of reframing or supplementing the charges. The Attorney General for India was also to take into consideration the explanation furnished by the concerned member of the Public Service Commission. Originally, twenty two charges were proposed. Initially they were reduced to six charges. B C D E

8. The learned Attorney General for India finally suggested that out of the six charges proposed, charge Nos. 3 and 6 may be dropped since they were not strictly within the purview of the reference made by the President since they related to conduct subsequent to the misbehaviour complained of. The learned Attorney General for India suggested that charge Nos. 1, 2, 4 and 5 may be framed against the member. This Court heard the objections of the concerned member and the Public Service Commission to the suggestion made by the Attorney General for India and passed an order on 5.10.2005 directing that charge Nos. 1, 2, 4 and 5 contained in the note of the learned Attorney General for India be framed against the concerned member. On 25.10.2005, this Court adopted the procedure and the guidelines followed in the two instances referred to above and directed the evidence to be taken by a City Civil Court Judge of Bombay to be nominated by the Principal Judge, Civil Court, Bombay. The chief examination of the witnesses was to be by way F G H

- A of affidavits filed in this Court and the cross examination was to be done in the presence of the nominated City Civil Court Judge to be recorded by him. This Court directed that after recording the evidence, the concerned Judge shall forthwith transmit the records to the Registrar General of this Court for the matter being placed before the Bench. Pursuant to this, evidence was taken and the records transmitted to this Court by the City Civil Court Judge.
- B During arguments, it was discovered that due to some confusion, the concerned member against whom the charges are framed had not been examined. The member also wanted her statement recorded. This Court therefore passed an order on 17.1.2007 directing that the five affidavits filed by the concerned member before this Court be treated as her evidence in chief-examination and she may be cross examined in the presence of a Registrar of this Court who was subsequently named by order dated 22.1.2007. Pursuant thereto, the concerned Registrar of this Court recorded the evidence of the respondent and the matter again came up before this Court for consideration. The matter was heard in detail with reference to the relevant materials on record.
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- D 9. The following are the charges framed by this Court based on the suggestions of the learned Attorney General for India on examination of the relevant materials.

"Charge -1

- E Whereas Ms. Sayalee Joshi has, directly or indirectly, tried to protect the interests of 24 candidates who appeared in an examination conducted by the MPSC and has also attempted to influence an officer of the Commission to do such illegal actions in the future in conjunction with one Mr. Nitin Sathe.

F *Charge - 2*

Whereas the respondent No. 3, Ms. Sayalee Joshi committed an act of misbehaviour by interfering with an internal inquiry being conducted by the Secretary of MPSC regarding alleged malpractices in the examination for PSI/Asstt/STI conducted by the MPSC.

- G *Charge - 3 (renumbered; original Charge NO.4 as suggested by the Attorney General)*

- H Whereas Ms. Joshi deliberately and in a mala fide manner omitted to disclose a very vital fact to the Commission, namely that her daughter was appearing for an examination being conducted by MPSC,

which disclosure was mandatory as per Office Order No. 4/1998 dated 05.05.1998 of the MPSC and hence sought to suppress vital and material information from the Commission, which affects her integrity and complete devotion to duty in an impartial manner, amounting to misbehaviour under Article 317(1) of the Constitution. A

Charge - 4 (renumbered; original Charge NO.- 5 as suggested by the Attorney General) B

Whereas Ms. Joshi, in collusion with Mr. Nitin Sathe, attempted to sabotage lodging of a complaint by a candidate as regards malpractices in the examination conducted by the MPSC for the posts of PSI/Asstt/STI and hence abused her official position and acted contrary to the interests of the Commission and the candidates, and is guilty of misbehaviour under Article 317(1) of the Constitution." C

10. During the enquiry exhibits 1 to 71 were marked and 17 witnesses were examined. The respondent also got herself examined. Elaborate submissions were thereafter made on the charges framed. D

11. Before we proceed to deal with the separate charges which we have renumbered as 1 to 4 for convenience certain facts may be noted. The various complaints that arose were in connection with a competitive examination announced by the Public Service Commission on 14.7.1999 for recruitment of Police Sub-inspectors/Sales Tax Inspectors and assistants. The Preliminary Examinations were held on 18.6.2000 and the results of the Preliminary Examinations were declared on 2.11.2000. There were complaints regarding the Preliminary Examination and a decision is said to have been taken by the Public Service Commission on 29.11.2000 to permit all the candidates whether they had qualified in the Preliminary Examination or not, to appear for the main examination. A Notification in that behalf was issued on 6.12.2000. On 8.3.2001 the main written examination was held at different centres in the State. The scanning of the mark-sheets took place between 23.3.2001 to 16.5.2001. E F

12. At all these times the respondent was not a member of the Public Service Commission. She joined only on 8.5.2001. G

13. Learned counsel for respondents No.3 argued as if this reference was a criminal trial and the charge against the respondent has to be proved beyond reasonable doubt. Learned counsel for the Public Service Commission submitted that these proceedings were neither in the nature of a criminal trial H

A nor in the nature of the service dispute, but that it was a question of an inquiry into the conduct of a member of the Public Service Commission who was expected to maintain highest standards of integrity. This Court in *Re Reference under Article 317(1) of the Constitution of India* [1990] 4 S.C.C. 262 while answering Special Reference No. 1 of 1983 had noticed:

B “The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of a Member of the Commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by Articles 315 to 323 of Chapter II of Part XIV of the Constitution. In our view the decisions dealing with service cases relied upon on behalf of the respondent have no application to the present matter and the reference will have to be answered on the merits of the case with reference to the complaint and the respondent’s defence.”

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D 14. While answering *Reference Case No. 1 of 1995* [1997] 3 S.C.C. 216], this Court held that the attempt to influence the result of a candidate appearing in an examination conducted by the Public Service Commission would amount to misbehaviour on the part of a member of the Commission. In *Special Reference No. 1 of 1997* [2000] 4 S.C.C. 309, this Court explained the position held by the members of the Public Service Commission thus:

E “Keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and members of the Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they in turn are expected to be models themselves in their functioning. The character and conduct of the Chairman and members of the Commission, like Caesar’s wife, must therefore be above board. They occupy a unique place and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and members of the Public Service Commissions.”

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G This Court towards the end further stated:

H The credibility of the institution of Public Service Commission is founded upon faith of the common man on its proper functioning. The faith would be eroded and confidence destroyed if it appears that the

Chairman or the Members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and Members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service Commission must for ever remain vigilant and conscious of these necessary adjuncts.

The task of this Court therefore is to find out as a fact whether the materials disclose a conduct on the part of the respondent (a constitutional functionary) which would be misbehaviour within the meaning of Article 317(1) of the Constitution of India. Our approach to the reference in answering the charges framed has to be on this basis.

15. There is no doubt that the first respondent- Public Service Commission has clearly fallen from grace and the exalted status it enjoys under the Constitution. That one scam after another should erupt in respect of such a constitutional body is a very disturbing aspect. If constitutional institutions fail in their duties or stray from the straight and narrow path, it would be a great blow to democracy a system of governance that we have given unto ourselves and the great vision our constitutional framers had about the future of this country. During the course of our detailed enquiry, we also felt that it is possible that an attempt is also made not to expose everything in connection with the erupted scandal but to brush at least some of the aspects under the carpet. This is also an unhappy augury for the working of our institutions.

16. We shall first summarise the evidence in the light of the facts set out in support of the charges framed.

The evidence

17. As has been noticed, the Main written examination for the post was conducted on 18.3.2001 and the scanning of the Mark Sheets took place on 23.3.2001. Respondent No.3 joined the Commission as a Member on 8.5.2001. The charge against respondent no.3 is that on 25.4.2002 the Controller of Examinations Mr. Sarode (PW.15) visited respondent no.3 at her residence at her behest. According to the facts in support of the charge, Mr. Nitin Sathe was also present at that time at the residence of respondent no.3. After

A introducing Mr. Nitin Sathe to PW.15, respondent no.3 told PW.15 that a List of 24 candidates furnished by Nitin Sathe for favourable treatment while evaluating the results, were her own candidates and that PW.15 should do all that is possible to help those candidates. The further charge is that she also told PW.15 that he should work in conjunction with Nitin Sathe in future also so that benefit could be had by all by such association. Respondent No.3

B while admitting that she had met PW.15 at her residence, flatly denied that Nitin Sathe was present on the occasion, that she had introduced Nitin Sathe to PW.15 and had told him about a list of 24 candidates or about the prospect of working together in future. According to her version, PW.15 had come to her residence to discuss the problem of his son who was doing his course

C in Bachelor of Commerce and she being a Commerce graduate, he wanted her help in correcting the course of his son's carrier.

18. In support of the second charge, it is alleged that an internal enquiry was conducted into the complaints received and during the enquiry respondent No.3 summoned Sarode and directed him not to disclose the name of Nitin

D Sathe in the ongoing enquiry. This, on her part was an interference with the enquiry which amounted to misbehaviour. On her part the respondent had denied that she issued such a direction to Sathe.

19. In support of the third charge it was alleged that Poorva Joshi, the daughter of respondent No.3 applied for appearing in an examination conducted

E by the Commission from two centres and that she failed to disclose that fact to the Commission. Though the respondent admitted this fact she pleaded that she had no such obligation since such an obligation to disclose rested only on employees and officers of the Commission and not on its members. She also took up the stand that her daughter had actually not appeared in

F the examination.

20. In support of the fourth charge it was set out that the respondent had got Nitin Sathe to threaten PW 9 Aparna Dubey and compelled her to withdraw her original complaint and to make a second representation to the Commission handed over to the respondent which she received and handed

G over to the acting Chairman Wani. On search of her residence the representation wherein the seal of the Commission was recovered. The documents were not once handed over to her officially.

21. PW.15 in his chief examination by way of affidavit in this Court, had

H sworn to the fact that he had made a free and voluntary confession on 28.11.2002 before the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai

regarding the irregularities and illegalities in the working of the Maharashtra Public Service Commission and its concerned Members and Officers which came to be known as M.P.S.C. Scam. He had made the confession while he was in judicial custody. During the relevant period, he was working as the Controller of Examinations. He had given the details in his confession which was a free and voluntary one. He has further sworn : "I say that, sometime in the month of April-2002, Smt. Sayalee Sanjeev Joshi, member of the Maharashtra Public Service Commission, asked me to meet her at her official residence. During this period the process of declaration of results of the Police Sub-Inspector & Sales Tax Inspector/Assistants Exams-1999, was in its final stages. That, when I visited the official residence of Smt. Sayalee Sanjeev Joshi on 25.4.2002 she introduced me to one Mr. Nitin Sathe, who was already present there. I say that, while entering the official residence of Smt. Sayalee Sanjeev Joshi, I made an entry of my visit in the visitors book kept at her official residence. During this meeting at her official residence, Smt. Sayalee Sanjeev Joshi told me that the 24 candidates supplied by Mr. Nitin Sathe were her own candidates and the interests of these candidates were to be protected and these candidates were to be selected for the above said Police Sub Inspector/Sales Tax Inspector/Assistant Exam-1999. I say that, these candidates had qualified in the Main Examination of Police Sub-Inspector & Sales Tax Inspector/Assistants Exam-1999. That, during the said meeting Smt. Sayalee Sanjeev Joshi also put forward a proposal to me that I should work with Mr. Nitin Sathe in the future for mutual benefits. Smt. Sayalee Joshi had called me to her residence on 1st May 2002 also and she again told me that I should not disclose the name of Shri Nitin Sathe to anyone during the enquiry. I have made an entry of this visit in the visitor's book kept at the residence of Smt. Sayalee Joshi." The confession referred to was marked in evidence as Ext.53.

22. The visit of PW.15 to respondent no.3 at her residence on 25.4.2002 is corroborated by the visitors' register kept at the building in which respondent no.3 was residing. That visit is also not denied by respondent no.3. In his confessional statement PW.15 had stated : "the work of the result of the examination was in last stage, somewhere in the month of April-May 2002, Smt. Joshi, Member of the Commission asked me to meet her at her house. Meantime, Smt. Dhamdhere had started inquiry on the basis of anonymous complaints.

When I went to the house of Smt. Joshi that time, one Nitin Sathe was present there. Smt. Joshi told me that 24 candidates supplied by Nitin Sathe were of her own. Hence she instructed me not to disclose the name of Nitin

A Sathe in the inquiry. In the same meeting, she also put forward a proposal before me to do the same work in future with the help of Nitin Sathe.

B At the same time, an advertisement was published for the recruitment of the Gazetted officers in the State Service. Smt. Joshi told me that her daughter was one of the candidates. She also suggested to me that we had to pass her in the examination. I told her that it was not possible.”

C 23. In his cross-examination on behalf of respondent no.3, it was brought out that PW.15 was associated with the Commission from the year 1972 onwards. He joined as an Assistant and rose to the position of Controller of Examinations. It was suggested to him that Dr. Karnik who became the Chairman of the Commission was responsible for his elevation to the position of Controller of Examinations. It was also brought out that at the time he was appointed as the Controller of Examinations, Mr. Edwankar was senior to him amongst the Deputy Secretaries. PW.15 asserted that he got the post on the basis of seniority and accepted it, though he was reluctant. It was a post that carried a huge responsibility. He agreed with the suggestion that two reasons combine insofar as what came to be called the Scam of 1999. They were, one of letting every candidate appear for the Main Examination and secondly the decision to re-scan the answer sheets. He also admitted that some persons had collected money from the candidates promising that they would be allowed to take the Main Examination. Those candidates were the unsuccessful ones in the Preliminary Examination. It was also brought out that based on a conspiracy, the candidates who had failed were induced to hold a demonstration in front of the office of the Commission so that the Commission could take a fresh decision based on their alleged grievance. It was also brought out that the meeting with regard to the 1999 re-examination took place on 29.11.2000, at a time when respondent no.3 had not joined the Commission. To a question, he answered that answer sheets of those from whom money had been taken, were to be changed, but it became impossible because of him, because he refused to be a part of the game. He stated that there were lot of complaints and Public Interest Litigations in the High Court and as a result of those complaints, the charge of Controller of Examinations came to be taken away from him pursuant to the order of 8.4.2002 passed by Mr Wani who was then the Acting Chairman of the Commission. He also admitted that in May 2002, the Secretary to the Commission Mrs. Seema Dhamdhare had commenced her enquiry. He also admitted that he was the first person to be arrested in connection with the M.P.S.C. Scam. He was arrested on 29.6.2002. He also stated in paragraph 24 that : “Till I gave my confessional statement I did not

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write any letter or written intimation either to the court or to the police about the involvement of the respondent Mrs. Joshi." He asserted that loss of face had led to his repentance and that had induced him to make the confession before the Metropolitan Magistrate. It was suggested to him that a complaint file came to be opened against him containing personal allegations and the allegations were about his misbehaviour with lady employees. It was suggested to him that he had a special relationship with Dr. Karnik and Dr. Karnik had deliberately shut his eyes to the existence of the personal file of complaints against him while promoting him as the Controller of Examinations. He admitted that he was called up and a written intimation was also sent to him from the Commission with regard to the affidavit in chief examination that he had filed in this reference. He knew that he was swearing to the affidavit as a witness. He was aware that he would be a witness against one of the accused in favour of the prosecution. Then he stated : "It is not true that I gave the confessional statement falsely to save myself. It is not true that I swore to the affidavit in this reference falsely to save myself. It is not true that a promise was held out that if I made a confessional statement and swore the affidavit I would be made approver and I would get free from the botheration of the prosecution. It is not true that I never felt any repentance. It is not true that this stand is adopted by me to save my skin." (paragraph 31). Regarding the meeting with respondent no.3 this was what was brought out-"I cannot mention the date but it was in April 2002 that according to me the respondent called me. It was either in the second or third week of April 2002. I did not tell this fact to anybody that the respondent had called me as just mentioned. She had called me to her chamber in the office and told me to meet her at her residence. The date was not fixed on which I should see her at her residence. I had mentioned in my confessional statement that this event took place sometime in April-May 2002. It is true that in the confessional statement the date 25.4.2002 was not specifically mentioned by me. In my confessional statement I did not mention that I met the respondent on 1.5.2002. In fact there is no mention of my second visit at all in my confessional statement. I did not disclose to anybody in the office of the Commission the fact of my visit to the residence of the respondent either on 25.4.2002 or 1.5.2002. I had not mentioned in my confession that I made entry in the visitors book when I visited the residence of the respondent. I had not given the list of the 24 candidates either in my confessional statement or in my affidavit in this reference (see page no.3 of the affidavit)." (paragraph 32). He admitted that : "it is true that the fact that the respondent told me in connection with the 24 candidates that the interest of those candidates were to be protected is not mentioned in my confessional statement. Volunteers: Whatever I could

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A recollect was mentioned in the confessional statement. It is true that it is not mentioned in my confessional statement that those candidates had qualified in the main examination of Police Sub Inspector and Sales Tax Inspector/ Assistants exams 1999. The facts just referred to in relation to my confessional statement and the affidavit were not mentioned by me to anybody in the interregnum. As far as the question as to whether I agreed with what according to me the respondent proposed, I say that by then the finalisation of the result was in progress and nothing was in my hand." (paragraph 33). He denied the suggestion that the respondent had never called him on 25.4.2002. He also denied the suggestion that he visited the respondent on that day on the pretext that his son was not getting through his B.Com and since the respondent belonged to that faculty she could give necessary guidance. He denied the suggestion that the real reason for his visit to the respondent was that he wanted to create a soft corner with the respondent because his name had appeared in the anonymous complaint. He denied the suggestion that he saw the respondent in her chamber with a request to see to it that no prosecution was started against him and he offered that he was prepared to submit his resignation when it became clear that the matter would escalate. He denied the further suggestion that the respondent had spurned his request. He admitted that he could have refused to swear to the affidavit in this reference. He had not talked to anyone in the Commission before he swore to the affidavit in chief examination. He denied that the recitals in his affidavit about Nitin Sathe having met him in the manner mentioned therein were incorrect. He denied the suggestion that the respondent never sought his help in any manner for helping her daughter Purva as stated in his affidavit. He denied the suggestion that the affidavit filed by him was prepared as instructed by Mrs. Seema Dhamdhare. He denied the suggestion that his entire evidence was false and was being given under the threat of the police and as an exercise in self preservation.

24. The confessional statement marked Ext.53 was also proved through the Metropolitan Magistrate who recorded it examined as PW.14. In his chief examination PW.14 submitted that he was working as Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai. Then Sorode (PW.15) was produced before him as per the directions of the Sessions Court, Mumbai. Sarode was produced from custody in the Central Jail. He stated that when PW.15 was produced before him he asked all police personnel and other persons to vacate this Court. He confirmed from the witness that no body connected with this case was present in the Court and allowed only two constables on duty in the Court for his safety to be present. When PW.15 wanted to make the statement

voluntarily he had put certain questions and recorded the answers. The witness had stated that he wanted to make a confessional statement. He had on the first day sent PW.15 back to custody with a direction that he be produced again on 25.11.2002. On 25.11.2002 he again asked PW.15 whether he wanted to make a confession and he stated that he wanted to make a confession voluntarily. He also ascertained that PW.15 had not been ill-treated while in custody. PW.15 had told him that he was repenting for the act done by him and that had induced him to make a confessional statement and to reveal the truth and to help the law. PW.14 had given PW.15 further 24 hours to rethink on his wanting to make a confession and had directed that he be produced before him on 26.11.2002 but PW.15 was produced before him on 28.11.2002 due to some administrative reason. After ascertaining that the confession was being made freely and on his own volition by PW.15, he recorded the confessional statement. He recorded it after ensuring that no one interested in the case was present in court. After the completion of the recording of the confessional statement, he obtained the signature of PW.15 in the recorded statement. He also countersigned it. He, thereafter, endorsed that the statement was recorded in his presence and it was a full and true account of what PW.15 had stated. Before he made the confession he had issued a warning to PW.15 that he was not bound to make any confession but if he made one, the same would be used as evidence against him. He also certified the grounds on which he believed that the confession was genuine and recorded the precautions taken by him while recording the confessional statement. He put the confessional statement in a sealed cover and submitted the same on 28.11.2002 to the Registrar, City Sessions Court, Greater Mumbai in compliance with the order of the Sessions Judge, Greater Mumbai. In his cross-examination, at the instance of respondent no.3, he reiterated that PW.15 was brought before him on two or three occasions before he recorded the confession. He had recorded the entire confession in the open Court. The doors were all kept open. PW.15 was making the statement in the form of narrative and the confessional statement was dictated by PW.14 to the Typist. He interrupted PW.15 only when he found that PW.15 was mentioning something that was unnecessary or was getting unnecessarily verbose or irrelevant. There was no mention of these interjections in the confessional statement recorded by him. The basis for deciding that a particular statement was irrelevant was whether he travelled beyond the scope of MPSC case. The facts of the MPSC case were mentioned in the letter that was given to him by the prosecution. That letter was handed over to him about four days before the recording of the confessional statement. He had asked the questions in Marathi and not in English. He had translated the statement into English.

- A** He was also a Maharashtrian and his mother tongue was Marathi. PW.15 was fluently talking in Marathi. He was conversant with the provisions of Criminal Manual. It was true that there was a provision in the Manual that as far as possible such statement should be recorded in the language of the accused and if it was not practical then in the language of the Court in English. He
- B** became aware of the contents of the confessional statement since he had dictated it and read it over to PW.15. There were two parts in the confession, namely, relating to some of the accused in the first part and relating to the respondent in the second part. In the first part there was a reference to the main conspiracy and also a reference to his own participation in the said
- C** conspiracy. Going through the second part that pertains to the respondent he could say that PW.15 did not mention that he agreed with the proposal of the respondent. It appears that as far as the respondent was concerned according to PW.15, either he declined the proposal of the respondent or he was just a listener thereof. He agreed that it would have been better to have recorded the confessional statement in Marathi. He came to know through a
- D** police officer, sometime in January 2006, that he had to file an affidavit before this Court. The officer concerned was ACP Poojari. He did not sign the affidavit on the same day that the ACP visited him. First of all he addressed a communication to the Chief Metropolitan Magistrate informing him that he had been asked to submit the affidavit he had submitted in this Court as per
- E** a letter of the Secretary of the Commission. The Chief Metropolitan Magistrate had written to the Secretary of the Commission that being a judicial officer, PW.14 was not supposed to file such an affidavit. But he was informed that filing of the affidavit was necessitated as per the directions of this Court. It was only thereafter he signed the affidavit in chief examination. He had told the officer concerned that he had only recorded the confessional statement
- F** of PW.15 and that his affidavit should remain restricted only to the statement of those facts. He had indicated what should be the contents of the affidavit and thereafter it was drafted and shown to him. The officer had brought it to him, he had read it and signed it. He had told the officer that he had nothing to do with the respondent and his affidavit should be restricted only
- G** to the recording of the confessional statement of PW.15.

25. Going by the procedure set down by this Court in the decisions referred to earlier, the admissibility and relevance of a piece of evidence has to be decided by this Court. In that context an argument was raised by learned
- H** counsel for the third respondent that Ext.53, the confessional statement was not admissible in evidence. It was alleged to be that of a co-conspirator and

it did not relate to and under Section 10 of the Evidence Act it could not be admitted as evidence since it was a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy after it had been completed. Relying on the decision in *Mirza Akbar v. King Emperor*, AIR (1940) PC 176 counsel submitted that things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist as admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference.

26. He also referred to the decision of this Court in *Jayendra Saraswathi Swamigal v. State of Tamil Nadu*, [2005] 2 SCC 13 wherein it was held that only if *prima facie* evidence of existence of conspiracy is given and accepted, evidence of acts and statement made by one of the conspirators in furtherance of the common object would be admissible. He pointed out that in that case statement of alleged co-conspirators was sought to be used to implicate the appellant-accused and it was held that having been recorded long after the event when the conspiracy had culminated, that was not admissible.

27. We do not think that it is necessary for us to rule finally on this question since that would be a matter for consideration by the appropriate criminal court wherein respondent No.3 has also been prosecuted. In the proceedings before us we have the evidence of PW 15 who allegedly made the confession Ext.53 and the evidence of PW15 before us is sought to be corroborated with reference to a prior statement or confessional statement made by him before PW 14. The recording of the statement has been proved before us by examining PW 14. It is really a case of appreciating the evidence of PW 15 before us in the light of all the circumstances disclosed, including the making of a previous statement by him which according to the Commission corroborates or supports his present evidence. Though Ext.53 may or may not be used as evidence of conspiracy in terms of Section 10 of the Evidence Act, we think that the same can be used as a corroborative piece of evidence being a previous statement made by PW 15. We are, therefore, of the view that Ext.53 cannot be totally discarded while considering whether respondent No.3 has been guilty of misbehaviour in this inquiry under Article 317 of the Constitution. For the purpose of deciding the question whether respondent No.3 is guilty of misbehaviour, it may not be necessary to establish the

A existence of a conspiracy when we consider the charges that have been framed and charge No.1 which is the subject matter of this discussion. We are more concerned with the acceptability of the evidence of PW 15, as to whether respondent No.3 did in fact introduce him to Nitin Sathe, whether she told him that the list of 24 given by Nitin Sathe included her own people and that PW 15 should help them through the examination, that he must work in coordination with Nitin Sathe for their mutual benefit and that he should help her daughter Poorva to qualify.

28. PW 10 Jyoti Shidojirao Desai deposed in her chief examination that she was a candidate for the MPSC Examination which was held in 2000. She had passed the preliminary examination and she had failed in the main examination. She had given a detailed statement to the Investigating Officer and the Anti Corruption Bureau, Mumbai supported by the relevant documents. She had also made an application before the Chief Justice of the High Court of Bombay regarding the mal-practices and corruption in the MPSC examination committed by Nitin Sathe and respondent No.3. She has stated that Nitin Sathe had approached her and told her that he could get her selected in the interview and final selection if she paid Rs.1 lakh to Rs.3 lakhs as per the preference for the particular post. He had told her that he had the necessary contacts. But she did not accept the proposal. He had come again after two days to her residence and repeated the offer. He had told her that if she did not believe him then he would take her to the residence of respondent No.3, who was staying in Pune and who looked after all the money matters for the interview and selection of candidates. He also told her that she could personally talk to respondent No.3. But according to PW 10 she again refused his proposal. She was disqualified in the examination due to malpractices/corruption carried out in the said examination by Nitin Sathe and respondent No.3 as she refused to pay the amount demanded by Nitin Sathe on behalf of respondent No.3. After reading the newspapers reporting the MPSC scam she personally approached the High Court and filed an application addressed to Hon'ble the Chief Justice praying for an enquiry into the scandal. She had also approached the Anti Corruption Bureau, Mumbai where her statement was recorded. In her cross examination she reiterated that she failed in the main examination. She had thereafter moved the Commission for reassessment. There was no change in the result. Thereafter as far as that examination was concerned she had no concern with the Commission. Then in the year 2000 she offered her candidature for the post of Class I and Class 2 State Government Officers. It was called State Civil Services Examination. She explained that the examination was held in three stages, a preliminary, main and the interview. Qualifying

marks for the main examination was 460. She had secured 471 marks. Her marks sheet was marked as Ext.36. The maximum marks in the interview were 100. She had secured 471 out of 800, in the written examination and 33 out of 100 in the interview. She had received a total of 504 marks. The qualifying marks for group A were 537 and in group B 516. She was short by 33 marks in the case of group A and by 12 marks in the case of group B. She stated:

“According to me in June 2001 the results were out for the main examination of Civil Services. It was declared in the first week of June 2001. It is my case that on that very day Nitin Sathe saw me at the address where I was residing at. It is my case that 2-3 days thereafter Nitin Sathe met me again at the same place.”

It was brought out that the address she gave and where she met Nitin Sathe was the address of her father in Hindustan Antibiotics Colony, Pimpri, Pune. She could not even approximately state when she started residing at that address. She got married on 15.5.2002. Her husband serves at Pune Race Course. She was residing with him after marriage. It was not true that after marriage she and her husband were residing at the Pimpri Address. But in her complaint to the Chief Justice of Bombay High Court she had given the Pimpri address. She denied the suggestion that Nitin Sathe never met her and that is why she is creating a confusion with regard to the address. The respondent was not in the panel of the interviewers in the Civil Services examination before which she appeared. She admitted that she got her final result at her Rajendera Nagar address on 18.8.2001. She further stated:

“It is not true that the allegations pertaining to the Nitin Sathe are the product of the meeting of myself, Aparna Dubey, Kalpandey and Poojari. It is not true that Nitin Sathe had never met me and my case in that behalf is incorrect. It is true that I had given out the address of Rajendra Nagar in the 1999 examination also. I now say that I do not remember if I had given that address then.”

29. PW 12 Valmiki Shivram Ohwal swore in chief examination that he was working in the Maharashtra Public Service Commission since 1980 as a peon and in the year 1996 he was promoted as ‘Naik’. He has spoken about the 1999 Competitive Examination for the recruitment of Police Sub-Inspector and Sales Tax Inspector/Asstts. Conducted by MPSC in three stages, preliminary examination, main examination and physical test/interview. He continues as a peon/Naik and in the year 2002 he was attached to respondent No.3, a Member of the Commission and used to go along with her outside Mumbai

A for interviews. At the time of interviews of the examination 1999 he was at the Circuit House, Pune along with respondent No.3 and at that time Nitin Sathe and one Kailas Jadhav used to come at the interview place i.e. the Circuit House, Pune. In the year 2002 he had received a call at the office of respondent No.3 from Nitin Sathe. He told Nitin Sathe that respondent No.3 was busy in a meeting. Nitin Sathe told him to convey the information of his phone call to respondent No.3 as and when she became free from the meeting.

B In his cross examination he stated that he continued in the service of the Commission even now. He was attached to the establishment section of the Commission. This statement was recorded by ACP only once and that was in the year 2004. It was taken on 19.1.2004. His statement was recorded after the present reference was made to this Court. He could not speak in English.

C He gave his statement in Marathi and it was recorded in English. He asserted "it did so happen that I received a telephone call to the fact that I should inform Madam that the caller had called up. I cannot remember the date, day, time and the year but the said telephone call was received." Every member of the Commission had a cabin. He would open the cabin in the morning and close it in the evening. The dusting and sweeping was done at about 8.30 am by Hamals and for that purpose they would take the key from the security guards. He would report for work between 9.15 am and 9.30 am. The members of the Commission report for work at about 10.30 am and they remain there till 4.00/4.30 pm. Family of the respondent was based at Pune. She would visit Pune during week end and holidays. The respondent would leave for Pune in the evening preceding non-working Saturdays and would return on the morning of Monday. Whenever she came back from Pune, she would report for work at about 11.00/11.30 am. His affidavit filed in court was prepared by a clerk in the Commission and it was not prepared as per the dictate of ACP Pujari.

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F 30. PW 17 Poojari in his chief examination stated that on the complaint of Seema Dhamdere, Secretary, Maharashtra Public Service Commission, Mumbai he registered an FIR on 20.6.2002 vide ACBCR No.33/2002 under Sections 409, 418, 420, 465, 466, 467, 468, 471, 477(a), 380, 381, 457 read with 120(B) of Indian Penal Code read with 13(1)(d) of Prevention of Corruption Act, 1988 and commenced investigation. He first arrested Sarode, the Controller of Examinations and subsequently arrested the others. Till date, 29 persons were arrested. The investigation is continuing with the permission of the Special Court, Mumbai. According to him during the course of the investigation the stages of conspiracy in the conduct of PSI/STI/Asstt., 1999 examination

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H of MPSC was revealed as under:

I. Collecting huge amounts from the prospective candidates with an assurance of success in the said MPSC examination immediately after the advertisement for the said post (April 2000 onwards). A

II. Ensuring by manipulation that all the students (even those who had failed the Preliminary examination) appeared for the main written exam and later qualify through the interview to be held for recommendation to the posts (August 2000 onwards). B

III. Procuring original blank answer sheets for the purpose of forging answer sheets to be subsequently filed in with the correct answers (29.3.2001 onwards) C

IV. Offering huge amounts to the employees of MPSC with the intention to subvert their integrity and to include them in the said conspiracy (On or about May 2001).

V. Obtaining illegally, the keys of the cupboard where in the answer sheets are kept (on or about July 2001). D

VI. Entering the MPSC Office using duplicates of the original keys, for the main and rear doors which were kept at Mantralaya and then substituting the original answers sheets with the forged marked answer sheets. (On or about 21/22 July 2001).

VII. Tampering with the MPSC computers containing scanned data with original answer sheets for the said examination which will facilitate the re-scanning of forged answer sheets which were to be later replaced with the original. (On or about 25th July, 2001). E

VIII. Ordering a re-scan to be conducted after a gap of few days from the data of tampering of computers and replacing the forged answer sheets. (On or about 27th July, 2001). F

IX. Selecting the unmerited candidates on the basis of increased marks assessed after re-scanning. Selecting the unmerited candidates by flouting all rules, under the pretext of rechecking and calling answer sheets out of Headquarters i.e. Mumbai Office to Pune (2nd August, 2001 onwards). G

X. Managing Physical test and interview for final selection (15.10.2001 to 16.3.2002).” H

A 31. He deposed that during the course of the investigation, at the final stage the statement of respondent No.3 was recorded in the capacity of a witness. However, later on, on getting evidence of respondent No.3 having joined the conspiracy, she came to be arrested in this case on 8.6.2003. He stated that sanction for prosecution has been accorded. Respondent No.3 was arrayed as accused No.22. Prior to her arrest, her residence at Nilambri, Church Gate, Mumbai, was searched. The search resulted in recovery of confidential MPSC documents including certain papers relating to a candidate Kumari Aparna Saheblal Dubey who was also a witness in this enquiry. A Panchnama had been prepared. According to him during the course of investigation it was revealed that respondent No.3 was in regular contact with the accused persons vide CR No.33/2002 like Nitin Sathe who was earlier arrested in CR No.27/1996 relating to the Maharashtra Public Service Commission paper leakage case. It was also revealed during investigation that respondent No.3 was in contact with accused persons like Kalash Pandurang Jadhav, who was conducting classes at Barshi, Solapur for competitive examinations conducted by the Maharashtra Public Service Commission.

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Respondent No.3 was also found to be in contact with Kailash Jadhav from her telephone No.2670541 between 27-2-2002 and 22-3-2002. Kailash Pandurang Jadhav was arrested in the present case on 29.11.2005 and was presently in judicial custody. He also stated that it was noted during investigation of respondent No.3 that she was in regular contact with Mohammed Chand Mulani, father of a candidate, Riyaz Mulani. Mohammed Chand Mulani was an accused in the famous Telgi Stamp Paper Scam. She was also in contact with candidate Riyaz Mulani. He has given evidence regarding the confession made by Sarode and about the fact that the respondent had met Sarode and had put him in contact with Nitin Sathe. He stated that the confessional statement of Sarode was corroborated by the entry made in the visitors book maintained at the residence of respondent No.3 at Nilambri Building, Church Gate, Mumbai. The telephone print out received from service providers had revealed that respondent No.3 had contacted accused Nitin Sathe from her office on telephone No.22670541 to his mobile No.9822484228 eight times between 28.3.2002 and 25.9.2002. She was in contact with Nitin Sathe from her residential office telephone 2820760 to his same mobile twenty times between 30.3.2002 to 20.5.2002. Respondent No.3 was using mobile No.9869066882 and from it she had contacted Nitin Sathe four times between 18.5.2002 to 27.5.2002 on his mobile number and the land line No.4362099 at Pune. The statement of Aparna Dubey who was allegedly threatened by Nitin Sathe at the instance of respondent No.3 and who later on retracted the statement by making a

fresh application which was personally accepted by respondent No.3 from her. The statement of Jyoti Desai who was contacted by accused Nitin Sathe and was offered success was recorded. The statement of other candidates recorded during the course of investigation indicated that Nitin Sathe had collected huge amounts promising them success. The statement of Dr. B.S. Solunke, Member, MPSC, the statement of the peon of respondent No.3, the statement of the husband of the respondent, Mr. Sanjeev Joshi and the statement of the sister-in-law Neha Joshi were recorded. He also deposed that the special court had also taken cognizance of the offence committed by respondent No.3.

32. In his cross-examination he admitted that in the first charge-sheet, in the first supplementary charge-sheet and in the second supplementary charge-sheet, the respondent was shown as a witness. In the third supplementary charge-sheet also she was shown as a witness. But in the charge-sheet filed on 3.9.2003 the respondent as shown as an accused. Her statement was recorded on various dates. It was brought out that Nitin Sathe was arrested on 12.11.2002 and that Sarode was the first to be arrested on 29.6.2002. He had contacted Sarode on 25.6.2002 and had again interrogated him on 26.6.2002. Between 26.6.2002 and 29.6.2002 on which day Sarode was arrested no other statements were recorded. After Sarode was remanded to judicial custody, PW.17 had, with the permission of the Court, met Sarode in Jail. That was on 4.10.2002 and that was regarding the missing answer sheets of 5 candidates. He was shown Ext.53, confessional statement and asked whether he was present at the time the said statement was opened before the Sessions Judge on 13.12.2002. He stated that he could not remember whether he was present on that day. He had questioned the driver of the respondent, but he did not remember whether had had questioned the maid servant. He had also made enquiries with the security guards of the building which contained the respondent's official residence. He had not shown to any of them the photographs of Nitin Sathe or Sarode. He had made enquiries with regard to the payment of money by the candidates. He had recorded the statements of more than 2000 candidates in this behalf. He stated that according to the respondent in her statement of 4.12.2002, Sarode had seen her at her residence in the last week of April in connection with the problem concerning his son's education. It was also her version that she owned a plot of land at Pune and she wanted to sell it and that she was trying to sell it through Nitin Sathe, who according to her, was an estate agent. It was put to him that in an affidavit filed by the respondent before this Court, there was a reference to a public interest litigation allegedly at his instance and also to a private

A complaint under MCOCA filed by an accused Avinash Sanas against the witness. He stated that the allegations were looked into and rejected as being without substance. He had been serving the police department for the last 23 years. He denied that in a private complaint the Special Judge found a *prima facie* case against him. He had taken a certified copy of the order dismissing the complaint. He admitted that Dr. Kadam had made a complaint against him alleging harassment. He denied the suggestion that when Dr. Kadam made a complaint he implicated the wife of Dr. Kadam also and she is also an accused. He stated that, however, it was true that the wife of Dr. Kadam was also an accused. He had made enquiries with regard to the assets of Dr. Kadam. He admitted that a complaint was made against him and other police officers by one Mrs. Manisha Nichad who asserted that the same was also rejected. In paragraph 4 of his affidavit in chief examination he had mentioned the stages of the conspiracy and the period thereof. It was true that originally there were 22 charges against the respondent before this Court and that only 4 charges were framed ultimately. Though the charge with regard to contact of the respondent with Kailash Jadhav and Mohammed Chand Mullani had been dropped, they were referred to in his affidavit to explain the contact of the respondent with Jadhav and Sathe. According to him charge no.5 covered the charge pertaining to Poorva, the daughter of the respondent. He denied the suggestion that these references were made by him in his affidavit merely to cause prejudice. He stated that there was sanction both by the Governor and the President. He denied the suggestion that he had indulged in arm twisting tactics as far as the respondent was concerned. He denied the suggestion that he had falsely implicated her. It was not true that there was no evidence against the respondent. It was not true that he had been after the respondent for her to tender her resignation from the membership of the Commission. He denied the suggestion that the confession of Mr. Sarode was inspired by him during his meeting with him when he would be brought before the Court and on the pretext of recording his statement on 4.10.2002. He admitted that he had been to the Central Jail to meet Sarode on 4.10.2002. He denied the suggestion that he had brain washed Sarode on the assurance that Sarode would be made an approver. He denied the suggestion that Sarode made the confessional statement at his instance. He denied the suggestion that the various affidavits filed in this case were drafted by him. There was also a disproportionate assets case against Sarode, the investigation into which was in progress. He denied the suggestion that the said case was being kept as a sword hanging over the said of Sarode to ensure that he fell in line.

H 33. PW.9 Aparna Saheblal Dubey stated in her chief examination that

she had given the statements before the Anti Corruption Bureau, Mumbai regarding the malpractices and corruption in the working of MPSC and concerned Members and Officers which is, commonly known as MPSC Scam Case. In the year 1999-2000 she applied for and passed in the District Sport Officers' Screening Test as also in the Examination for recruitment of PSI/STI/Assistant. In October, 2000 Nitin Sathe approached her at her residence and after introducing himself he enquired about her candidature for the post of Tahsil Sports Officer. He told her that she had obtained less marks in the interview and therefore would be disqualified for the said post. But he offered that he could get her qualified for the said post if she paid him a sum of Rs.1 lakh. He also told her that he had got very close contacts with Controller of Examinations Mr. Sarode and one of the Members, respondent no.3. The witness had refused his offer. She was declared to be disqualified in the examination when the results were announced. At that time, she recollected the offer of Nitin Sathe which gave her the idea that there must be some sort of malpractice/corruption in the MPSC Examinations. On the basis of that, on 20.4.2002, she and her friend Sandip Shinde who was also one of the candidates, made a joint application addressed to the Chairman of MPSC complaining that some kind of unfair practice had taken place in the process of the Main Examinations conducted by MPSC for recruitment Exam 1999. Pursuant to that complaint, the Secretary to the Commission Mrs. Seema Dhamdhare by letter dated 22.4.2002 had requested her to attend the office of the Commission on 7.5.2002 with the evidence available with her. After she had submitted the complaint with the MPSC Office on 20.4.2002, Nitin Sathe came to her and threatened her for making the application. She and Sandip Shinde also received threatening calls frequently. Due to this she became scared and did not go to meet Mrs. Seema Dhamdhare due to fear. After some days Nitin Sathe again came to her and asked her to retract the application made by her and Sandip Shinde on 20.4.2002 to the MPSC. On the threats and instructions of Nitin Sathe she and Sandip Shinde again prepared an application to the effect that the previous complaint made by them dated 20.4.2002 was false and as directed by Nitin Sathe they made allegations against Mrs. Seema Dhamdhare, the Secretary to the Commission in the second application. Thereafter, as per instructions of Nitin Sathe she and Sandip Shinde met respondent no.3 on or about 12.6.2002 in her Mumbai Office and handed over the set of six copies of the said application which the respondent accepted. The respondent retained all the copies with her and told them that she will send those copies to the concerned Members. After getting messages from Anti-Corruption Bureau, she had gone to the ACB Office. Her statement was

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A recorded with reference to the offence committed, her application dated 20.4.2002 and her second application which was handed over to the respondent on 12.6.2002 retracting her earlier application dated 20.4.2002. The second application for retraction was made at the instance of Nitin Sathe. After the arrest of the respondent, she was called to the ACB Office for recording her statement, where she identified respondent no.3 as the same person to whom

B she had given six copies of her second application retracting her earlier application dated 20.4.2002. The second application was made as per the threats and instructions of Nitin Sathe and handed over to the respondent as directed by Nitin Sathe. It was personally accepted by the respondent who stated that she will send those to all Members of the Commission. During

C the course of her statement she was shown the papers relating to the post of Superintendent in which she was a candidate. The papers were pertaining to her and were found to be recovered by the police from the residence of the respondent after the respondent's arrest. This was the same examination in which Nitin Sathe had demanded Rs.2,50,000/- from her for getting her qualified

D for the said post. At that time Nitin Sathe had offered to take her to the residence of the respondent. In her cross-examination she said that while coming from Pune to give evidence she was put up in the Visawa Government rest house. The arrangements for the residence of herself, Jyoti Desai and Kalpandey who also came to Mumbai, were made by the Commission. They had not gone to the office of the Commission the previous day. She had

E known Jyoti Desai from the year 1996 and Mr. Kalpandey from 1998. They were all candidates in the 1999 Examinations. She had not gotten through in the Preliminary Examinations at that time. Jyoti Desai had got through. Most probably Kalpandey also did not get through. Ultimately, they were all allowed to take the Main Examination. In the Main Examination Jyoti Desai got through

F though she was not sure if Jyoti got through or not. She and Kalpandey did not succeed. Her father was a doctor, agriculturist as well as Civil contractor. She was originally from Mahur, District Nanded. Mahur was about 550 to 600 Kilo Meters from Pune. When her attention was drawn to paragraph 3 of her affidavit in chief examination and to the allegation that she had applied for the post of District Sports Officer and had passed in the Screening Test she

G said that the contents were incorrect. The consequential statement in paragraph 5 was also not correct. Her affidavit was prepared by the Law Officer of the Commission. She did not know his name. According to her, Nitin Sathe came to her in October 2000 and that was in Pune and at that time she was staying in Sadashi Peth hostel. He had come in the evening, when he met her first,

H she had no previous acquaintance with him. He had come to that hostel all alone. Since men were not permitted inside the girls hostel, Nitin Sathe met

her at the place of the landlord in a guest room. Nitin Sathe was there for about 30 minutes or so. When she asked him who he was, he told her that he was the brother of the respondent. It was suggested to her that she had not disclosed that aspect in the statement made by her before the police. In answer she asserted that it should be there. It was true that her interview had already been taken place in September 2000 before Nitin Sathe met her. The members who were there at the time of her interview were Mr. Wani and others. The respondent was not in that panel. She could not get to know the marks scored by her in the interview because they were not communicated to the candidates. It was put to her that the certificate produced by her was incomplete. She answered that the certificates produced by some others also were incomplete but the respondent allowed other candidates who did not mention the dates but only in her case it was not accepted. She could name those candidates. Great injustice had been done to her. It was suggested to her that she had produced an incorrect certificate showing her income. She stated that it was true that She and Sandip Shinde gave a joint application to the Commission on 20.4.2002. That application was referred to in paragraph 5 of her affidavit in chief examination. It was not true that copies thereof were sent to high dignitaries, though their names were mentioned in the application. They had made the complaint application only to the Chairman of the Commission. Mr. Wani was the acting Chairman then. It was true that in response to her complaint a communication was received from the Secretary of the Commission Mrs. Seema Dhamdhare. That communication asked her to come to the office of the Commission at 4.00 p.m. along with the evidence. She had informed the Commission telephonically that on account of illness she would not be able to visit their office on 7.5.2002. It was true that she had made an application to the Commission in June, 2002 retracting the complaint of 20.4.2002. The two documents were got marked Exts.30 and 31. It was suggested to her that in the subsequent application Ext.31 there was no retraction of the earlier application, i.e., Ext.30. She denied the suggestion that her statement that she submitted Ext.31 at the instance of Nitin Sathe was incorrect. She denied the suggestion that it was not true that Nitin Sathe had ever met her and offered that he would get her qualified if she paid him Rs.1 lakh. It was not true that after the complaint Ext.30 Nitin Sathe never came to her and held out no threat to her. It was not true that her statement in Ext.31 was not at the instance of Nitin Sathe. She denied the suggestion that Nitin Sathe never demanded Rs.2,50,000/- from her and never promised to take her to the respondent's residence. It was put to her that there was no question of Nitin Sathe either meeting her or calling her on telephone as deposed to

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A by her. In answer she stated that in January, 2003 Sathe might not have been in jail. It was not true that he was in Jail from October 2002 till 2005. The fact of demand of Rs.2,50,000/- by Nitin Sathe was not mentioned in her first statement to ACB. It was not true that she was deposing incorrectly to wreck vengeance against the respondent. It was not true that her entire deposition was incorrect and false. It was not true that she did not fall within the category of non-creamy layer.

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34. P.W. 13, Nayana S. Bhide deposed in her chief-examination that she had in her reply to the letter of the Anti-Corruption Bureau revealed to the Investigating Officer that the documents shown to her as detailed in the Bureau's letter dated 12.6.2003 had not been sent to Respondent No. 3 by the M.P.S.C. officially and that those letters could not have been kept in the official residence of the respondent. Those documents were seized by the Investigating Officer on the day of arrest of the respondent. In her cross-examination, she admitted that she was assisting Mrs. Seema Dhamdhare in her inquiries initiated at the instance of the Commission into these affairs. Her statement came to be recorded seven or eight times during the investigation by the Anti Corruption Bureau. There was no reference to the respondent in her statement in the preliminary inquiry by Mrs. Dhamdhare, who had recorded her statement in the preliminary inquiry. She could not remember whether the letter referred to in the chief-examination by her was sent after the last of her seven or eight statements came to be recorded by the ACB. The statements in the chief-examination related to the documents found in the cabin and the official residence of the respondent. She admitted that the gist of her chief-examination was that the respondent ought not to have kept the official documents at her residence. She admitted that in respect of the family members of the members of the Commission who wanted to compete in the examinations held by the Commission, a file used to be kept. It was true that the file pertained to the son of Mr. Solunke the member and the daughter of the respondent. The roll numbers of both of them came to be mentioned therein. Both of them were candidates for the preliminary examination for State Civil Services for the year 2002. The daughter of the respondent Purva remained absent from the examination. The complaint made by Mrs. Dhamdhare, based on which the investigation was set afoot pertained to the 1999 examinations. She stated that without reference to the concerned document, she could not say whether the Circular relating to relatives participating in the examination was brought to the notice of the respondent. It was true that there was a file pertaining to the misbehaviour by Mr. Sarode. She had only heard that it pertained to a period before the events that gave rise to the present

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investigation. A public interest litigation was filed in the High Court of Bombay seeking the relief that Mrs. Dhamdhere should not be transferred out of the Commission. That was one relief sought along with other reliefs. She admitted that she used to accompany Mrs. Dhamdhere to the court in connection with that public interest litigation. She and Mrs. Edwankar were the observers for scanning of answer-sheets. It did come out as a result of the preliminary inquiry that there was no virus and no defect in the computers. But the computers could not start functioning. She admitted that the main allegation in the preliminary inquiry was that the answer-sheets that were placed in the cupboard were removed and replaced. She denied the suggestion that she was also a part of the conspiracy. She denied the suggestion that she was making false allegations for self preservation and under the threat of Mr. Poojari and Mrs. Dhamdhere.

35. P.W. 3 *Vaishali v. Sankhe*, in her chief-examination, deposed that she had acted as a Pancha in the house search of the respondent in the Nilambari building. She was in service of the Sales Tax department since 1979. The search was conducted in the presence of the respondent and other members of her family. At that time, the documents, files relating to M.P.S.C. and M.P.S.C. examinations were found in the house of the respondent. The same were seized and a panchanama was drawn in her presence and it was signed by her and Smt. Nayana Maruti Manyar. She was in a position to identify the seized documents. In her cross-examination, she reiterated that she had gone to the place of residence of the respondent at the time of the search; that there was no occasion for her to go there again. After signing the panchnama, she went back home via the office of Mr. Poojari. She had got written intimation for preparation of the affidavit in chief-examination. She produced the same in court and the same was marked as Exhibit 9. The affidavit was drafted by an officer of the M.P.S.C. She had signed the same before a Notary and not in the office of the Commission. She had no acquaintance with the Notary. It was true that Sales Tax people regularly go to the ACB persons for investigation purposes. She denied the suggestion that she was deposing falsely on account of her being cordial with ACB people.

36. PW 2 was examined to speak of the search of the residence of the respondent and the recovery of certain papers from therein. He was a Panch witness.

PW 4 was another Panch witness to the search conducted in the office

A of the respondent. He proved that Panchnama.

37. P.W. 6 Ashok Shankar Jadhav was also serving with the Sales Tax department, gave evidence that he had also signed the panchanama. He spoke about the search conducted in the office room of the respondent in the M.P.S.C. office, about the seizure of documents and the preparation of the
B panchanama.

38. P.W. 5 Dhanaji Shivaji Nalawade deposed that he was a member of the Special Cell led by I.O. A.C.P S.B. Pujari of the Anti Corruption Bureau, Mumbai and during the course of the investigation, telephone print outs were
C obtained from the Maharashtra Pubic Service Commission and the Service Providers. The print out regarding the telephone of the respondent was obtained from the Service Providers and not from the Maharashtra Public Service Commission. He had scrutinised the print outs. In the chief-examination, he has given the details about the number of calls the respondent had made to Nitin Sathe, to another accused Kailash Jadhav, to Riyaz Mohammed
D Mulani. He had stated that he scrutinised the said print outs received from the Service Providers and on scrutinising the same he prepared a chart dated 27.6.2003 in which he had mentioned that the respondent had contacted accused Nitin Sathe from her office telephone number 2670541 to his mobile 9822404228 eight times between the period 28.3.2002 to 20.5.2002. Respondent had contacted another accused Kailash Jadhav from her MPSC office number 2670541 to his Barshi number 02184-26774 four times between 27.2.2002 to 22.3.2002. The scrutiny also revealed that the respondent had contacted a
E candidate Riyaz Mohammed Mulani on his mobile 9822196408 from her MPSC telephone six times during the period 28.6.2001 to 5.3.2002. She had also contacted the candidate's father Mohammed Mulani on his mobile 9823057035
F fifty one times between the period 19.5.2001 to 5.10.2002 from her MPSC telephone number 2670541. He is a suspect in this case and also in custody on being arrested in the Telagi Scam case. He said that the respondent was in contact with accused Nitin Sathe from her residence telephone number 2820760 to his mobile number 9822404228 twenty times between the period 30.3.2002 to 20.5.2002. Respondent was also in contact with accused/suspect
G Mohammed Chand Mulani on his mobile 9822057035 and 9822196408 forty nine times between the period 13.12.2001 to 21.12.2001. He said that on 30.6.2003, he again scrutinised the mobile print out of the respondent bearing number 9869066882 and found that she had contacted accused Nitin Sathe four times between the period 18.5.2002 to 27.5.2002 on mobile number
H 9822404228 and landline number 4362099 at Pune. She was also in contact on

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this mobile with the accused Mohammed Mulani on his mobile 9822057035
and 9822196408 between the period 18.2.2002 to 17.10.2002 for twenty two
times. He also stated that accused Mohammed Chand Mulani was named as
a suspect in the present case and he was an accused arrested in the Telagi's
Stamp Scam Case presently being investigated. He further stated that the
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telephone contact of the respondent with the accused and suspects revealed
in the investigation is in respect of the period of conspiracy and the period
of internal enquiry conducted by MPSC. In his cross-examination, he stated
that the statement came to be recorded during the investigation by the ACP,
Poojari and that statement related to the landline and mobile telephone numbers
C
of both the residence and the office of the accused in the ACB case. That
was the only subject covered therein. He was attached to ACB from June 2001
to June 2005. He admitted that he was a member of the Special Cell headed
by Poojari. The investigation into this matter was conducted by the said Cell.
D
He admitted that in the original charge-sheet and three supplementary
chargesheets thereafter the respondent was shown as a witness and not as
an accused. It was in the fifth charge-sheet submitted on 3.9.2003 the respondent
came to be shown as an accused. It was true that his chief-examination covers
two points; one pertained to the telephone contact between the respondent
on the one side and accused persons Kailash Jadhav, Mulani and Nitin Sathe
on the other. He was not aware whether the charges against the respondent
vis-à-vis Kailash Jadhav and Mulani had been dropped by this Court. He
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knew that before she joined the Commission, the respondent was serving the
Indian Institute of Education at Pune. He did not know whether she was a
joint director there. He did not know whether there was a labour problem
there. He did not know if at that time Mulani was the ACP incharge of the
police station within which that institution fell. Nitin Sathe was an estate
agent and an owner of a video parlour at Pune. He did carry out investigation
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in respect of Nitin Sathe. He perused his affidavit and stated that as per the
print out, the first telephone contact between the respondent and Sathe was
on 28.3.2003.

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39. P.W. 16, Seema Pradeep Dhamdhare, in her chief-examination stated
that she was the Secretary of the M.P.S.C. from 1.2.2002 till date. She had
conducted the preliminary enquiry regarding the irregularities and illegalities
in the examination 1999 on the basis of the two applications received in the
office of the Commission in the month of April 2002. In view of an order in
that behalf from the then Chairman Wani, she had started an enquiry into the
complaints alleging malpractices in the recruitment examination. The two
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applications were sent by "Avedh Marg Satya Shodhan Samithi" She had

A found in the enquiry about the change of the answer-sheets. Since the members agreed with her finding, they asked her to complete the enquiry and put up a formal report. She prepared a report with her recommendations which was put up before the Commission on 27.5.2002. Thereafter, the complaint was lodged. It was not true that it was the respondent who first pointed out the difference in the answer-sheets. The respondent only confirmed her findings

B in the informal meeting held on 21.5.2002. It was not true that the respondent had first taken the decision of debaring 398 candidates. Actually, it was her recommendation to debar them. Her decision was confirmed by the Commission. It was the routine office procedure to send the file concerned to the Junior Member of the Commission first and lastly the file goes to the

C Chairman. That would not mean that the Junior Member took the decision first. As a matter of fact, the decision was taken by the Commission collectively. She had read the confessional statement of Mr. Sarode and from that she came to know that Sarode had visited the residence of the respondent and Nitin Sathe was present at that time. The respondent had never informed her or the office, orally or in writing till date, that Sarode, the then Controller of

D Examinations had at any time visited her residence at Nilambari. She had also not informed her or the office that Sarode had at any time told her that the case/enquiry into the malpractice in the examination should not be given to the police for investigation and it should be conducted as a Departmental action for which he is ready to resign. If the respondent had informed her of

E that fact, she would have undertaken disciplinary enquiry/action against Sarode. The respondent did not tell her or the office that her daughter Poorva was going to appear for the examination conducted by the Commission in the year 2002. After the respondent was arrested, the Anti-Corruption Bureau informed the then Acting Chairman C.D. Singh about the arrest and then the Acting Chairman recommended to the Governor for taking action under Article

F 317 of the Constitution of India. In her cross-examination, she stated that she used to visit the Supreme Court after the present proceedings commenced. Initially, there were 22 charges proposed and a list of 32 witnesses proposed. She was asked questions about the attempt to replace the answer-sheets and the taking of keys of the cupboard by Mr. Sarode. She stated that it was true

G that as far as non-members were concerned, Sarode was the only one to have been proceeded against and prosecuted. No departmental enquiry came to be initiated against any staff member of the Commission except Sarode. The present one was the first ever F.I.R. filed by her. It was true that Sarode made a confessional statement in November, 2002. She had read it sometime in December 2002 and the said statement was called for by the Commission as

H per the orders of the Acting Chairman Mr. Varma. She did not remember

Sarode having mentioned in the confessional statement that he tried to enlisting her support for the conspiracy, but she would like to peruse the same to confirm as to what precisely he said. The question of enlist her support for the conspiracy did not arise. He had not tried to enlist her support in regard to the replacement of the answer-sheets and the other aspects relating to the scam. She did not make any report in writing against Sarode with regard to the fact of the five answer-sheets. She admitted that daughter of the respondent Poorva did not actually appear in the examination of the Commission. She stated that it was stated in Varma's statement dated 15.2.2003 to the ACB that Sarode had told the respondent that no further steps be taken against him and that he was ready to resign and that this fact was conveyed to him by the respondent. A communication from Joint Commissioner, ACB was received by the Commission and the report was made by Mr. Dhare Joint Commissioner in response to a Government query with regard to the status of the case against the respondent. It was there in his report that Nitin Sathe had denied his presence at the official residence of the respondent on 25.4.2002 when Sarode visited the respondent at her residence. She had filed an affidavit before this Court on 30.7.2004. She had mentioned therein 10 stages of this scam and had briefly mentioned as to what precisely had happened in each of those stages. She had also indicated there, the beginning and the culmination thereof. That period was from April 2000 to 16.3.2002. Those details were mentioned in her affidavit on the basis of the papers of the ACB that were called by the Commission. That was after the reference had reached this Court. There was a move to transfer her out of the Commission and against that a public interest litigation was filed. Some of the statements in the preliminary enquiry were recorded by her after the resolution of 27.5.2002 authorising her to file the F.I.R. and certain others after the registration of the F.I.R. The respondent was on leave from 27.5.2002 to 1.6.2002 suffixing and prefixing the 25th and 26th of May and 2nd June. It was true that the respondent attended the meeting of 27.5.2002 cutting short her leave. According to her, this was since the Chairman told her to do so.

40. The evidence of P.W. 1 Ranjana C. Pathak related to the attempt to rescan the answer sheets. She stated that the back up was available and she had submitted an office note that result of the examination would not be affected because of that. Sarode had then made a note stating that back-up data might be unreliable and sought approval for rescanning of the answer-sheets. The Secretary, Kulkarni had approved the suggestion and the Chairman S.D. Karnik had approved the recommendation for rescanning. The respondent and Wani were on tour and Karnik said that he would inform them. It was also

A ordered that the computer should be kept in the custody of the Secretary. It was seen from the file that after the respondent returned from her tour, she did not put any remarks in this record on the file. In her cross-examination, she admitted that the respondent was the junior-most member of the Commission. One G.C. Varma was also a member of the Commission. Mr. B Varma and the respondent were the members of the Departmental Promotional Committee. The examination for the post under reference were covered by parts 2 and 3 of the concerned notification. The Chairman Karnik and Wani were the members of that Committee. It was specifically provided that the work pertaining to those examinations should not be given to any other member. The decision for rescanning came to be taken and it was signed by C the Chairman Dr. Karnik and members Solunke, Wani and C.D. Singh. The concerned note did not bear the signature of the respondent. There was nothing to show that the said report even came to be marked to the respondent by either the Chairman or any other functionary of the Commission. She did not know if the respondent and Mr. Wani were at Aurangabad and Mr. Singh was at Pune when the rescanning decision was taken. It was true that Wani and Singh endorsed her note after they had returned from wherever they had D gone in connection with the Commission work. It was for the office to take the further follow up action upon her note regarding rescanning. She had also put her initials just as the others who had dealt therewith. It was true that Aparna Dubey had appeared for the examination in the year 2002 and she was E interviewed in 2003. Her certificate was out-dated. She denied the suggestion that she was herself a party to the conspiracy and so had managed to put up the note in such a manner as to save her skin and at the same time create occasion for rescanning. She had not report to the higher ups that Sarode had taken away from her the keys as just mentioned.

F 41. P.W. 11, D. Kalpande in the chief-examination stated that he had given a statement before the Anti-Corruption Bureau regarding the malpractices in the concerned examination. He had met Nitin Sathe and Sathe told him that to pass in Preliminary Examination he had to spend Rs.50,000/- and for passing the Main Examination and final selection, he will have to spend Rs. 3 lakhs. G Sathe also told him that he knew officers working in M.P.S.C. and other big persons who can get the job done. In the cross-examination, it was brought out that he had failed in the Preliminary examination. He got to meet Nitin Sathe through one Sanjay Shirke. He had never made any payment actually to Sathe. It was true that he could not get through the final examination 1999. In spite of his request, the Commission did not give him opportunity of H perusing the marks obtained as a result of the rechecking. He denied the

suggestion that he had never met Nitin Sathe. He also denied the suggestion that he was giving evidence at the instance of Poojari. A

42. P.W. 7, Chander Dev Singh, a retired Acting Chairman of M.P.S.C. deposed in chief-examination that he was a member of the Commission between the period 21.9.1999 to 28.9.2003 and was working as the Acting Chairman from 7.6.2003 till 29.9.2003. He spoke of the holding of the competitive examination 1999, the internal enquiry headed by the Secretary of the Commission and the lodging of a complaint to the Anti-Corruption Bureau and to the arrest of Dr. Karnik, Wani and Sarode. His statement also came to be recorded by the Investigating Officer during the investigation. The Commission was informed by the Anti-Corruption Bureau on 8.6.2003 by letter that the respondent was arrested and produced before the Special Judge on 9.6.2003 and was remanded to Police custody till 16.6.2003. On being informed of the arrest of the respondent and of her being held in custody for more than 48 hours, he in his capacity as the Acting Chairman of the Commission wrote a letter to the Governor of Maharashtra recommending action under Article 317 of the Constitution of India, as it would not have been in public interest for the respondent to continue as the Member of the Commission after she was arrested and remanded to police custody under a strong suspicion of being involved in a criminal conspiracy relating to the offence. As per office order dated 5.5.1998, it was mandatory to inform the Commission if the children of any officer or staff working in the Commission are appearing for any examination conducted by the Commission. He was not aware whether the respondent informed the Commission about her daughter Poorva having applied for the State Service 2002 Examination. The Secretary of the Commission who conducted the enquiry had confirmed that there were malpractices in the Examination 1999 as alleged. The Commission had thereupon directed her to lodge the F.I.R. with the Anti Corruption Bureau. It was not correct to say that the respondent was the first to detect the malpractices/change in answer-sheet etc. of the aforesaid examination. In his cross-examination, it was brought out that he had accorded sanction to prosecute Sarode after he gone through the relevant papers and come to the conclusion that there was sufficient material to accord sanction to prosecute Sarode. Sarode was at that time acting as Controller of Examinations and Deputy Secretary of the Commission. Each member had an independent cabin and the members often visited one another's cabin in the office of the Commission. In the course of his visit, to the cabin of the respondent he had used her telephone. It was true that there were two parts of the conspiracy in question. The first was regarding permitting all those who failed in the preliminary examination to take the main examination. H

- A The second was, in spite of the back up being available, the allowing of rescanning. He was present in the meeting held on 29.11.2000 when the decision to permit those who failed the preliminary examination to take the main examination was taken. The other members were the Chairman, Dr. Karnik, Wani and Varma. It was a unanimous decision. The Chairman had brought to their notice that there were certain mistakes in the question papers of the preliminary examination and also indicated the precedent of 1991 when re-examination was held for all the candidates. He had not raised any objection regarding the unsigned note that was circulated regarding the 1991 re-examination. He had also not asked for the papers recording that decision for perusal. There were 27 mistakes in the preliminary examination paper. He could not say if there were in all 150 questions in that paper. But from the minutes, it would appear that there would be 150 questions. This was the only occasion in his tenure of four years as a member that even those candidates who failed in the preliminary examination were permitted to take the main examination. This statement was recorded by the Anti-Corruption Bureau during investigation on three occasions. He was asked about the demonstration, the public interest litigation and the order of preliminary enquiry in his cross-examination. Mrs. Damdhare had submitted a preliminary report of her inquiry on 21.5.2002 and submitted her final report on 27.5.2002. He was not aware of whether in the year 2000, there was an attempt to tamper with the computer of the Commission and to remove the hard disk and whether about this incident, Mr. Sarode, the Deputy Secretary of that Section, had ever submitted a report. The matter was incharge of the examination committee and may be, it never came up before him again. The Chairman and normally the senior most member, constituted the examination committee. The genuine answer-sheets and the so called bogus answer-sheets were produced by Damdhare, the Secretary, before the members of the Commission. Both type of answer-sheets were perused by the members. The respondent gave her views as the other members did. He could not say if the views of the respondent were restricted to the quality of papers of these answer-sheets. It was possible that the respondent had made an endorsement on the file relating to 398 candidates that the answer-sheets of not only those who had passed out but even those who had failed should be checked. He was the Acting Chairman when the respondent was arrested. He had written to the Governor for considering action under Article 317 of the Constitution of India. While he sent his communication to the Governor, he annexed two letters received from the Anti-Corruption Bureau which disclosed the arrest and detention of the respondent for more than 48 hours in police custody under C.R. 33/2002. That fact was not mentioned in his letter itself, but it was there in the annexure. According to him a member of the

Commission also was a Government servant because the whole time of the member is for the Commission and they get pay and perks from the Commission. It was true that in none of his three statements to the Anti-Corruption Bureau, he had mentioned anything about Poorva, the daughter of the respondent. He had never verified whether Poorva did or did not appear ever in the examination of the Commission. It was not true that he had made a reference to Poorva in his affidavit only at the instance of ACP of the Anti-Corruption Bureau. He was not involved in the decision making process regarding rescanning. He agreed with the passage in his statement earlier recorded by the Anti-Corruption Bureau on 17.7.2002. He was admitted in the hospital in December 2002, but he could not remember the date. He admitted that he did not know the result of the enquiry held by Sarode with regard to the tampering of the computer. He denied the suggestion that the Anti-Corruption Bureau threatened him that unless he toed their line he would himself be implicated as an accused and therefore he agreed to become a witness. He denied the suggestion that he wrote to the governor on 16.3.2003 without any resolution of the Commission and without any material because he was himself involved in the scam.

43. P.W. 8 Solunke, who also joined the Commission as a member on the same day as the respondent joined it, in his chief-examination, stated about the internal enquiry conducted by Seema Dhamdhare, the registration of the First Information Report, the arrest of the respondent and her remand to judicial custody and his view that it would not have been in public interest for the respondent to be continued as a member of the Commission. He stated that he was residing in the same building Nilambari and he was residing in the third floor. He stated that the respondent had not informed him about the visit of Sarode to her flat. There was a visitors book maintained in the building by the Security Guard, but it was not made mandatory for everyone to make an entry therein. Sometimes, even the visitors entered the building along with the residents. The Investigating Officer during the course of investigation had called for the telephone details of Dr. Karnik, the Chairman, Wani and of himself and of the respondent. The information relating to himself, Dr. Karnik, Wani and Sarode was sent to the Investigating Officer by the then Acting Chairman G.C. Varma. But the information relating to the respondent was withheld. It was later revealed that the telephone printout relating to the respondent was not sent as that would have revealed her contact with the arrested accused Nitin Sathe and Kailash Jadhav. His son had appeared in an examination conducted by the Commission and he had informed the Commission that his son was appearing. The respondent never informed the

- A Commission that her daughter Poorva had applied for appearing in the Examination 2002. It was mandatory to inform such a fact to the Commission. The respondent had never informed him that Aparna Dube had met her in her office in the Commission and had given her an application retracting her earlier application complaining about the malpractices committed in the examination. While he was functioning as a member of the Commission, the respondent never informed him or the Commission that she was intending to sell a property in Pune and hence, she was in contact with Nitin Sathe who was an arrested accused in the case and who was also an accused in an earlier case relating to the Public Service Commission Examination of 1996. In his cross-examination, the attempt was to show that if a reference was to be made against the respondent under Article 317 (1) of the Constitution of India in respect of her alleged misbehaviour, there existed an equally strong case against the witness who was also a member, for making a reference under Article 317 of the Constitution of India. It was brought out that he had no personal knowledge about the conduct of the respondent. It was also brought out that he had joined the Public Service Commission before the respondent even without resigning his position as Principal of an Institution and he had faxed his resignation and his resignation was accepted telephonically. It was also brought out that he was a party to the decision for rescanning the answer-sheets. It was also brought out that one Prabhakar Jaywant More, who was the friend of his son had appeared in an examination conducted by the Commission and in his application, he had given the residential address of the witness. The witness stated that he was not aware of that fact; that he admitted that it was seen that More had given his address. He agreed that the Circular of 1998 regarding disclosure pertained to the staff and officers of the Commission, though he asserted that the fact that Poorva was appearing for the examination should have been intimated to the Commission by the respondent. He was not aware whether Poorva actually appeared in the examination or not. It was then brought out more disturbingly that one Vezre who was also an accused in the scam and arrested, had been sent to him by Dr. Karnik after Karnik had gone to the U.P.S.C. as a member. He had met with Vezre when Vezre came to call on him at Nilambari. There was no entry regarding the Vezre visit in the register because Vezre did not come up to his flat. He had come down to meet Vezre. That was because he did not know the background of Vezre. Dr. Karnik had not told him anything about Vezre's background. He had not informed to the respondent about his meeting with Vezre or that Vezre had come to see him. He did not know who Vezre was, but later came to know that he was an employee of the Mantralaya. He came to know later that Vezre was involved in such matters of the Commission. He

admitted that Vezre was an accused in the scam in question and he was arrested. Vezre had told him that he had in fact come to help the witness. He told the witness that he had a message from Karnik that P.W. 8 should accompany Vezre to a Minister and that Minister would get P.W. 8 appointed as a Chairman of the Commission. The witness claimed that he was not interested in the offer and chided Vezre for his action. It was true that at present he was next to the Chairman in seniority. His term would expire on 7.5.2007, but if he got appointed as the Chairman, he would get another six years. He was not keen for the post but in case he got it, he would accept it. He would be happy to do it. He had not informed the Commission that Vezre had come to him as described by him above and of the other persons he had seen as being sent by Dr. Karnik. Vezre had called him back again the same day two hours after meeting him. He wanted to know whether he had a change of mind and what he should report to Karnik. The witness informed him that his views had not undergone any change; that the witness himself would inform Karnik accordingly. He accordingly called up Karnik to inform him. It was true that at the time this incident occurred, the Commission was headed by the Acting Chairman Wani. The reason why he still called up Karnik was that he did not like such an incident. He came to know that a similar scam had taken place in the Commission in 1996 in which four persons, namely, Patil, Sanas, Kelkar and Vezre were accused. It was true that in his first statement to the Anti Corruption Bureau, the Vezre episode was not disclosed by him. He had been asked by ACP Poojari whether he knew Vezre and he had told Poojari that he knew Dr. Karnik, Wani and Sarode and he did not know any other accused. But before that day, Vezre had already been arrested. It was true that Poojari had showed the photographs of Vezre to the witness and asked him if the witness knew him. It was true that after Poojari confronted the witness with the photographs, the witness identified Vezre and related the above incident. It was true that when the bogus answer-sheets and genuine answer-sheets were brought before the members, the respondent opined about the quality of the paper being different from the genuine ones. He did not know whether Aparna Dubey actually met the respondent or not. He had not mentioned Aparna Dubey in any of the four statements made by him during the investigation. He was never an estate agent. He was not an expert in property matters. People did not consult him about such matters. Before he made his last statement to the Anti-Corruption Bureau, he was given for reading the confessional statement of Sarode. Then questions were put him about 398 candidates against whom action was taken. It was put to him that he was himself a part of the conspiracy and that he had signed the rescanning file. He denied it. He denied that it was in that connection that

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- A** Dr. Karnik had sent Vezre with the proposal put forward by Vezre. He denied that he was in regular contact with Vezre. He denied that he was all along worried that the respondent might become the Chairperson.

44. The respondent, in her evidence, made a strenuous attempt to say that her frequent contacting of Nitin Sathe over the telephone was in connection with the sale of her property in Pune and on the footing that Nitin Sathe was a broker dealing in real estate. Her evidence that she had gone to the Talathi (Lowest Revenue Office) in Pune a number of times after the death of her mother for getting the records changed to her name and someone there suggested the name of Sathe as the person who would help her to sell the property, reads rather thin in the circumstances of the case and on a reading of her evidence as a whole in the light of her pleadings. It is a case that she was trying to sell a property in Pune over which there were some restrictions regarding construction. According to her own showing she had never met Nitin Sathe earlier, according to her. No one had introduced Nitin Sathe to her. She could not remember, who at the Talathi suggested the name of Nitin Sathe to her. She wants the court to believe that merely on the suggestion of someone at Talathi who had given her the phone number of Nitin Sathe, she contacted him and told him that she had a piece of land to sell. She had never visited the office of Nitin Sathe, according to her, and she did not know his office. She could not recollect the name of any prospective buyer suggested by Nitin Sathe. She had not entered into any written agreement with regard to the brokerage payable with Nitin Sathe. She had only enquired about a buyer and the expected price. When she was asked whether she had made any enquiry about the antecedents of Nitin Sathe, his credibility, experience and reputation, her answer was that she was much interested in his position as an Estate Agent in that area. When the question was persisted in whether she had discussed with anyone about the credibility, reliability, etc. of Nitin Sathe, her rather evasive answer was it was only at the initial stage. When the question was persisted in, she answered that since there was no finalisation of any deal, there was hardly any chance for having assessment of the credibility, reliability and reputation of Nitin Sathe. It was put to her that her story that Nitin Sathe was suggested by someone at the Talathi to her was not stated in any of her affidavits. She denied the same and stated that whatever she felt was necessary, she had incorporated in the affidavits. When it was suggested to her that someone at the Talathi office naming Mr. Sathe as a person who could help her was being disclosed by her for the first time in her cross-examination, she answered that that was because she was being asked the question for the first time in the court. She stated that she did not

know the names of any of the candidates out of the 24 candidates referred to in page number 21 of her affidavit dated 4.10.2004 marked as Exhibit R-2(a). Out of the 11 candidates mentioned therein, she had interviewed only 6 and out of the 6 interviewed by her, she had given below average marks to 5 candidates. It was brought out in her cross-examination that she was acquainted with one Mohan Chand Moolani who, according to her, was the Inspector of Police within the jurisdiction of which her prior employer, the Indian Institute of Education was situated. Therefore, around 1995-96, she came to know him as Inspector of Police of that police station. There was a charge against Moolani also but the said charge was dropped by this Court. It was brought out that Moolani was also involved in the Telgi scam as an accused. No one from her family had contacted Nitin Sathe with regard to any property. But her sister-in-law Neha Joshi, whenever she came to the house of the respondent at Bombay, used to contact Nitin Sathe over her telephone. She had not shown the location of her plot to Nitin Sathe. She had not enquired of any transaction put through earlier by Nitin Sathe. She had only asked Nitin Sathe. He did not tell her anything about any specific transaction. He generally told her that some properties in that area were sold through him. She had not made any further enquiry regarding that. She did not know anything about the name under which Nitin Sathe carried on his business. She had sold the property on her own after her being enlarged on bail. When she sold the property, Nitin Sathe was in jail. The property was sold by her directly without the assistance of any broker. She had not informed the Nitin Sathe about the sale of the property. Since he was in jail, there was no question of telling him anything. Nitin Sathe used to convey the information to her over the telephone. She used to read the daily newspaper 'Sakal'. She did not recollect whether she had read anything in the newspaper about the 1996 examination scandal relating to M.P.S.C., before she joined the Commission. It was put to her that in connection with exam paper leakage scandal of the year 1996 concerning the M.P.S.C., it was published in all newspapers including Sakal, that Nitin Sathe was the prime culprit. Her answer was she did not come across any such news. She was always on tour during that period. She did not know whether Nitin Sathe was visiting the Circuit House, Pune, when the interviews for 1999 examination were going on. She denied the suggestion that Nitin Sathe used to visit the Circuit House, Pune, when the interviews were going on. She denied the suggestion that she knew Nitin Sathe and his criminal antecedents much before she joined the Commission. She denied the suggestion that Nitin Sathe was not a real estate broker and that he was only a person deputed by her for contacting the candidates and for collecting money from them for her benefit for doing favours in the examination. She

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- A** pointed out that Nalwade P.W. 5, a Police Officer had also admitted that Nitin Sathe was a real estate agent. She denied the suggestion that the story of sale of land through Nitin Sathe put forward by her was concocted a story put forward as an after thought for the purpose of giving an explanation to the communications which had taken place at length between her and Nitin Sathe. She denied the suggestion that Nitin Sathe was on visiting terms with her at her residence as well as in the Circuit House whenever she resided there. She did not remember the date on which she made the last phone call to Nitin Sathe. It was put to her that when the sealed computers of the Commission were opened for examination, she ceased to have communication with Nitin Sathe. She answered that she will have to see the records to answer that question. Nitin Sathe never visited her residence at any time. She saw Nitin Sathe for the first time in the court after her arrest. She denied the suggestion that it was because Nitin Sathe used to accompany her to her residence, that his name was not entered in the visitors' book at Nilambari. She did not know who introduced Nitin Sathe to her sister-in-law Neha Joshi. She did not know the name of the person who had given the phone numbers of Nitin Sathe to Neha Joshi. To a question whether she asked Neha Joshi about the name of the person who had given her the telephone number of Nitin Sathe, she answered that it was the personal matter of Neha Joshi. She did not know the phone number in which Neha Joshi used to contact Nitin Sathe. But she knew that whenever Neha Joshi came to her residence, she used to contact Nitin Sathe through her telephone. She denied the suggestion that she used to dial the number of Nitin Sathe and handover the same to Neha Joshi to speak to Nitin Sathe. She denied the suggestion that it was she who had introduced Nitin Sathe to her sister-in-law Neha Joshi and that she supplied the phone number of Nitin Sathe to Neha Joshi. She denied the suggestion that there was a meeting at her residence of herself, Nitin Sathe and Sarode and that at that time, she had told Sarode that the names of 24 candidates supplied by Nitin Sathe were her candidates and that Sarode had to do something to get them passed. She also denied the suggestion that at the meeting on 25.4.2002, she had told Sarode to work for Nitin Sathe in future for mutual benefit. She denied the suggestion that she had again called Sarode to her house on 1.5.2002 and told Sarode that Sarode should not divulge the name of Nitin Sathe in the enquiry. She denied the suggestion that she had invited Sarode to her house only to introduce Nitin Sathe and discussed the modality of the conspiracy. She denied the suggestion that at her instance Nitin Sathe visited Aparna Dubey and Sandeep Shinde and threatened and pressurised them to withdraw the complaint they had made.
- H** She denied the suggestion that it was on her instructions that Nitin Sathe

persuaded Aparna Dubey and Sandeep Shinde to make allegations against the Secretary of the Commission. She denied the suggestion that Nitin Sathe had demanded illegal gratification of Rs.2,50,000/- from Aparna Dubey on the instructions of the respondent. She did not know whether her husband Joshi knew Nitin Sathe or not. She admitted that she knew Mohd. Moolani and his son Riaz Chand Moolani. She denied the suggestion that Mohd. Moolani had helped her for the sale of her plot at Pune. The Chairman of the Indian Institute of Education had called Mohd. Moolani to help the Institution and to that extent assisted her in some legal matters relating to the institution. She could not remember the number of times Mohd. Moolani visited her office. It was correct that Riaz Chand Moolani was a candidate in the examination conducted by the Commission. However, he never passed in any of the examinations. She denied that she had any conversation with Riaz Chand Moolani, but she admitted that she was having conversation with Mohd. Moolani even prior to her joining as a member of the Commission. She admitted that she came to know from the newspapers that Mohd. Moolani was arrested in connection with the Telgi Stamp Paper scam. She admitted that P.W. 12 Ohwal was her peon and that the peon used to stand outside the interview room. To her knowledge, there was no visitor to see her during the time of the interviews. She had no occasion to notice any misbehaviour on the part of the P.W. 12 Ohwal. It was true that P.W. 12 had accompanied her to Pune for the interview. It was brought out that she knew Dr. Karnik earlier even before she joined the Commission. When she joined the Indian Institute of Education in the year 1988, Dr. Karnik was a trustee of that institute. Karnik was thereafter Vice-Chancellor of Bombay University for five years. Thereafter he joined as Chairman of the Commission. She denied the suggestion that it was only after Dr. Karnik took over as Chairman, the process for appointing her as the member of the Commission was started. She stated that she was proposed by Dr. Banu Coyaji, who was a trustee of the Indian Institute of Education and who was the winner of Megasseseey Award. She stated that no confidential documents were seized from her house. She pointed out that the charge in that regard had been dropped by this Court. She admitted that the Xerox copy of the paper of Aparna Dubey was seized from her residence. She had declined to conduct the interview of Aparna Dubey as Aparna had cheated the Commission. She had informed the Commission about that. She had kept the Xerox copy for her protection. She did not remember the approximate date when Aparna Dubey was interviewed. She pleaded ignorance that it was her son Ajinkya who had brought the keys of the cupboard of her office to the police who wanted to open the cupboard during the search of her office. She stated that she was asked to sit in one

- A** room, so she did not know what happened in her room. In answer to the question that it was her son Ajinkya who had brought the keys to open the cupboard and it was with those keys that the cupboard was opened, her answer was that she did not remember. She admitted that her daughter poorva had applied from two places for the civil services examination conducted in the year 2002. There was no bar from applying from two centres. However,
- B** Poorva had not appeared in the examination. She denied that it was misconduct on her part for not having reported to the Commission that her daughter was to be a candidate for the examination 2002. She took up the position that the circular issued in that behalf was not applicable to the members of the Commission, but it was only applicable to the officers and staff. She denied
- C** the suggestion that Poorva did not appear in the examination only because Sarode expressed his inability to help her daughter. She asserted that she had never discussed any such matter with Sarode. She stated that everyone in the Commission knew that Sarode was a womanizer. She also knew it. When she was asked, whether she stopped Sarode from entering into her house when she was aware of the character and bad reputation of Sarode, her answer was
- D** she did not invite Sarode to her house. He came to her house on his own. At that time, she was taking a bath. Her sweeper opened the door for Sarode. She admitted that she had not stated in any of her affidavits that the door was opened by her servant and not by her. Sarode was there in her house for approximately 10 to 15 minutes. He had visited her residence only once.
- E** That was on 25.4.2002. When the Anti-Corruption Bureau showed her the visitors book, she found that the entry with regard to the visit of Sarode was there in the visitors book. She denied the suggestion that Sarode had visited her at her house on 1.5.2002. He had visited her only once at her house on 25.4.2002 and when Sarode visited her house nobody other than Sarode and herself were there in the house. She stated that in the last week of May 2002,
- F** Sarode met her in her office and requested her not to lodge a complaint with the police. Sarode further stated that Sarode was prepared to resign. She replied to Sarode that action would be taken against Sarode as per law. To a question, in what context Sarode had told her as she had stated just then, her answer was, "He just came to my chamber and told me like that. Complaints
- G** were being filed again and again by different persons showing the involvement of Mr. Sarode at that time. The preliminary enquiry was also ordered before that time (A)." She stated that she did not know what was in the mind of Mr. Sarode when Sarode had admitted his guilt. It was put to her that Sarode had admitted his guilt when he had requested her not to report the matter to the police. She could not member the approximate date in the month of May 2002
- H** on which Sarode visited her office. She had asked Sarode why he had made

the request but she had directly told Sarode that action would be taken in accordance with law. To a question whether she informed the head of the Commission about the request of Sarode, her answer was that Mr. Varma was heading the preliminary enquiry, being an ex-Director General of Police. Therefore she informed Varma orally about the request of Sarode. She agreed that it was Seema Dhamdhare who was conducting the preliminary enquiry, but she stated that Varma was guiding the preliminary enquiry as per the request of the Chairman. She denied the suggestion that it was untrue to say that Varma was guiding the enquiry on the request of the Chairman. To her knowledge, the case was registered by the Anti-Corruption Bureau as per the First Information Report against unknown persons. If Seema Dhamdhare had made a proper enquiry, the case would have been registered against some specific persons. Since she had informed Varma about the request of Sarode, she thought that that was sufficient and she did not pass on that information to anybody else. She denied the suggestion that she had never informed about the visit of Sarode to her office either to Varma or to any other person. She asserted that Vezre who was the main culprit in the scam used to visit P.W. 8 Solunke, as admitted by Solunke in his cross-examination. But Solunke did not inform any body of that visit. Sarode had approached Seema Dhamdhare also, but Seema had also not informed anybody about it. She denied the suggestion that she had not passed on the information regarding the suggestion of Sarode, because she was also a conspirator along with Sarode, Varma, Nitin Sathe, Dr. Karnik and Wani. She denied the suggestion that on 12.6.2002 or so, Aparna Dubey had submitted six copies of one retracted complaint to her. She asserted that Aparna Dubey never met her. One copy of the complaint was on her table. Immediately, she signed it and forwarded the same to the Chairman. She came to know of the complaints filed by Aparna Dubey and Sandeep Shinde on 24.2.2002 only from the charge-sheet. She denied the suggestion that Aparna Dubey did not accede to her request to pay money and hence she kept her papers with her. She tried to assert that other people could also use her telephone kept in her cabin in the Commission Office and tried to suggest that they might have contacted the, Moolani, Jadhav etc.

45. It is in the light of above evidence that the answers to the charges framed have to be found.

46. *Charge No. 1*

There is evidence to show that on 25.4.2002, P.W. 15 Sarode visited the respondent at her flat. The visit is recorded in the visitors' book kept at

- A** Nilambari, the building in which the flat is situate. The respondent has also admitted this visit. It is the charge that at this meeting, Nitin Sathe, a person who was involved in the 1996 examination scam and who was also arrested in connection with the 1999 examination scam was also present. The presence of Nitin Sathe is sought to be proved by the evidence of P.W. 15 Sarode, supported by his previous statement, Exhibit 53, the confession made before P.W. 14 and also by way of inference from the number of telephone calls the respondent had made to Nitin Sathe from her residential telephone, office telephone and her mobile phone. The respondent has admitted that she had contacted Nitin Sathe on a few occasions, but she has pretended ignorance of the fact that Nitin Sathe was an accused in the 1996 examination scam of M.P.S.C. and that the said fact was carried by various newspapers. Though the respondent admitted that she read a newspaper regularly, she took the stand that she did not remember having read about Nitin Sathe and his involvement in the 1996 scam. The number of phone calls made by her to Nitin Sathe during the relevant time is sought to be justified by the respondent by stating that Nitin Sathe was a land broker; that she and her mother jointly purchased a plot in Pune, which she wanted to sell after the death of her mother and that she had contacted Nitin Sathe for the purpose of helping her to sell that plot of land. According to her, nobody introduced Nitin Sathe to her, but someone at the Talathi, to which she was regularly going after the death of her mother for getting the land records changed, had told her about Nitin Sathe and given her his phone number. She could not remember the person who suggested Nitin Sathe to her. The respondent is an educated person. She had held a responsible position in the Indian Institute of Education from where she had come to the Public Service Commission as a Member. It is difficult to believe her story that she had no occasion to verify the antecedents of Nitin Sathe before getting in touch with him for the purpose of the sale of her plot of land, and that she had simply contacted him on the basis of some unknown at the Talathi telling her about him and giving her his telephone number. Going through her evidence which we have summarised earlier, it is not possible to believe her story that she was not aware of the antecedents of Nitin Sathe and that she was trying to get her plot of land sold through him without even having met him once and even without having gone to his office at any time or even without giving him at least the copies of the documents of title or sketch of the property to be sold. After all, in the normal course, a person takes care to ensure that the person she seeks the help of for selling an item of property is a reliable person and has a good record as a broker before entrusting such a person with the task of finding
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out a purchaser for his or her own property. It is difficult to imagine that the respondent did not act as a prudent person in this matter. She relied upon the evidence of P.W. 5 to show that Nitin Sathe was an estate broker. P.W. 5 has stated in cross-examination that Nitin Sathe was an estate agent. From that alone we cannot infer that his activities were confined only to land broking. The evidence indicates that he was involved in other activities, particularly relating to the qualifying examination conducted by M.P.S.C. On the basis of the evidence read as a whole and in the circumstances, we have no hesitation in discountenancing the version of the respondent that she was not aware of the antecedents of Nitin Sathe and that she had never met him even though she had entrusted him with the task of finding out a purchaser for her property in Pune. The fact that she was also contacting dubious characters who were subject to prosecution like Moolani (a large number of times) and Jadhav who was running a coaching institute for M.P.S.C. Examinations also suggests that her innocent version about contacting Nitin Sathe cannot be accepted. It is also difficult to imagine that as a woman of the world, who had held a responsible position, she was not aware of the antecedents of Nitin Sathe and his involvement in the 1996 examination scam especially after she had become a member of the Commission in the year 2001.

47. There is also the evidence of P.W. 9 Aparna Dubey that she was approached by Nitin Sathe who claimed that he was close to the respondent, that he had threatened and coerced her to retract a complaint she had made regarding the conduct of the 1999 examination and the threat had been held out to her and her friend by Nitin Sathe presumably at the instance of the respondent. The attempt in the cross-examination was to show that Aparna Dubey was an unreliable person by suggesting that she had produced an inaccurate creamy layer certificate which was also outdated and, that she had also produced an experience certificate which was obtained from her father and it was a false one. Some attempt was also made to show the confusion about the address at which she was residing. All the same, the fact remains that Aparna Dubey originally made a complaint and then gave a second statement to the Commission, in essence withdrawing her earlier complaint which was one of the items that triggered an internal enquiry conducted by the Secretary to the Commission, Seema Dhamdhare and a copy of the second representation with the seal of the Commission was found in the residential premises of the respondent and it was recovered from her residence on a search.

48. There is also the evidence of P.W. 10 Jyoti Desai that Nitin Sathe

A had asked for money to get her selected in the examination and Nitin Sathe had claimed that he had the necessary contacts in the Commission. She has deposed that Nitin Sathe had approached her and told her that he could get her selected in the interview and final selection if she paid Rs.1,00,000/- to Rs.3,00,000/- as per the preference for the particular post. He had told her that he had a necessary contacts and that if she did not believe him he would take her to the residence of respondent No. 3 who was at that time staying in Pune and who according to him looked after the money matters for the interview and selection of candidates. He also told her that she could personally talk to respondent No. 3. Of course, it is the evidence of P.W. 10 that she refused the proposal since she refused to pay the amount demanded by Nitin Sathe on behalf of the respondent. On reading about the scam in the newspaper she had approached the High Court with an application addressed to the Chief Justice of the High Court, she had also approached the Anti-Corruption Bureau where her statement was recorded. In her cross-examination, it had brought out that she had not secured the qualifying marks in the examination. The difference in her address was emphasized and it was suggested that she could not have met Nitin Sathe. She denied that she was in link with Aparna Dubey and one Kalpande and the Investigating Officer Poojari, P.W.17 in trying to incriminate respondent No. 3.

E 49. P.W. 12 Ohwal, a Peon in the office of the Commission who was promoted as a Naik was admittedly attached to the respondent as a Peon. He had accompanied her to Pune and to other centres where she held the interview. He has given evidence that at the time of interviews of the 1999 examination when he was at the circuit house at Pune along with respondent No. 3, Nitin Sathe and one Kailash Jadhav used to come to the interview centre. In the year 2002, he had received a call at the office of respondent No. 3 from Nitin Sathe who wanted to get in touch with the respondent and he had told Nitin Sathe that respondent No. 3 was busy in the meeting. Nitin Sathe had then told him to convey the information of his phone called to respondent No. 3. In his cross-examination, it was brought out that he continued in his position in the service of the Commission. He was attached to the establishment section. His statement was recorded by ACP and his statement was recorded for the purpose of this reference. He re-asserted that he did receive a telephone call asking him to inform respondent No. 3 that the caller had called. He could not remember the date, day, time and the year but he was sure that such a telephone call was received.

H 50. P.W. 17 was the investigating officer into the crime connected with

the scandal. The different stages of the conspiracy were unfolded by him. He admitted that originally, the respondent was shown as a witness in the charge sheet and the supplemental charge sheets. However, later on, getting evidence of the respondent having been a part of the conspiracy, she came to be arrested. Sanction for prosecution had been accorded both by the Governor and by the President. The respondent was arrayed as accused No. 22. Her residential flat was searched prior to her arrest. The search had resulted in recovery of confidential M.P.S.C. documents including certain papers relating to a candidate Aparna Dubey. During the investigation, it was revealed that respondent No. 3 was in regular contact with accused persons like Nitin Sathe, who had also been earlier arrested in connection with the crime relating to the 1996 scandal. It was also revealed that respondent No. 3 was in contact with other accused persons like Kailash Pandurang Jadhav who was conducting classes at Barshi, Solapur for competitive examinations conducted by the Commission. It was found that she had contacted Jadhav from her telephone. Jadhav had been arrested in connection with the crime. It was also found that the respondent was in regular contact with Mohd. Chand Moolani. He was also the father of a candidate Riaz Moolani. Mohd. Chand Moolani was an accused in the notorious Telgi Stamp Paper scam. The respondent was also in contact with the candidate Riaz Moolani. He also gave evidence about the confession made by Sarode P.W. 15 and spoke about the confessional statement regarding the involvement of respondent No. 3 being corroborated by the entry made in the visitors' book maintained at the residence of respondent No. 3 at Nilambari building. He also gave evidence that the telephone printout received from service providers had revealed that respondent No. 3 had contacted Nitin Sathe 8 times between 28.3.2002 to 25.9.2002 from her office phone and 20 times through her residential phone between 30.3.2002 to 20.5.2002. From her mobile, she had contacted Nitin Sathe four times between 18.5.2002 to 27.5.2002. He also spoke about the recording of the statement of Jyoti Desai and Aparna Dubey. He had also recorded the statement of others like that of Solunke P.W. 8 and Ohwal P.W. 12. In his cross-examination, it was brought out that the respondent was originally shown as a witness and only later on shown as an accused. It was suggested to him that he had not made a proper enquiry with the driver and the maidservant of the respondent. It was brought out that he had recorded the statements of more than 2000 candidates in respect of this crime. It was brought out that there were charges against him on various counts, but he asserted that no substance was found in any of them. Though originally, there were 22 charges proposed to this Court, only four charges had been framed ultimately. It was attempted to be suggested

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A that his evidence in this Court was motivated. He denied the suggestion that the confession Exhibit 53 made by Sarode was inspired by him. He also denied that the confessional statement was made by P.W. 15 Sarode at his instance. The Panch witnesses proved the recovery and some of the papers from the residence of the respondent and from her cabin in the Commission office.

B 51. In respect of the first charge, the question is whether it has been established that respondent No. 3 had told P.W. 15 Sarode, the then controller of Examinations that a list of 24 names supplied by Nitin Sathe were her own candidates and that Sarode should help them get selected and further that Sarode should work with Nitin Sathe in future for the benefit of all concerned.

C This part of the charge really depends upon believing or disbelieving the evidence P.W. 15 given before us in the light of his prior statement in the form of a confession recorded by P.W. 14 and the versions of Jyoti Desai, Aparna Dubey and Ohwal. As indicated earlier, it is clear that the respondent was being in constant touch with Nitin Sathe over the telephone and we have already commented on the acceptability or otherwise of her version regarding
D her coming into the telephonic contact with Nitin Sathe. That P.W. 15 visited the respondent on 24.5.2002 is admitted. This is also corroborated by the visitors' register kept at Nilambari. Obviously, what transpired in her flat is something that is known only to her and P.W. 15 Sarode and if Nitin Sathe was present there, also to Nitin Sathe. The evidence of Nitin Sathe is not
E before us but it is clear that he has been arrested in connection with the scam and he was also involved in the previous scam of the year 1996.

52. It is contended on behalf of the respondent that the prior statement of P.W. 15 Sarode Exhibit 53 is not a spontaneous one and that the later part in which he seeks to rope in the respondent was unnatural and does not
F appear to be a part of the main confession that was made by him about the conspiracy as a whole including the permitting of all failed students in the preliminary examination to participate in the final examination, the rescanning, the attempt to replace the answer-sheets and so on. Obviously, the respondent joined the Commission only on 8.5.2001 and even before that, the conspiracy relating to permitting all students to take the final examination had been
G enacted. The alleged role of the respondent started only from the decision to rescan the answer-sheets on the pretext that the computer had become corrupted and the subsequent attempt of replacing the answer-sheets. It is after narrating all these facts that P.W. 15 has stated in his prior statement that the respondent had called him to her residential flat and had introduced Nitin Sathe to him
H and had told him that the list sponsored by Nitin Sathe containing 24 names

were her own candidates and further that in future he should work in conjunction with Nitin Sathe for the mutual benefit of all concerned. Though it may be part of a different phase, the fact remains that P.W. 15 has also stated that he has been called to the office of the respondent subsequently and had been told not to reveal the name of Nitin Sathe at the internal enquiry that was ordered by the Acting Chairman of the Commission and that was being carried on by the Secretary Seema Dhamdhare. It is not possible to accept the argument of learned counsel for respondent No. 3 that the prior statement should be thrown out lock, stock and barrel for the purpose of this enquiry. As we have indicated in the beginning, what we are concerned with is the appreciation of the evidence of P.W. 15 examined before us in the light of his cross-examination, the other evidence and in the light of his prior statement contained in Exhibit 53. So viewed, it is really a question of believing or disbelieving the evidence of P.W. 15 given before us. We are not dealing with a prosecution and in that context the alleged confession of a co-accused. We are on a fact finding enquiry based on the evidence before us and the probabilities of the case.

53. In that context, we must take note of the fact that PW 15 is himself an accused in the case registered in connection with the scam and he is also a self confessed participant in the goings on in the Commission. In that situation, it will be appropriate for us to look for some corroboration of his version before we could enter a finding that the respondent has, in fact, said that 24 persons mentioned by Nitin Sathe were her own candidates and that PW 15 should help them to qualify in the examination. This part of the case is not supported by the papers allegedly recovered either from her flat or from her office. There is also no clear evidence of a list of 24 persons. There is no adequate material to show that Nitin Sathe was in fact present when PW 15 met the respondent at her flat on 24.5.2002. In this situation we think that the benefit of doubt must go to the respondent, especially, when our enquiry is to find out whether she is guilty of misbehaviour within the meaning of Article 317 of the Constitution. So in the absence of any other evidence to corroborate the evidence of PW 15 and his prior statement Ext.53 we are not inclined to find that charge No.1 is proved against the respondent.

54. Charge No.2.

This charge is essentially on the footing that the respondent did not disclose the information to the Secretary of the Commission, Seema Dhamdhare who was conducting the internal enquiry about the request of Sarode to not

A to make a criminal complaint and in that event, he was prepared to resign from his post and that the respondent influenced Aparna Dubey and her friend to withdraw their complaint made to the Commission and to file a fresh complaint implicating Seema Dhamdhare in the racket. The respondent did not disclose to the Commission that Sarode had made such an offer to her. She spoke about this in her evidence. She also does not deny that she did not inform the Chairman or the Commission as a body about the offer of Sarode. But her case is that she informed Varma, another member, who was an ex-Director General of Police. The Chairman of the Commission had requested Varma to oversee the enquiry conducted by Seema Dhamdhare. According to her, she thought that that was sufficient. There is nothing further to show that Varma was conveyed this information by the respondent. Therefore, to that extent, the respondent had not cooperated with the enquiry. Aparna Dubey has given evidence that Nitin Sathe had threatened her and compelled her to withdraw the first complaint made and to make a second complaint involving Seema Dhamdhare who was making the internal enquiry. Aparna Dubey further stated that according to Nitin Sathe, it was at the instance of respondent No.3 that he had approached her to retract her original complaint. Nitin Sathe had followed up this request with threats over the telephone. It is true that other than the statement of Aparna Dubey there is nothing to show that Nitin Sathe claimed that he was acting at the behest of the respondent or that he was acting on her behalf. Of course, her repeated contacting him over the telephone, does create a suspicion, a suspicion, that Nitin Sathe might have been acting on her behalf also. But, we feel that based on suspicion alone it would not be appropriate to enter a finding on that aspect. But the fact remains that at least a copy of the second complaint/statement said to have been made by Aparna Dubey which she claimed to have handed over to the respondent in person, was found in the possession of the respondent. The evidence indicates that it was not a document that was communicated to her by the Commission officially, and consequently, her custody or possession of that paper should be considered unauthorised. But all said and done, the only fact that can be found as causing impediment in the internal enquiry could be said to be her failure to disclose the statement of PW 15 Sarode to the enquiry officer and the suggestion of a complaint being got made against the investigating officer herself so as to impede the internal enquiry. On these materials alone we would not like to enter a finding that the respondent had committed an act of misbehaviour by interfering with the internal enquiry.

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55. *Charge No.3*

It is admitted that the daughter of the respondent had applied from two places for appearing in the examination conducted by the Commission in the year 2002. It is the case of the respondent that her daughter had not, as a matter of fact, appeared in the examination. But the question is whether the respondent had an obligation to inform the Commission that her daughter was a participant in the examination conducted by the Commission in her capacity as a Member of the Commission. The respondent did not deny that she had not informed the Commission about the candidature of Poorva, her daughter. She also does not deny that there was a circular to the effect that all employees and officers of the Commission should disclose if any of their near relations were candidates in any examination conducted by the Commission. Her stand is that since she was neither an employee nor an officer, but was a member of the Commission, the circular did not apply to her and she had no legal obligation to inform the Commission of her daughter appearing in an examination conducted by the Commission.

56. The respondent was holding the position of a member of a constitutional body having a higher status. It is not possible to appreciate the stand of the respondent that even while the employees and officers of the Commission had an obligation to inform the Commission about the appearance of their near relations in any examination conducted by the Commission, no such obligation was attached to a member of the Commission. May be, a member of the Commission would not qualify as an employee or as an officer of the Commission, but that cannot absolve a member from the obligation of disclosing to the Commission that her daughter was to appear in the examination conducted by the Commission. Obviously, the object was to ensure that she did not participate in that particular selection process lest charges are raised of partiality in the process of selection. Normally, in such a situation the member or members are to be kept out of the particular process. Since, admittedly the daughter of the respondent had applied for appearing in the examination 2002 from two places and the respondent had failed to inform the Commission about the participation of her daughter in such an examination, it has to be held that she has misconducted herself by not making a disclosure to the Commission in that regard. The fact that the daughter later on did not actually appear in the examination would make no difference.

57. Learned counsel for the respondent argued that this charge did not

- A relate to the 1999 examination about which the reference was being made and hence this charge cannot survive, especially, in view of the fact that charge No.3 and 6 originally proposed had been dropped. Even while dropping those charges this Court had retained charge No.3 after a consideration of the relevant aspects on the basis that the charge had relevance to her conduct as a member of the Commission especially in the light of what had transpired regarding the 1999 examination. No doubt, it was clarified that this aspect could be argued at the time the court was to take a final decision but having considered the circumstances and the nature of the charges against the respondent we are not inclined to agree with the learned counsel that this charge should be kept out of consideration in the present enquiry. In fact, on an application of mind to all the relevant aspects it appears that one or two other charges should also have been framed against the respondent on the materials available. But then, the Attorney General had not suggested those charges and we had also not framed those charges. Therefore, for the moment we do not say anything more about those charges. Suffice it to say that this charge has to be found against the respondent and it has also to be held that her conduct in not informing the Commission about the making of applications by her daughter for appearing in the examination 2002 conducted by the Public Service Commission amounts to misconduct.

58. *Charge No.4*

- E Even while considering charge No.2, the evidence of Aparna Dubey to the effect that she was made to withdraw her complaint by Nitin Sathe by holding out threats to her and that she had to file a second complaint by handing over the same to the respondent implicating Seema Dhamdhare, the Secretary to the Commission has been referred to. An attempt was made to show that Aparna Dubey was not an honest person and that she and her friend were acting in concert to defame the respondent. Aparna Dubey had produced an incorrect experience certificate and she had not produced an accurate creamy layer certificate and she was unreliable. Of course, we have noticed that there is not enough evidence to show that Nitin Sathe had acted at the behest of the respondent while he is alleged to have threatened Aparna Dubey and her friend to withdraw their first complaint and compelling her to make a second complaint. But the fact remains that one of the copies of the complaint was found in the residence of the respondent when it was searched and according to the evidence the respondent was not authorised to keep such a copy of the alleged complaint since it had not been communicated to her officially. The explanation of the respondent is that she had found a copy

of the complaint lying on her desk in her office and she had immediately affixed a seal on it and forwarded it. But that part of the story is belied by the fact that at least one copy was found in her premises when the search was made. A

59. It is true that the respondent was in constant touch with Nitin Sathe. We have already discountenanced the story that she was contacting Nitin Sathe only in connection with the sale of her plot in Pune. But even then, it cannot be said that there is adequate evidence to show any collusion with Nitin Sathe as reflected by this charge. Therefore, though some suspicions are raised regarding the conduct of the respondent in this court in the light of her own evidence, it is not possible to say that the charge, as such, has been made out so as to enable us to hold that this charge is proved against the respondent. B C

60. Thus, based on our finding on charge No.3 and our observations on charge No.2, we are of the view that the respondent has not behaved in a manner befitting a member of a constitutional body like the Public Service Commission and under the circumstances we answer the reference made by Hon'ble the President of India to us in the affirmative only as regards charge No.3. D

61. The reference is answered as above. The answer will be duly forwarded to the Hon'ble the President of India. E

G.N.

Reference answered.