

A MAHINDER KUMAR & ORS.
v.
HIGH COURT OF MADHYA PRADESH THROUGH
REGISTRAR GENERAL & ORS
B (Writ Petition (Civil) No.289 of 2007)

JULY 12, 2013

**[ALTAMAS KABIR, CJI AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, VIKRAMAJIT SEN JJ.]**

C *Judiciary – Higher Judicial Service – Madhya Pradesh
Higher Judicial Service – Selection of entry level District
D Judge – Procedure followed by High Court – Challenged –
Held: Having regard to the power vested in the High Court u/
E r.7, as well as para 9 of the advertisement (inviting
D applications for filling up the posts), in particular para 9 (iv),
the High Court was fully empowered to prescribe its own fair
F procedure for purpose of evaluation of the marks of the
G candidates, in order to make the ultimate selection – No flaw
found in the process adopted by the High Court – Para 9(iv)
of the advertisement, read along with r.7, fully empowered the
High Court to prescribe a procedure from the stage of
evaluating the answer sheets of the candidates, initially by
different District Judges and after noticing different standard,
F adopted by different District Judges in the matter of valuation
of answer sheets of the candidates, for adopting the
normalization process in order to streamline the whole
selection in a fair manner – Also there was no conflict with the
Shetty Commission recommendation, as approved by
Supreme Court – The procedure followed by 1st respondent
High Court was also rational – No material on record in
support of the plea that the minimum percentage requirement
for final selection was increased at the final stage – Procedure
adopted by the 1st respondent High Court well in order and
not calling for interference – Madhya Pradesh Uchchatar*

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Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994 – r.7 (as amended by Madhya Pradesh Rajpatra (ASADHARAN) dated 08.06.2005).

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Selection made by the High Court of Madhya Pradesh of the third respondent for the post of entry level District Judge in the cadre of Madhya Pradesh Higher Judicial Service for the year 2006-07 was in issue in the instant appeals.

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Dispute arose as to whether by virtue of the powers provided in Rule 7 of the Madhya Pradesh Uchchar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994 (“the 1994 Rules”) as amended by Madhya Pradesh Rajpatra (ASADHARAN) dated 08.06.2005, read along with para 9 (iv) and (vi) of the advertisement inviting applications for filling up posts in the Madhya Pradesh Higher Judicial Service, the High Court was well justified in formulating the procedure in making the selection in question.

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The Petitioners/ appellants further contended before this Court that under the Rules, there was no provision for adopting the procedure of normalization of the marks secured by the candidates in the written examination and that, therefore, the said procedure adopted by the High Court could not be sustained. It was also contended that while making the final selection and appointment of 3rd respondent, the prescription of 50% cut-off marks in the aggregate marks was again not prescribed either in the Rule nor in the advertisement and thus, such a prescription evolved by the High Court on its own was without any authority and, therefore, the ultimate selection and appointment of 3rd respondent cannot be sustained. In support of their stand, the Petitioners/ appellants referred to the Shetty Commission Report, which was accepted by this Court where the benchmark of 120 out of 200 marks, i.e. 60%, was fixed, which in turn

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A stated that the said prescription should be followed, unless or otherwise the High Court Rules provide for a different benchmark and the prescription of a benchmark for viva voce.

B Disposing of all the matters, the Court

HELD:

Per Kalifulla, J.

C 1. Rule 7 specifically deals with the direct recruitment
of District Judges as provided for in Rule 3(1) of the
amended Rules. Therefore, in the absence of any
challenge to the said Rule 7 as prescribed or any serious
D infirmity pointed out in the said Rule, going by the Rule
as it stands, it can be stated that the High Court has been
vested with the required power to evolve its own
procedure of selection for direct recruitment and
promotion in respect of Entry Level District Judges and
that the High Court can specify such procedure from time
E to time. Rule 7 fully empowered the High Court to evolve
its own procedure. [Para 26] [910-B-D]

2. It cannot be said that the said Rule 7 in anyway
conflict with whatever that has been recommended in the
Shetty Commission Report. The Shetty Commission
F Report, while prescribing a benchmark of 60% marks for
the written examination, without any prescription of
minimum marks in the viva voce, itself mentions that
such recommendation was subject to prescription of any
Rule, which operates in the respective High Courts.
G Therefore, so long as Rule 7 operates in the field and the
said Rule does not conflict with any other constitutional
or statutory provision or any other Rule or regulation
governing the subject, the said Rule empowering the
High Court to formulate its own procedure and specify
H such procedure from time to time is valid and also

justified. Such a provision does empower the High Court to formulate a procedure for the purpose of selection of direct recruitment to the post of Entry Level District Judges. [Para 27] [910-E-H]

3.1. In view of the constitutional mandate, which empowers the respective High Court to deal with the selection of District Judges, within its jurisdiction and the ultimate appointment to be made by the concerned Governor of such a State, a reading of Article 233(1) of the Constitution along with Rule 7 of the 1994 Rules, as amended in the year 2005, makes it clear that the 1st respondent High Court is invested with every power and authority to evolve an appropriate procedure in the matter of selection for direct recruitment and promotion of Entry Level District Judges and that depending upon the exigencies, such procedures can also be specified by the 1st respondent High Court from time to time. Therefore, the 1st respondent High Court was fully empowered under Rule 7 to prescribe the required procedure for selection of Entry Level District Judges by way of direct recruitment and specify such procedure from time to time according to the exigencies prevailing. [Para 30] [912-G-H; 913-A-C]

3.2. In the background of the Rule prevailing, the prescription contained in para 9(iv) of the advertisement dated 21.08.2006, empowering the High Court to decide which of the candidates can be called for the interview based on the evaluation of their performance in the written examination, should also be held to be in consonance with Rule 7 and Article 233(1) of the Constitution. [Para 31] [913-C-D]

3.3. There is a clear indication in para 9 of the advertisement as to in what manner the High Court is going to conduct the selection process. In para 9(iii), it has been sufficiently indicated that each paper of the

A written examination will be for a duration of 3 hours, with a maximum of 100 marks to be scored. The object in holding the written examination in both the 1st and 2nd papers, have also been specifically highlighted in para 9(iii). Once the written examination part is fulfilled, the High Court has to formulate a procedure by which the answer papers are to be evaluated in order to ascertain the marks scored by the respective candidates. Therefore, in para 9(iv) it has been specified that before calling any of the candidates for interview who appeared for the written examination, an evaluation will have to be made and based on the evaluation and performance, the High Court will decide as to who should be called for the interview. [Paras 32, 35 & 36] [913-G; 914-D-F]

D 3.4. The expression 'evaluation' would take into its fold the minimum marks to be scored, the manner in which the evaluation is to be made and in the event of any requirement, to equalize the merits of the candidate in the written examination and follow any appropriate procedure in consonance with law, in order to ultimately arrive at a fair process by which the candidate can be called for interview, based on the evaluation of the marks in the written examination. In a situation like this, where nearly 3000 candidates appeared for the written examination and the answer papers were evaluated by several District Judges, the High Court in exercise of its authority under Rule 7, read along with para 9(iv) adopted a fair procedure to normalize the marks of the candidates in order to assess their respective merits. Therefore, the expression evaluation used in para 9(iv), should be held to fully empower the High Court to even resort to such a step in a case like this, where more number of District Judges evaluated the answer sheets and thereby, it required the intervention of the High Court in its administrative side, to find a fair method by which the

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normalization of the marks could be worked out. [Paras 37, 38] [914-G-H; 915-A-D] A

3.5. Para 9(iv), read along with Rule 7, fully empowered the High Court to prescribe a procedure from the stage of evaluating the answer sheets of the candidates, initially by different District Judges and after noticing different standard adopted by different District Judges in the matter of valuation of answer sheets of the candidates, for adopting the normalization process in order to streamline the whole selection in a fair manner. Therefore, the submission that every minute detail of the procedure, which the High Court followed in evaluating the answer sheets of the candidates, were not disclosed to them in the advertisement and on that the whole selection stood vitiated, cannot be accepted. [Para 39] [915-E-G] B
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3.6. By virtue of Rule 7 and para 9(i), (iii), (iv) and (vi), there was enough prescription empowering the High Court to follow its own procedure in evaluating the answer sheets initially by the District Judges and subsequently by common evaluators, before holding the interview. The submission made on behalf of the petitioners in attacking the procedure followed by the High Court in the matter of holding the selection pursuant to the advertisement dated 21.08.2006, is therefore rejected. [Para 40] [915-H; 916-A-B] E
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4.1. The High Court constituted a Selection Committee, consisting of 6 Judges of the High Court, with whom the process of direct recruitment to the post of Addl. District Judges, through competitive examination was entrusted. The methodology followed by the High Court based on the resolution of the Selection Committee dated 24.04.2007, was that the 40% marks secured by general category candidates and 35 % marks secured by reserved category candidates in each of the papers G
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A evaluated by the District Judges was the basis to finalize the names of 15 candidates for the purpose of interviewing them on the 6th and 7th of April, 2007, by the Selection Committee and not based on the normalization of marks. [Paras 47, 54] [918-H; 919-A; 924-A-B]

B 4.2. Any such criteria of fixing 50% of aggregate marks as the benchmark for making the selection, was neither resolved in any of the resolutions of the Selection Committee or any other proceedings of the High Court, nor was there anything stated in so many words in the counter affidavit of the first respondent High Court. [Para 57] [926-C-D]

D 5. None of the aggrieved candidates have made any allegation of *mala fides* or lack of *bona fides*, as against any of the Selection Committee members or for that matter in the manner in which the interview was held by the interviewing committee or with regard to the valuation of marks arrived at either by the District Judges or in the normalization of marks ultimately arrived at by the common evaluators. The only submission was that the methodology adopted by the Selection Committee in resorting to the normalization process was a departure in the midway of the selection process and therefore, on that score the ultimate selection cannot be approved. As far as the said challenge is concerned, having regard to the power vested in the High Court under Rule 7, as well as paragraph 9 of the advertisement, in particular para 9 (iv), the High Court was fully empowered to prescribe its own fair procedure for the purpose of evaluation of the marks of the candidates, in order to make the ultimate selection. Therefore, in the absence of any other attack to the selection process made by the High Court by constituting a Selection Committee and the procedure followed by the said Selection Committee, which ultimately arrived at the merit list of the 15 shortlisted

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candidates for finalizing the selection, it will have to held that no flaw can be found in the said process adopted by the High Court. [Para 59] [927-B-F]

6. The Selection Committee's ultimate decision in their resolution dated 18.4.2007, in holding that in their fair assessment, the third respondent alone, who secured 55.46% marks in the aggregate, as the only suitable candidate for holding the post of entry level District Judge, cannot be assailed. It is by now well settled that no Court, including this Court can venture to go behind the said assessment made by an expert committee consisting of high level members of the judiciary of the State and state that the said decision should be varied by holding that the other candidates whose performance was also appraised by the said expert committee, should be held to be suitable on par with the selected candidate and that they should also be selected and appointed. This Court should never make even an attempt to go behind the ultimate decision of the Selection Committee in order to set at naught the final decision arrived at by it, which was approved by the Full Court or vary its decision by adding some more candidates in the list by laying down a different criteria, by altering or by fixing any benchmark for being appointed to the higher judiciary of the State. [Para 61] [928-H; 929-A-D]

7. In the instant case, based on the Rule prevailing and the prescription found in the advertisement, the first respondent High Court scrupulously followed the procedure without giving room for any deviation. Also there was no conflict with the Shetty Commission recommendation, which had the approval of this Court in the decision reported in All India Judges' Association and others. [Para 62] [929-F-G]

8. The normalization process adopted by the High Court in this case where the initial evaluation was made

A by several evaluators in the rank of District Judges, by appointing common evaluators in the status of a Retd. Chief Justice and a Retd. Judge of the High Court, was a prudent step taken by the 1st respondent High Court and no fault could be found with that approach. [Para 65]

B 9. In the present case, what all was done by the Selection Committee based on the power vested in the High Court, under Rule 7 and what was prescribed in para 9 (iv) of the advertisement, was a pattern of selection in which the 25 marks allotted for interview was simply applied. No minimum marks to be secured in the interview, was prescribed afresh after the selection process commenced and thereby, for anyone to state that there was any change in the 'rule of the game' in order to interfere with the selection. By virtue of Rule 7 and para 9(iv), the 1st respondent High Court had every authority to prescribe the procedure, while making the selection to the post of higher judicial service and that such procedure followed was also rational. The procedure adopted by the 1st respondent High Court was well in order and the same does not call for interference. [Paras 68, 69 and 73] [933-B-C; 935-A-F]

K. Manjusree vs. State of Andhra Pradesh and another (2008) 3 SCC 512: 2008 (2) SCR 1025 – held inapplicable.

F *K.H. Siraj vs. High Court of Kerala and others* (2006) 6 SCC 395: 2006 (2) Suppl. SCR 790 – relied on.

All India Judges' Association and others vs. Union of India and others (2002) 4 SCC 247: 2002 (2) SCR 712;
G *Sanjay Singh and another vs. U.P. Public-Service Commission, Allahabad and another* (2007) 3 SCC 720: 2007 (1) SCR 235; *Hemani Malhotra vs. High Court of Delhi* (2008) 7 SCC 11: 2008 (5) SCR 1066; *Ramésh Kumar vs. High court of Delhi and another* (2010) 3 SCC 104: 2010 (2) SCR 256 and *The State of Haryana vs. Subash Chander*

Marwaha and others (1974) 3 SCC 220: 1974 (1) SCR 165 – A
referred to.

Per Kabir, CJI. [Supplementing]

HELD: 1. There is no material on record in support of Ground 'D' taken in the Writ Petition, wherein it has been mentioned that "To top it all, the minimum percentage requirement for final selection was increased to 50% at the final stage." [Para 1] [936-A-B] B

2. Nowhere in the advertisement inviting applications for filling up the 20 posts in the Madhya Pradesh Higher Judicial Service by direct recruitment from the Bar, has it been indicated as to what would be the minimum percentage of marks, which would be required for final selection. The only place where reference has been made to the said figure is in the Resolution of the Selection Committee adopted on 23rd March, 2007, wherein in paragraph 1 it has been indicated that on the basis of the evaluation made by District Judges, Scheduled Castes and Scheduled Tribes candidates would have to secure 35% marks and other candidates would have to secure 40% marks in the first paper and in the second paper in order to qualify for the viva-voce. The problem was caused by the note written by the Registrar General of the High Court indicated at the bottom of the final Select List, wherein it was mentioned that the selected candidate, who had obtained more than 50% marks, was found suitable to be recommended for appointment. The said note has given cause for Ground 'D' to the Writ Petition, although, there is nothing, even in the note, to suggest that previously 40% of the total marks had been declared or accepted to be the bench-mark for appointment. The note is merely a statement which indicates that the selected candidate had obtained more than 50% marks. The same does not either indicate or pre-suppose that there was a lower bench-mark for the Petitioners to claim C
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A in Ground 'D' that the bench-mark had been increased to 50%. [Paras 1, 2 and 3] [936-C-D, G-H; 937-A-B]

Case Law Reference:

In the judgment of Kalifulla, J.

- B 2002 (2) SCR 712 referred to Paras 4, 8, 61, 67, 71
- 2007 (1) SCR 235 referred to Paras 4, 64
- C 2008 (2) SCR 1025 referred to Para 4, 66
- 2008 (5) SCR 1066 referred to Para 4
- 2010 (2) SCR 256 referred to Paras 4, 60, 70
- D 2006 (2) Suppl. SCR 790 referred to Para 8, 61, 72
- 1974 (1) SCR 165 referred to Para 8,

E CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 289 of 2007.

Under Article 32 of the Constitution of India.

WITH

F W.P.(C) No. 178 of 2008, C.A. Nos. 7790 & 7791 of 2011.

G B.H. Marlapalle, Ravindra Shrivastava, Pragati Neekhra, Rauf Rahim, Yadunandan Bansal, Parth Tiwari, Annam D.N. Rao, Manisha Monga, A. Venkatesh, Manish K. Bishnoi, C.D. Singh, Sunny Choudhary, Survigya, Harmeet, Sakshi, Arjun Garg, Mishra Saurabh, Dharam Bir Raj Vohra, Mohan Pandey, Niraj Sharma, Kuldip Singh, B.S. Banthia, Deepak K. Wadhvani (Respondent-In-Person) for the appearing parties.

H The Judgments of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. As the issues involved in these writ petitions and appeals are one and the same, the same are being disposed of by this common judgment.

2. In Writ Petition (C) No. 289 of 2007, the challenge is to the selection made by the High Court of Madhya Pradesh in the cadre of Madhya Pradesh Higher Judicial Service to the post of entry level District Judge in the selection process for the year 2006-07 in which the third respondent alone came to be selected for the 20 posts advertised. Petitioners and respondent Nos.4 to 8 were all unsuccessful candidates who participated in the said selection. Writ Petition No.178 of 2008 was also by one of the candidates who also participated in the selection of 2006-07 and has come forward with the similar relief as in Writ Petition (C) No. 289 of 2007. Civil Appeal No.7790 of 2011 and Civil Appeal No.7791 of 2011 have been preferred by two candidates who were also not successful in the very same selection and who approached the High Court by filing independent writ petitions in W.P. (C) No.4604 of 2007 and W.P.(C) No.4605 of 2007, which were disposed of by a common order dated 09.04.2007, by the Division Bench of Madhya Pradesh High Court. Both the writ petitions were dismissed. Those writ petitions were also filed challenging the very same selection made for the post of Madhya Pradesh Higher Judicial Service in the selection process of 2006-07. Since the challenge in both the writ petitions, as well as the civil appeals are relating to the same selection for the post of District Judge (Entry Level) of the Madhya Pradesh Higher Judicial Service, we dispose of all the above four cases by this common judgment.

3. Since the submissions made by Mr. Marlapalle, learned senior counsel appearing for the petitioners in W.P.(C) No.289 of 2007 were generally adopted by the other respective counsel, except for a few submission made by Mr. Annam D. N. Rao, learned counsel for the appellants in Civil Appeal

A No.7790 of 2011 and Civil Appeal No.7791 of 2011, we mainly refer to the submissions of Mr. Marlapalle, while considering the grievances of the petitioners in the writ petition, as well as the appellants in the civil appeals.

B 4. Mr. Marlapalle learned senior counsel, in his submissions referred to the advertisement dated 21.08.2006, calling for 20 posts of Higher Judicial Service of Madhya Pradesh, namely, the Entry Level District Judge post. The written examination was held on 17.12.2006, for two papers prescribed in the advertisement. The learned senior counsel, C after referring to the list of candidates who were called for interview and the ultimate resolution of the Selection Committee after normalization of the marks secured by the short-listed 15 candidates, who are the petitioners in Writ Petition (C) No. 289 of 2007, as well as respondent Nos.4 to 8 in that writ petition, D submitted that the merit list could have been drawn solely based on the written examination marks and the interview marks put together, without adopting the normalization process as was done by the High Court, which was not mentioned in the advertisement. According to learned senior counsel, the E procedure of normalization of marks adopted by the High Court after the holding of the written examination, was not permissible in law. The learned senior counsel contended that the condition of 50% of marks to be scored in the normalized marks along with marks secured in the interview, was neither mentioned in F the advertisement, nor in the Rules, nor in the Shetty Commission recommendations and, therefore, such a condition could not have been prescribed at the fag end of the conduct of the selection. The learned senior counsel after referring to the resolution of the Selection Committee submitted G that the same did not have the approval of the Full Court. By referring to the amended Rules 7 of the Rules relating to the recruitment for the post of Higher Judicial Service of Madhya Pradesh, learned senior counsel contended that if the High Court can formulate its own procedure as per the said Rule,

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then it should have been disclosed in the advertisement or at least before the written examination was conducted. The learned senior counsel would further contend that even in the counter affidavit filed before this Court, no reason was given for the decision taken by the High Court to resort to normalization of marks as mentioned in para 11(a) of the counter affidavit. The learned senior counsel would contend that having regard to such serious violations in the matter of selection, the whole selection was vitiated. The learned senior counsel in his submission contended that in the Shetty Commission Report, which was accepted by this Court in **All India Judges' Association and others vs. Union of India and others** – (2002) 4 SCC 247, the Shetty Commission, recommended that there can be a benchmark of 120 marks out of 200 marks, i.e., 60%, for making the selection and that the High Court can provide a benchmark under the Rules for viva voce and without any such prescription it was not permissible for the High Court to prescribe a benchmark, while making the selection. The learned senior counsel also relied upon the decisions in *Sanjay Singh and another vs. U.P. Public Service Commission, Allahabad and another* – (2007) 3 SCC 720, *K. Manjusree vs. State of Andhra Pradesh and another* – (2008) 3 SCC 512, *Hemani Malhotra vs. High Court of Delhi* - (2008) 7 SCC 11 and *Ramesh Kumar vs. High court of Delhi and another* – (2010) 3 SCC 104.

5. Mr. A.D.N. Rao, learned counsel appearing for the appellants in Civil Appeal No.7790 of 2011 and Civil Appeal No.7791 of 2011, referred to the advertisement and submitted that though specific posts were earmarked for reserved categories, when the ultimate select list was announced, reservation was given a go by. The learned counsel further contended that since the Rules were changed midway, the appellant got eliminated and, therefore, on that score the selection should be held to be vitiated.

6. As against the above submissions Mr. Shrivastava,

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A learned senior counsel appearing for the High Court, dealing with the last of the contentions made by Mr. Marlapalle that the selection did not have the approval of the Full Court, pointed out that in the letter by which the selection was announced by the communication of the Registrar General dated 24.04.2007, there is a reference to the resolution of the Full Court meeting dated 22.04.2007, by which the selection was approved by the Full Court. The said submission was made by Mr. Shrivastava, apart from submitting that such a contention was never raised before the High Court, nor in the writ petition.

C 7. The learned senior counsel then referred to the amended Rule 7 and pointed out that as per the said Rule, whatever was not prescribed in the Rules was left to be decided by the High Court and that even as per para 9 of the advertisement and in particular Rule 9(iv), the High Court was empowered to follow its own procedure. The learned senior counsel then contended that the High Court in exercise of such powers vested in it, constituted a Committee of Judges to make the selection and that the Selection Committee determined the procedure to be followed as to how the eligibility of the candidates who participated in the examination, were to be determined for the purpose of the interview and that after following the due procedure resolved by the Selection Committee, the marks secured by the candidates in the written examinations, in both the papers, which were evaluated by different District Judges, were normalized by two common evaluators and that based on such normalized marks and the marks scored by the eligible candidates in the interview, the ultimate selection was made.

G 8. The learned senior counsel contended that the submission that there was midway change in the process of selection was not correct in the light of the amended Rule 7 and the power vested in the High Court under Rule 9(iv), which enabled the High Court to follow its own procedure for making the selection. The learned senior counsel lastly contended that

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by following the due procedure prescribed by the High Court in the matter of the selection, which was in accordance with the prescribed Rules, the Selection Committee in its wisdom found that the third respondent alone was found meritorious and suitable for holding the post in Higher Judicial Service of Madhya Pradesh and in the absence of any other allegations striking at the route of the selection process or the Selection Committee or Interview Committee, the ultimate selection made by the High Court and the appointment of the third respondent based on such selection cannot be interfered with. The learned senior counsel relied upon the decisions reported in *All India Judges' Association and others* (supra), *K.H. Siraj vs. High Court of Kerala and others* – (2006) 6 SCC 395 and *The State of Haryana vs. Subash Chander Marwaha and others* - (1974) 3 SCC 220 in support of his submissions.

9. Having heard the learned counsel for the respective parties and having perused the relevant Rules made by the High Court in its advertisement, as well as the judgment impugned in the civil appeals and other material papers, we feel that in order to appreciate the controversy raised and the correctness of the decision made by the High Court in the matter of selection and appointment of third respondent in Writ Petition (C) No.289 of 2007, reference to the relevant Rules, the clauses contained in the advertisement and the resolutions of the Selection Committee of the High Court and the proceedings of the Interview Committee have to be looked into. We also find that the procedure actually followed by the High Court and what it sought to explain in the counter affidavit, have to be referred in order to understand and clarify the procedure followed in the matter of selection.

10. By the advertisement at Annexure P-2, filed by respondent No.1 by way of counter affidavit dated 21.08.2006, the High Court of Madhya Pradesh called for applications to fill up 20 posts in Madhya Pradesh Higher Judicial Service by direct recruitment from the Bar, making it clear that it will be

A governed by the Madhya Pradesh Uchchatar Nyayik Seva (Bharti Tatha Seva Sharten) Niyam, 1994 (hereinafter called "the 1994 Rules") as amended by Madhya Pradesh Rajpatra (ASADHARAN) dated 08.06.2005.

B 11. The advertisement stated that out of 20 posts, 11 posts were earmarked for general category candidates and three posts each reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes candidates. It was also made clear that if sufficient number of suitable candidates belonging to the reserved categories were not available, such posts would be treated as unreserved. Para 9 of the advertisement which contains sub-clauses (i) to (vii) are relevant for our purpose. The same are required to be extracted, which read as under:

D (i) The candidates may be short-listed at the preliminary stage i.e. before written examination, by the High Court.

E (ii) Eligible candidates will be required to appear in Written Examination and interview at their own expenses before the High Court of Madhya Pradesh, Jabalpur, or at such other places as may be specified by the High Court.

F (iii) The Written Examination shall consist of two papers, each of 3 hours' duration and of maximum 100 marks. The object of the written examination is to assess the knowledge of a candidate in Law and latest pronouncements. 1st paper shall relate to Constitution of India, Civil Procedure Code, Cr.P.C., I.P.C., Hindu Law, Transfer of Property Act, M.P. Accommodation Control Act, Limitation Act, Evidence Act and M.P. Land Revenue Code, Special Acts like N.D.P.S. Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, Prevention of Corruption Act, Negotiable Instrument Act.

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Second paper will be in two parts, the First Part will contain factual data of a Civil Case and a Criminal Case on the basis of which the candidate shall prepare judgment in the Civil Case and Criminal Case. The Second Part will contain a passage in Hindi to be translated into English and a passage in English to translate into Hindi.

(iv) Only such candidates will be called for interview as the High Court may decide, on the basis of evaluation of their performance in the written examination.

(v) The interview shall carry 25 marks.

(vi) Candidates shall be selected on the basis of aggregate marks obtained by them in both the written examination and interview.

(vii) On completion of the selection process, the result of examination (list of selected candidates) shall be published in M.P. Rajpatra and all the candidates both successful and unsuccessful shall be supplied mark sheets at their given addresses by ordinary post."

12. The said para 9 states as to how the short-listing of candidates at the preliminary stage itself before the written examination were to be made by the High Court, the requirement of the candidates to appear in the written examination consisting of two papers where, the maximum marks in each paper was 100 and the relevant laws in which the examination would be conducted in both the papers was also specified. In para 9(iv), it was specified that the High Court may decide on the basis of evaluation of their performance in the written examination for calling those candidates for interview. Under para 9 (v), the interview marks were specified as 25. In para 9(vi), it was mentioned that candidates would

A be selected on the basis of aggregate marks obtained by them, both in the written examination and the interview. The last paragraph of the amended Rule 7 is also relevant, which reads as under:

B "The procedure of selection for direct recruitment and promotion shall be such, as may be specified by the High Court from time to time."

C 13. As per the advertisement at Annexure P-2, the last date for submission of application was 30.09.2006 and the date of examination was notified as 17.12.2006. In response to the advertisement, it is stated that 3556 number of applications were received and ultimately 2498 candidates appeared for paper I and 2494 candidates appeared for paper II. According to the High Court, in accordance with Rule 7, as well as D paragraph 9 of the advertisement, the Selection Committee constituted by the High Court, monitored the whole selection and the ultimate appointment of the third respondent was also approved by the Full Court. The Selection Committee stated to have met on 22.03.2007, as per Annexure R-1 in which the E committee adopted the following resolutions in the matter of direct recruitment to the post of Additional District Judge through competitive examination. The resolutions are as under:

F "1. On the basis of the evaluation made by District Judges scheduled caste and scheduled tribe candidates must secure 35 per cent marks and other candidates must secure 40 per cent marks in the first paper and in the second paper to qualify for viva-voce.

G 2. While determining the merit of candidates finally, the marks secured by different candidates in the written examination in the first and second paper will be normalized on the basis of marks secured by them in the common evaluation by the same

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evaluator for each of the two papers.

3. To the marks so normalized by common Evaluators of both the papers, the marks secured in the viva-voce will be added and the merit position of the candidates will be determined."

14. Annexure R-2 filed along with counter affidavit of the High Court, consists of 15 candidates who were called for interview on the basis of the result of the written examination held on 17.12.2006. The date of interview was noted as 6th and 7th April, 2007 at 10 A.M. to 5 P.M. for all the candidates at the High Court of Madhya Pradesh, Jabalpur. All the 15 candidates found in Annexure R-2 are the petitioners and respondents 3 to 8, in Writ Petition (C) No. 289 of 2007 and it is relevant to state that Annexure P-6 to P-9 relate to them. Annexure P-6 filed by the petitioners in the said writ petition, is a true copy issued by the Registrar General of the High Court of Madhya Pradesh, which is stated to be the tabulation sheet of candidates on the basis of the marks awarded by District Judges prior to the process of normalization and who were selected for personal interview on the 6th and 7th of April, 2007. It will be necessary to note the marks found therein in the said statement and, therefore, the same is also extracted hereunder;

S. No.	Roll No.	Name of the No.Candidates	Paper I	Paper II
1	1030	Shri Axay Kumar Dwivedi	59	58
2	3202	Shri Radhe Shaym Sharma	65	64
3	3806	Shri Sanat Kumar Kashyap	58	45
4	1652	Shri Arvind Kumar Soni	53	57
5	4477	Shri Mahinder Kumar	50	59
6	4480	Shri Hemant Kumar Yadav	48	50

A	7	4484	Shri Jai Narayan Gupta	44	54
	8	4463	Shri Praneet Sharma	42	52
	9	4143	Shri Ravindra Kumar Agrawal	40	44
B	10	2571	Shri Akhilesh Shukla	43	45
	11	1554	Shri Dharam Prakash Sharma	42	44
	12	4402	Shri Niraj Kumar Shrivastava	47	41
C	13	1058	Raj Kumari Mishra	40	45
	14	3048	Shri Deepak Kishanchand Wadhvani	40	41
D	15	2909	Shri Krishna Ballabha Kumar Pandey	43	40

15. Annexure P-7 is also a certified true copy issued by Registrar General, which contains the normalized marks awarded by the common evaluator of the candidates who were called for personal interview on the 6th and 7th of April, 2007, which is as under:

S. No.	Roll No.	Name of the Candidates	Normalized Marks by common Evaluators		
			I	II	
F	1	1030	Shri Axay Kumar Dwivedi	50	56
	2	3202	Shri Radhe Shaym Sharma	47	52
G	3	1652	Shri Arvind Kumar Soni	42	52
	4	3806	Shri Sanat Kumar Kashyap	37	41

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5	4477	Shri Mahinder Kumar	41	42	A
6	4480	Shri Hemant Kuamr Yadav	29	50	
7	1554	Shri Dharam Prakash Sharma	36	40	B
8	4143	Shri Ravindra Kumar Agrawal	23	44	
9	2571	Shri Akhilesh Shukla	34	37	C
10	1058	Raj Kumari Mishra	26	40	
11	4402	Shri Niraj Kumar Shrivastava	29	37	
12	4484	Shri Jai Narayan Gupta	23	38	D
13	4463	Shri Praneet Sharma	24	36	
14	3048	Shri Deepak Kishanchand Wadhvani	19	32	
15	2909	Shri Krishna Ballabha Kumar Pandey	23	28	E

16. Annexure P-8 is another certified true copy of the tabulation sheet of candidates who were interviewed on the 6th and 7th of April, 2007, which disclosed the marks secured by them in the interview, which is as under:

S. No.	Roll No.	Name of the Candidates	Interview Marks
1	1030	Shri Axay Kumar Dwivedi	18.79
2	3202	Shri Radhe Shaym Sharma	5
3	1652	Shri Arvind Kumar Soni	1.92
4	3806	Shri Sanat Kumar Kashyap	12.71

A	5	4477	Shri Mahinder Kumar	1.29
	6	4480	Shri Hemant Kumar Yadav	2042
	7	1554	Shri Dharam Prakash Sharma	3.29
B	8	4143	Shri Ravindra Kumar Agrawal	9.28
	9	2571	Shri Akhilesh Shukla	1.79
	10	1058	Raj Kumari Mishra	3.93
	11	4402	Shri Niraj Kumar Shrivastava	1
C	12	4484	Shri Jai Narayan Gupta	1.93
	13	4463	Shri Praneet Sharma	1.79
	14	3048	Shri Deepak Kishanchand Wadhvani	3.5
D	15	2909	Shri Krishna Ballabha Kumar Pandey	1.29

17. Annexure P-9 contains the list of total marks of candidates who were called for personal interview on the 6th and 7th of April, 2007, which disclose the aggregate marks obtained by the 15 candidates, both in the written examination, as well as in the interview and the percentage arrived for 225 marks, which was fixed for the written examination and interview (200+25). The same is as under :

F	S. No.	Roll No.	Name of the Candidates	Marks Obtained Written & Interview out of 225	
G				Total	%
	1	1030	Shri Axay Kumar Dwivedi	124.79	55.46
	2	3202	Shri Radhe Shaym Sharma	104	46.22
H	3	1652	Shri Arvind Kumar Soni	95.92	42.63

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4	3806	Shri Sanat Kumar Kashyap	90.71	40.32	A
5	4477	Shri Mahinder Kumar	84.29	37.46	
6	4480	Shri Hemant Kumar Yadav	81.42	36.19	
7	1554	Shri Dharam Prakash Sharma	79.29	35.24	B
8	4143	Shri Ravindra Kumar Agrawal	76.28	33.90	
9	2571	Shri Akhilesh Shukla	72.79	32.35	C
10	1058	Raj Kumari Mishra	69.93	31.08	
11	4402	Shri Niraj Kumar Shrivastava	67.00	29.78	D
12	4484	Shri Jai Narayan Gupta	62.93	27.97	
13	4463	Shri Praneet Sharma	61.79	27.46	
14	3048	Shri Deepak Kishanchand Wadhvani	54.5	24.22	E
15	2909	Shri Krishna Ballabha Kumar Pandey	52.29	23.24	

18. One other factor to be mentioned is that of the 15 candidates, respondent No.5 Shri Hemant Kumar Yadav, son of Ram Lal is the only candidate who belongs to the Other Backward Class category.

19. Having noted the above factors, in the first place, we wish to deal with the question as to whether the High Court was empowered to formulate its own procedure in the matter of selection for the post of Madhya Pradesh Higher Judicial Service. The initial contention raised on behalf of the petitioners, as well as the appellants centres around the said question and we feel that the same should be addressed at the first instance.

A 20. In order to appreciate the said contention, the relevant factors to be noted are some of the provisions contained in the Rules, as well as the advertisement. Under the last paragraph of the un-amended Rule 7, it was stated that the procedure of selection for direct recruitment and promotion to Categories (a), B (b), (c) and (d) of Rule 3(1), shall be such as may be prescribed by the High Court. Under Rule 3(1), five categories of service have been mentioned in the un-amended Rule. When the Rules came to be amended as published in the Madhya Pradesh Gazette dated 08.06.2005, Rule 3(1) came to be amended C wherein, the category of District Judges was restricted to only three categories, namely, (a) District Judges (Entry level), (b) District Judges (Selection Grade) and (c) District Judges (Super time scale), as against four categories as it originally stood under the un-amended Rule 3(1). Therefore, in D consonance with the amended Rule 3 (1), Rule 7 also came to be amended. The last para of Rule 7 also came to be amended, which though has been extracted earlier can be noted again. It reads as under:

E "The procedure for selection for direct recruitment and promotion shall be such, as may be specified by the High Court from time to time."

F 21. Keeping the above provision, namely, the last paragraph of Rule 7 in mind, when we examine para 9 of the advertisement dated 21.08.2006, the relevant paragraphs to be noted are para 9 (i), (iv) and (vi). Para 9(i) empowers the High Court to shortlist the candidates at the preliminary stage, i.e., before the holding of the written examination. Para 9 (iv) empowers the High Court to decide as to such of those candidates who can be called for interview based on the G evaluation of their performance in the written examination and para 9 (vi) provides as to how the ultimate selection of the candidates on the basis of aggregate marks obtained by them both in the written examination and interview are to be made.

H 22. Keeping the above Rule position, as well the

prescription contained in the advertisement relating to power of the High Court as provided therein in mind, when we examine the contention raised by Shri Marlapalle, learned senior counsel for the petitioners, the sum and substance of the submission was that under the Rules, there was no provision for adopting the procedure of normalization of the marks secured by the candidates in the written examination and that, therefore, the said procedure adopted by the High Court cannot be sustained.

23. It was also contended that while making the final selection and appointment of the 3rd respondent, the prescription of 50% cut-off marks in the aggregate marks was again not prescribed either in the Rule nor in the advertisement and thus, such a prescription evolved by the High Court on its own was without any authority and, therefore, the ultimate selection and appointment of the 3rd respondent cannot be sustained. It was, therefore, contended that on the whole, the selection is liable to be set aside. To support his stand, Shri Marlapalle learned senior counsel, referred to the Shetty Commission Report, which was accepted by this Court where the benchmark of 120 out of 200 marks, i.e. 60%, was fixed, which in turn stated that the said prescription should be followed; unless or otherwise the High Court Rules provide for a different benchmark and the prescription of a benchmark for viva voce.

24. The stand of the High Court as submitted by Shri Shrivastava, learned senior counsel for the respondent High Court, was that by virtue of the enormous powers provided in Rule 7 of the 1994 Rules as amended in 2005, read along with para 9 (iv) and (vi), the High Court was well justified in formulating the procedure in making the selection.

25. In the case on hand, since Rule 7 specifically states that the procedure of selection for direct recruitment and promotion shall be such as maybe specified by the High Court from time to time, it will appropriate to examine as to what

A extent the said Rule can be interpreted, in order to state whether the procedure evolved by the High Court in the case on hand, can be said to be in consonance with the said power contained in Rule 7.

B 26. As contended by the learned senior counsel for the High Court, Rule 7 specifically deals with the direct recruitment of District Judges as provided for in Rule 3(1) of the amended Rules. Therefore, in the absence of any challenge to the said Rule 7 as prescribed or any serious infirmity pointed out in the said Rule, going by the Rule as it stands, it can be stated that C the High Court has been vested with the required power to evolve its own procedure of selection for direct recruitment and promotion in respect of Entry Level District Judges and that the High Court can specify such procedure from time to time. In this respect, we find force in the submission of Shri Shrivastava, D learned senior counsel for the High Court when he stated that the said Rule 7 fully empowered the High Court to evolve its own procedure.

E 27. It cannot be said that the said Rule 7 in anyway conflict with whatever that has been recommended in the Shetty Commission Report. The Shetty Commission Report, while prescribing a benchmark of 60% marks for the written examination, without any prescription of minimum marks in the viva voce, itself mentions that such recommendation was F subject to prescription of any Rule, which operates in the respective High Courts. Therefore, so long as Rule 7 operates in the field and the said Rule does not conflict with any other constitutional or statutory provision or any other Rule or regulation governing the subject, the said Rule empowering the High Court to formulate its own procedure and specify such G procedure from time to time, in our considered opinion, is valid and also justified. Such a provision does empower the High Court to formulate a procedure for the purpose of selection of direct recruitment to the post of Entry Level District Judges.

H 28. In this context, it will be appropriate to make reference

to Articles 233-236, of Chapter VI of the Constitution, which exclusively deals with the appointment of District Judges, recruitment of persons other than District Judges to the judicial service, the control of the High Court over subordinate courts and other incidental matters connected with subordinate courts and the judges who man those courts. For our present purpose we only need to note Articles 233, 234, 235 and 236 falling under Chapter VI which are as under:

Chapter VI

Subordinate Courts

233. Appointment of district judges-(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

234. Recruitment of persons other than district judges to the judicial service - Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

235. Control over subordinate courts - The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall

- A be vested in the High Court, but nothing in this article shall
 be construed as taking away from any such person any
 right of appeal which he may have under the law regulating
 the conditions of his service or as authorising the High
 Court to deal with him otherwise than in accordance with
 B the conditions of his service prescribed under such law.

236. Interpretation - In this Chapter -

- C (a) the expression "district judge" includes judge of a city
 civil court, additional district judge, joint district judge,
 assistant district judge, chief judge of a small cause court,
 chief presidency magistrate, additional chief presidency
 magistrate, sessions judge, additional sessions judge and
 assistant sessions judge;
- D (b) the expression "judicial service" means a service
 consisting exclusively of persons intended to fill the post
 of district judge and other civil judicial posts inferior to the
 post of district judge.

- E 29. Article 233(1) specifically states that the appointment
 of persons to be made, as well as the posting and promotion
 of District Judges in any state, can be made by the Governor
 of the state in consultation with the High Court exercising
 jurisdiction in relation to such a state. In other words, while the
 Governor of the respective state is the appointing authority of
 F the District Judges, the selection for such appointments, as well
 as the subsequent aspects, namely, postings, promotions, etc.
 of the District Judges, are to be determined by the High Court
 in respect of the concerned state.

- G 30. When such being the constitutional mandate, which
 empowers the respective High Court to deal with the selection
 of District Judges, within its jurisdiction and the ultimate
 appointment to be made by the concerned Governor of such a
 State, a reading of Article 233(1) of the Constitution along with
 Rule 7 of the 1994 Rules, as amended in the year 2005, it will
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have to be held that the 1st respondent High Court is invested with every power and authority to evolve an appropriate procedure in the matter of selection for direct recruitment and promotion of Entry Level District Judges and that depending upon the exigencies, such procedures can also be specified by the 1st respondent High Court from time to time. Therefore, we have no difficulty in holding that the 1st respondent High Court was fully empowered under Rule 7 to prescribe the required procedure for selection of Entry Level District Judges by way of direct recruitment and specify such procedure from time to time according to the exigencies prevailing.

31. In this background of the Rule prevailing, when we examine the prescription contained in para 9(iv) of the advertisement dated 21.08.2006, we must state that such prescription contained therein, empowering the High Court to decide which of the candidates can be called for the interview based on the evaluation of their performance in the written examination, should also be held to be in consonance with Rule 7 and Article 233(1) of the Constitution.

32. Once we steer clear of the said position, the next submission of the learned senior counsel for the petitioner was that when assuming Rule 7 empowers the High Court to follow its own procedure, it should have been disclosed in the advertisement. The contention of the learned senior counsel was that whatever procedure evolved by the High Court should have been disclosed well in advance by the High Court or at least before the written examination was conducted. When we consider the said submission, we find that there is a clear indication in para 9 of the advertisement as to in what manner the High Court is going to conduct the selection process.

33. Rule 9(i) makes it clear that the candidates maybe shortlisted at the preliminary stage, i.e., before the written examination is held by the High Court. No one can find fault with such a prescription, inasmuch as such short listing will have to be necessarily made in order to ensure that only such of those

A candidates who satisfy the conditions in para 2-8 of the advertisement are duly complied with.

B 34. In fact, para 8 makes it clear that non-receipt of the forms of application, etc. in time by the candidate will not be accepted as an excuse for late submission of application forms. Meaning thereby, that any application for the post to be submitted before 30.09.2006, should be complete in all respects furnishing whatever details which were required to be furnished and also satisfy the various conditions such as, age restriction, years of practice, character certificate, citizenship etc. If such conditions are not fulfilled, by exercise of such power contained under Rule 9(i), the High Court would be fully entitled to exclude the consideration of such candidates for participating in the written examinations.

D 35. In para 9(iii), it has been sufficiently indicated that each paper of the written examination will be for a duration of 3 hours, with a maximum of 100 marks to be scored. The object in holding the written examination in both the 1st and 2nd papers, have also been specifically highlighted in para 9(iii).

E 36. Once the written examination part is fulfilled, the High Court has to formulate a procedure by which the answer papers are to be evaluated in order to ascertain the marks scored by the respective candidates. Therefore, in para 9(iv) it has been specified that before calling any of the candidates for interview who appeared for the written examination, an evaluation will have to be made and based on the evaluation and performance, the High Court will decide as to who should be called for the interview.

G 37. The expression 'evaluation' would, therefore, take into its fold the minimum marks to be scored, the manner in which the evaluation is to be made and in the event of any requirement, to equalize the merits of the candidate in the written examination and follow any appropriate procedure in consonance with law, in order to ultimately arrive at a fair

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process by which the candidate can be called for interview, based on the evaluation of the marks in the written examination.

38. In a situation like this, where nearly 3000 candidates appeared for the written examination and the answer papers were evaluated by several District Judges, it cannot be held that there was every scope for variation in the assessment of the answers and the award of marks valued by different valuers. The High Court in exercise of its authority under Rule 7, read along with para 9(iv) adopted a fair procedure to normalize the marks of the candidates in order to assess their respective merits. Therefore, the expression evaluation used in para 9(iv), should be held to fully empower the High Court to even resort to such a step in a case like this, where more number of District Judges evaluated the answer sheets and thereby, it required the intervention of the High Court in its administrative side, to find a fair method by which the normalization of the marks could be worked out.

39. We are, therefore, in full agreement with the learned senior counsel for the High Court when he submitted that para 9(iv), read along with Rule 7, fully empowered the High Court to prescribe a procedure from the stage of evaluating the answer sheets of the candidates, initially by different District Judges and after noticing different standard adopted by different District Judges in the matter of valuation of answer sheets of the candidates, for adopting the normalization process in order to streamline the whole selection in a fair manner. Therefore, the submission of Shri. Marlapalle that every minute detail of the procedure, which the High Court followed in evaluating the answer sheets of the candidates, were not disclosed to them in the advertisement and on that the whole selection stood vitiated, cannot be accepted.

40. We have, therefore, no hesitation in holding that by virtue of Rule 7 and para 9(i), (iii), (iv) and (vi), there was enough prescription empowering the High Court to follow its own procedure in evaluating the answer sheets initially by the District

A Judges and subsequently by common evaluators, before holding the interview. We, therefore, reject the said submission made on behalf of the petitioners in attacking the procedure followed by the High Court in the matter of holding the selection pursuant to the advertisement dated 21.08.2006.

B 41. Having thus arrived at a conclusion that the High Court was empowered to formulate its own procedure, we proceed to find out whether the procedure evolved by the High Court can be held to be in any manner vitiated or not in consonance with any constitutional or statutory provisions or any of the principles as laid down by this Court cited before us.

C 42. In this context it is necessary to consider the judgment impugned in Civil Appeal No. 7790 and 7791 of 2011. Two of the candidates who competed in the selection and who were not among the 15 candidates selected for interview, challenged the selection before the High Court, which was considered by the Division Bench of the Madhya Pradesh High Court and by the impugned judgments, the contention raised on behalf of the appellants came to be rejected.

E 43. We are concerned with one of the contentions raised therein, namely, that in para 9 (iv) of the advertisement, it is prescribed that only such candidates will be called for interview as the High Court will decide on the basis of evaluation of their performance in the written examination, while in 9(vi) it is stated that the candidates will be selected on the basis of the aggregate marks in the written examination and the interview.

F 44. The contention raised on behalf of the appellant before the Division Bench was that sub-clauses (iv) and (vi) of para 9 of the advertisement, have to be harmoniously construed and such harmonious construction would lead to the conclusion that all candidates whose answer sheets were evaluated, will have to be allowed to participate in the interview and that based on the aggregate marks scored by them in the written examination and the interview, the ultimate selection should have been made.

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The Division Bench, while considering the said submission of the learned senior counsel, held as under in para 6.

"Mr. Nagrath submitted that both sub-clauses (iv) and (vi) of Clause 9 of the advertisement have to be harmoniously constructed. We agree with the learned counsel for the petitioner that sub-clauses (iv) & (vi) of Clause 9 have to be harmoniously constructed. Harmonious construction would mean such a construction as will ensure that both the sub-clauses (iv) and (vi) of Clause 9 are given effect to. If we construe sub-clause (vi) of clause 9 to mean that the number of candidates to be called for interview shall be twice the number of vacancies irrespective of their performance in the written examination as suggested by the learned counsel for the petitioner then sub-clause (iv) of Clause 9 which provides that only such candidates will be called for interview as the High Court may decide on the basis of valuation of their performance in the written examination, will be rendered nugatory. On the other hand, if we construe sub-clause (vi) of Clause 9 of the Advertisement to mean that aggregate marks in the written and interview obtained by only those candidates who are called for interview on the basis of their performance in the written examination are to be taken into consideration for the selection of the candidates then both the sub-clauses (iv) and (vi) of Clause 9 are given effect to. A harmonious construction of sub-clauses (iv) and (vi) of Clause 9 of the advertisement would thus mean that only candidates who secure the qualifying marks on the valuation of the written examination, are called for interview and the marks of such candidates called for interview are aggregated to find out their position in the merit list for the purpose of selection."

(Emphasis Added)

45. Having regard to our conclusions stated above, we find that the conclusion of the Division Bench is also well justified. One another contention, which was raised before the Division

A Bench was that one of the appellants, namely, the appellant in Civil Appeal No.7790 of 2011 belonged to OBC category and that when 3 post were reserved for OBC category, as mentioned in the advertisement, the appellant ought to have been selected in that category. The said contention was also rejected by the Division Bench rightly by holding that the expression suitable candidates mentioned in the advertisement would mean candidates who qualify in the written examination for interview, in terms of sub-para (iv) of para 9 of the advertisement and since the appellant did not even come within the zone of candidates who were called for interview, on the basis of valuation of his performance in the written examination, he was rightly found not suitable for the post reserved for OBC category. As we fully concur with the above conclusions of the Division Bench on the points raised before it, we do not find any merit in any of the contentions raised by the appellants in the above two Civil Appeals.

46. Having thus found and held that by virtue of Rule 7 and para 9 of the advertisement dated 21.08.2006, the High Court was fully empowered to evolve its own procedure for making selection for appointment to the post of Entry Level Judges, for which the advertisement was made in the year 2006, we now proceed to find out whether the procedure evolved by the High Court can in anyway be held to be vitiated and whether on that score the selection can be interfered with, while also determining whether the ultimate selection and appointment of the 3rd respondent by the High Court can be held to be valid in law.

47. While dealing with the said aspect of the challenge, we have to note the steps taken by the High Court after the advertisement was issued and after the exam was conducted on 17.12.2006. From the counter affidavit filed by the 1st respondent High Court, we find that the High Court constituted a Selection Committee, consisting of 6 Judges of the High Court, with whom the process of direct recruitment to the post

of Addl. District Judges, through competitive examination was entrusted. The said Selection Committee held its meeting on 22.03.2007. In the said meeting, the Committee passed the necessary resolutions, which we have extracted in the initial part of our judgment.

48. Subsequently, an Interview Committee of Seven Senior Judges interviewed the short listed 15 candidates on the 6th and 7th April, 2007. Thereafter, the Selection Committee again met on 18.04.2007 and finalized the selection in which, it resolved to recommend the 3rd respondent for appointment to the post of District Judge in Higher Judicial Service by direct recruitment. Based on the resolution of the Selection Committee, the Registrar General forwarded the recommendation of the High Court to the Government of Madhya Pradesh for issuance of the necessary appointment order in favour of the 3rd respondent.

49. When we perused the initial resolution passed by the Selection Committee dated 22.03.2007, we find that as per the 1st resolution, the Selection Committee decided that based on the evaluation made by the District Judges, a minimum of 35 % of marks in respect of SC/ST candidates and 40% of marks in respect of general candidates was required, in the I and II paper, to qualify for viva voce. Going by the said resolution, it is seen that the evaluation made by the District Judges was to be kept as the basis for ascertaining the marks secured by the candidates, both in the reserved category, as well as in the general category in order to become eligible for attending the interview.

50. As per the 2nd resolution of the Selection Committee, for the purpose of determining the merit of the candidates finally, it felt necessary to evaluate the papers of those candidates who were short listed for the purpose of interview by way of a common evaluation in which process the marks secured by the candidates in the written examination in the I as well as the II

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A paper, would be normalized. The apparent purpose was, as stated by the 1st respondent in the counter affidavit that the valuation, which was carried out by the District Judges, were more in number and therefore, there was different yardsticks applied by those District Judge evaluators. It was, therefore, decided to make a further evaluation for the purpose of normalization in order to proceed with the final step of applying para 9 (vi) of the advertisement, to find out the aggregate of the marks secured by the candidates who were interviewed, in order to finalize the selection. It has been stated so by the High Court in para 10 of the counter affidavit. The relevant part of the said para 10 reads as under:

“10. That after the valuation carried out by the District Judges, a decision was taken by the Selection Committee on 22.3.2007 that a general candidate securing 40% marks and above in any of the two papers and the SC/ST candidates securing 35% marks and above in any of the two papers, shall be further evaluated for the purpose of normalization and after normalization is done, the marks awarded by the common evaluators and the marks secured in the viva voce would be added for the purpose of determination of merit position.”

51. While noting the purpose for normalization, as per the second resolution of the Selection Committee passed on 22.03.2007, the above referred to stand of the first respondent can be noted. We have to, however, state that in the said statement, what has been stated about the first resolution, namely, the determination of the marks, 35% for reserved category, 40 % for general category, has not been correctly stated on behalf of the High Court. We have to clarify the said position in order to efface any misunderstanding about the procedure followed by the Selection Committee. In other words, since the selection process was entrusted with a Selection Committee and the said process was carried out by the Selection Committee by passing an appropriate resolution and

based on such resolution, the required statements were also prepared at the behest of the Selection Committee, we are of the view that it will be appropriate to state what exactly was the procedure actually followed by the High Court. Based on the materials placed before us, certain inconsistencies, which are found in the counter affidavit filed on behalf of the High Court as compared to the Annexures filed have to be stated. Therefore, in the above extracted part of the counter affidavit as found in para 10, as compared to the resolution of the Selection Committee, we find that as per the Selection Committee's resolution, the candidates who had secured 35% in the reserved category and 40 % in general category in each of the paper I and II, based on the evaluation made by the District Judge, was determined as the criteria to qualify for viva voce. To put it more precisely, a candidate in order to become eligible to participate in the viva voce should have secured, insofar reserved candidates is concerned, 35% marks and insofar as general category candidate is concerned 40% marks separately in the I paper and in the II paper and not in any one of the papers as sought to be explained in the opening sentence of the counter affidavit.

52. The said position can also be further ascertained by making reference to the certified true copy of the tabulation sheets issued by the Registrar General of the High Court, which has been filed as Annexure P-6. The said tabulation sheet makes it clear that it consists of names of candidates who were selected for personal interview to be held on the 6th and 7th of April, 2007, based on the marks awarded by the District Judges. The names of the petitioners and respondent Nos. 3 to 8, are mentioned in the said annexure P-6 and we also find that each one of those 15 candidates who ultimately participated in the interview, had secured more than 40% marks in paper I, as well as in paper II. Therefore, reading annexure P-6 along with the first resolution of the Selection Committee dated 22.03.2007, it can be safely concluded that the basis for ascertaining the candidates who were eligible to

be interviewed, was based on the minimum marks of 35% in the reserved category and 40% in the general category, secured by the respective candidates in the evaluation made by the District Judges. In other words, the normalized marks were not the basis for determining their eligibility to participate in the viva voce. We specifically say so inasmuch as we find under Annexure P-7, which was also certified as a true copy, the Registrar General disclosed the names of the very same 15 candidates, namely, the petitioners and respondent Nos. 3 to 8, whose normalized marks were awarded by the common evaluator of the candidates and who were interviewed by the Selection Committee on the 6th and 7th of April, 2007, were shown in that list and the normalized marks by the common evaluators were also disclosed in the said list. A perusal of the marks secured by the very same 15 candidates in paper I and paper II disclose that except in respect of four candidates, the remaining candidates did not secure 40 % marks in both the papers. Therefore, reference to Annexure P-6 and P-7, read along with first resolution dated 22.03.2007, make the position abundantly clear that the marks awarded by the District Judge in their evaluation, were taken as the basis to ascertain the marks of the 15 Candidates, who secured the required minimum marks set by the Selection Committee, which made them eligible to participate in the viva voce.

53. We have also noted one other stand made on behalf of the High Court in paragraph 11 (a) and (b) and paragraph 12 of the counter affidavit. In para 11 (a) it has been stated that after the evaluation of the answer books by the District Judges, the answer books of those candidates who had secured 40% marks and above in any paper, were sorted out for common evaluation for normalization and that the number was 103. The said 103 papers were stated to have been sent to two evaluators. The first paper to one former Chief Justice of Punjab and Haryana High Court and the second paper was sent to another Retd. Judge of the Madhya Pradesh High Court, for such common evaluation for the purpose of rationalization and

normalization. Since the said statement with particular reference to the number of candidates has been mentioned, no doubt can be entertained with reference to the said statement. However, having regard to our conclusion, stated in the earlier paragraph, based on the resolution of the Selection Committee dated 24.02.2007 and the Annexure P-6 and P-7, the certified true copies disclosing the marks secured by the 15 shortlisted candidates. It will have to be held that in the ultimate process, only those 15 candidates, namely, the petitioners and respondents 3 to 8, alone became eligible to participate in the viva voce. Any discrepancy in the said statement contained in para 11(a) and 11 (b) as well as para 12 of the counter affidavit, therefore, need not deter us from proceeding further for finding out the ultimate selection made by the Selection Committee, which was also approved by the Full Court in its resolution dated 22.04.2007. Our above conclusion is also fortified by the final communication forwarded by the Registrar General to the State Government dated 24.04.2007. In the second paragraph it has been specifically stated as under;

“as per the norms set out by the High Court candidates of general category were required to secure 40% marks in each paper of the written examination and other candidates related to OBC, SC and ST were required to secure 35 % in each paper of the written examination. On the basis of aforesaid norm only 14 candidates of general category and 1 candidate of OBC category have secured 40% and 35% marks respectively in each paper of the written examination, therefore, they were found eligible to be called for the interview.”

(Underlining is ours)

54. The above statement found in the final communication addressed by the Registrar General to the State Government for the purpose of issuing necessary appointment order in favour of the 3rd respondent, also makes the position clear that

A the methodology followed by the High Court based on the
resolution of the Selection Committee dated 24.04.2007, was
that the 40% marks secured by general category candidates
and 35 % marks secured by reserved category candidates in
each of the papers evaluated by the District Judges was the
B basis to finalize the names of 15 candidates for the purpose
of interviewing them on the 6th and 7th of April, 2007, by the
Selection Committee and not based on the normalization of
marks. Once again, at the risk of repetition, we want to thus,
C make the above position clear in order to dispel any confusion
regarding the final list of 15 candidates who were shortlisted
for attending their viva voce on the 6th and 7th of April, 2007,
based on the resolution of the Selection Committee dated
22.03.2007.

D 55. Once we steer clear of the abovesaid position by which
the petitioners and respondents 3 to 8 were ultimately
interviewed by the Selection Committee of Judges on the 6th
and 7th of April, 2007, we have to now find out as to the
subsequent stages of the process of selection made by the
High Court, which ultimately resulted in selection and
E appointment of the third respondent. While the 15 candidates
were interviewed by the interviewing committee on the 6th and
7th of April, 2007, each of the member of the interviewing
committee, who were seven in number, awarded independent
marks, while holding the interview for the 15 candidates. The
F marks obtained by the candidates in the interview, as noted by
each of the Member of the Interview Committee was noted in
Annexure R4, filed along with the counter affidavit Annexure P-
8 is the certified true copy of the tabulation sheet of candidates,
who were interviewed on the 6th and 7th of April, 2007, issued
G by the Registrar General of the High Court, which disclose the
interview marks, namely, the average marks secured by each
of the 15 candidates. Thereafter, the Selection Committee met
on 18th April, 2007. Annexure P-9 contains the total marks of
the candidates who were interviewed on the 6th and 7th of April,
H 2007, i.e., the total marks obtained in the written examinations

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and the viva voce and based on the said aggregate marks secured by the 15 candidates, the percentage of such marks was also arrived at and noted. As per Annexure P-9 while the third respondent had secured 55.46 %, the 15th candidate had secured 23.24 %. The first four candidates in the said list alone had secured more than 40% in the aggregate. The sixth candidate who belonged to OBC category had secured 36.19 % of the aggregate marks.

56. The Selection Committee, which met on 18.04.2007 in its resolution, ultimately decided to recommend the third respondent alone for being appointed as officiating District Judge in Higher Judicial Service, on the basis of the marks secured by him which was 55.46% in the aggregate and it further resolved that the remaining 14 candidates who were called for interview and who had secured less marks than the third respondent, were found not suitable for appointment. The said resolution was filed as Annexure R-5, along with the counter affidavit of the first respondent High Court. In fact, in Annexure R-6 to the counter affidavit, which is again a statement containing the total marks of the 15 candidates who were interviewed on the 6th and 7th of April, 2007, contained a note. The note reads as under:

"Shri Axay Kumar Dwivedi (Roll No.1030) who obtained more than 50 % marks as indicated above is found suitable to be recommended for appointment as District Judge on probation under Rule 5(1)(c) of M.P. Higher Judicial Service (Recruitment & Conditions of Service) Rules, 1994 after due police verification."

57. A reading of the said note gives an impression as though 50 percentage of aggregate marks was set as benchmark for a candidate to get selected for the post of entry level District Judge. Mr. Shrivastava, learned senior counsel appearing for the High Court, clarified that the said note made by the Registrar General, was not really a statement issued with the authority of the High Court. The learned senior counsel

A submitted that neither the resolution of the Selection Committee
dated 18.04.2007, nor any of the earlier resolutions of the
B Selection Committee, ever decided that 50% of aggregate
marks should be the laid down as a benchmark for the selection
and appointment to the entry level of District Judges. Therefore,
C according to the learned senior counsel, the said statement
found in Annexure R-6, cannot be taken to have laid down any
authentic criteria by the High Court, in order to find fault with
the ultimate selection finalized by the first respondent High
D Court. We find considerable force in the submission of the
learned senior counsel appearing for the High Court. As rightly
E pointed out by the learned senior counsel, any such criteria of
fixing 50% of aggregate marks as the benchmark for making
the selection, was neither resolved in any of the resolutions of
the Selection Committee or any other proceedings of the High
F Court, nor was there anything stated in so many words in the
counter affidavit of the first respondent High Court. Therefore,
based on the said note appended to Annexure R-6, there is
no scope to find fault with the ultimate selection and
appointment made by the first respondent High Court.

E 58. In the light of our above conclusion, the only other
question that remains to be considered is as to whether the
selection and appointment of the third respondent, as
recommended by the Selection Committee in its resolution
dated 18.04.2007, which was approved by the Full Court in its
F meeting, held on 22.04.2007, calls for interference on the
footing that such a selection made by the High Court does not
satisfy the legal requirement.

G 59. When we consider the said question, it will have to be
borne in mind that in the various decisions placed before us,
by both the parties, the common principle stated is that in the
matter of selection to a post in the higher judiciary MERIT
should be the fundamental criteria. No one can dispute with the
said proposition. Therefore, what is to be ultimately examined
H is as to whether the process adopted by the High Court in the
matter of selection of entry level District Judges, pursuant to the

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advertisement dated 21.08.2006, which led to the ultimate selection and appointment of the third respondent, while holding the rest of the 14 candidates as not found suitable for appointment, can be found fault with. It is relevant to mention that none of the aggrieved candidates have made any allegation of mala fides or lack of bona fides, as against any of the Selection Committee members or for that matter in the manner in which the interview was held by the interviewing committee or with regard to the valuation of marks arrived at either by the District Judges or in the normalization of marks ultimately arrived at by the common evaluators. The only submission was that the methodology adopted by the Selection Committee in resorting to the normalization process was a departure in the midway of the selection process and therefore, on that score the ultimate selection cannot be approved. As far as the said challenge is concerned we have held that having regard to the power vested in the High Court under Rule 7, as well as paragraph 9 of the advertisement, in particular para 9 (iv), the High Court was fully empowered to prescribe its own fair procedure for the purpose of evaluation of the marks of the candidates, in order to make the ultimate selection. Therefore, in the absence of any other attack to the selection process made by the High Court by constituting a Selection Committee and the procedure followed by the said Selection Committee, which ultimately arrived at the merit list of the 15 shortlisted candidates for finalizing the selection, it will have to held that no flaw can be found in the said process adopted by the High Court.

60. In this context, reference can be made to *Ramesh Kumar* (supra). In para 11, while making reference to earlier decisions of this court, it has been held as under:

11. In *State of U.P. v. Rafiquddin, Krushna Chandra Sahu (Dr.) v. State of Orissa, Manjeet Singh v. ESI Corpn. and K.H. Siraj v. High Court of Kerala*, this Court held that the Commission/Board has to satisfy itself that a candidate had

- A obtained such aggregate marks in the written examination as to qualify for interview and obtained "sufficient marks in viva voce" which would show his suitability for service. Such a course is permissible for adjudging the qualities/capacities of the candidates. It may be necessary in view of the fact that it is
- B imperative that only persons with a prescribed minimum of said qualities/capacities should be selected as otherwise the standard of judiciary would get diluted and substandard stuff may get selected. Interview may also be the best mode of assessing the suitability of a candidate for a particular position as it brings out the overall intellectual qualities of the candidates.
- C While the written test will testify the candidate's academic knowledge, the oral examination can bring out or disclose overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership, etc. which are also
- D essential for a Judicial Officer.

(Emphasis Added)

- E 61. With that, when we come to the last of the questions, namely, whether the ultimate selection of the third respondent alone leaving out the rest of the 14 candidates as not suitable, can be held to be justified. In this context, we will have to make a reference to a fair statement made by Mr. Marlapalle, learned senior counsel who appeared on behalf of the petitioners that
- F he is not for a moment raising any doubt or question the marks allotted by the interviewing committee members, to the various candidates based on the their appraisal of the candidates in the interview. In fact a perusal of the marks awarded by each of the Seven members of the Interview Committee disclose their identity of mind while awarding marks in the interview to
- G each of the candidate interviewed by them. The interview committee's exercise, while interviewing the 15 candidates on the 6th and 7th of April, 2007 can thus be held to be above board. In the same breath, it will have to held that the Selection
- H Committee's ultimate decision in their resolution dated

18.4.2007, in holding that in their fair assessment, the third respondent alone, who secured 55.46% marks in the aggregate, as the only suitable candidate for holding the post of entry level District Judge, cannot be assailed. It is by now well settled that no Court, including this Court can venture to go behind the said assessment made by an expert committee consisting of high level members of the judiciary of the State and state that the said decision should be varied by holding that the other candidates whose performance was also appraised by the said expert committee, should be held to be suitable on par with the selected candidate and that they should also be selected and appointed. This Court should never make even an attempt to go behind the ultimate decision of the Selection Committee in order to set at naught the final decision arrived at by it, which was approved by the Full Court or vary its decision by adding some more candidates in the list by laying down a different criteria, by altering or by fixing any benchmark for being appointed to the higher judiciary of the State. In the light of our above conclusion, we do not find any scope to grant any relief to the petitioners in the writ petitions or in the civil appeals.

62. When we refer to the decisions relied upon by learned counsel for the respective parties, we find that none of the decisions relied upon by the learned senior counsel for the petitioners can have any relevance to the selection and appointment made by the first respondent High Court, inasmuch as we have found that based on the Rule prevailing and the prescription found in the advertisement, the first respondent High Court scrupulously followed the procedure without giving room for any deviation. We have also held that there was no conflict with the Shetty Commission recommendation, which had the approval of this Court in the decision reported in *All India Judges' Association and others* (supra). In the light of the prevailing Rule relating to the selection and appointment to the post in the Higher Judicial Services of the State of Madhya Pradesh, Mr. Marlappalle learned senior counsel for the

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A appellant, while referring to the decision rendered by this Court
 in *K.H. Siraj (supra)*, sought to distinguish the same by pointing
 out that in the advertisement issued by the High Court of Kerala,
 extracted in para 4 of the said judgment in sub para 10(3), the
 minimum marks to be secured by the candidates in order to
 B become eligible for appointment having been stated, the
 procedure followed by the High Court was held to be justified.
 While appreciating the attempt made by the learned senior
 counsel to distinguish the said judgment with reference to the
 present facts of the case, we will have to note that in that very
 C judgment, reference has been made to that very Rule, namely,
 Kerala Judicial Services Rules, 1991, in particular Rule 7, which
 also empowered the High Court by stating that;

D "...the list shall be prepared after following such procedure
as the High Court deems fit and by following the rules
 relating to reservation of appointments...."

(Emphasis Added)

E 63. While applying the ratio of the above said judgment,
 we may refer to para 50, where Rule 7 of the Kerala Judicial
 Service Rules, 1991, was referred to state as to how the High
 Court was justified in relying upon its Rule 7, while evaluating
 its own procedure, while making the selection. Paragraph 50
 reads as under:

F "50. What the High Court has done by the notification dated
 26-3-2001 is to evolve a procedure to choose the best
 available talent. It cannot for a moment be stated that
 prescription of minimum pass marks for the written
 examination or for the oral examination is in any manner
 G irrelevant or not having any nexus to the object sought to
 be achieved. The merit of a candidate and his suitability
 are always assessed with reference to his performance at
 the examination and it is a well-accepted norm to adjudge
 the merit and suitability of any candidate for any service,
 H whether it be the Public Service Commission (IAS, IFS.

etc.) or any other. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition in Rule 10 of the notification dated 26-3-2001. The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as benchmark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high-powered body like the High Court to evolve its own procedure as it is the best judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high-powered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in *Union of India v. Kali Dass Batish* wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper."

(Emphasis Added)

64. The learned senior counsel then relied upon the decision of this Court in *Sanjay Singh and another* (supra), wherein a question arose as to "***whether 'scaling of marks' is contrary to or prohibited by the relevant rules.***" While explaining what is 'scaling', this Court has held as under in para 25:

"25. Similarly, when marks are assigned to answer-scripts in different papers, say by Examiner 'A' in Geometry and Examiner 'B' in History, the meaning or value of the "marks" is different. Scaling is the process which brings the marks awarded by Examiner 'A' in regard to Geometry scale and the marks awarded by Examiner 'B' in regard to History scale, to a common scale. Scaling

A is the exercise of putting the marks which are the results
of different scales adopted in different subjects by different
examiners onto a common scale so as to permit
comparison of inter se merit. By this exercise, the raw
marks awarded by the examiner in different subjects are
B converted to a "score" on a common scale by applying a
statistical formula....."

65. Having thus noted what scaling is, this Court held in
para 44 that scaling system as adopted by the commission,
was unsuited for the Civil Judge (Junior Division Examination).
C In fact in para 46 this court after summarizing the position
regarding scaling in the previous para, stated that the
demonstrated anomalies and absurdities arising from the
scaling system used, the commission will have to identify a
suitable system of evaluation and if necessary by appointing a
D committee of experts. It however, made it clear that till any such
new system is in place, the commission may follow the
moderation system set out in the said judgment, with
appropriate modifications. Going by the above dicta of this
court, it will have to be held that the normalization process
E adopted by the High Court in this case where the initial
evaluation was made by several evaluators in the rank of District
Judges, by appointing common evaluators in the status of a
Retd. Chief Justice and a Retd. Judge of the High Court, was
a prudent step taken by the 1st respondent High Court and no
F fault could be found with that approach. The decision relied
upon by the senior counsel therefore, does not appeal to us to
interfere, either with the judgment of the Division Bench, or with
the ultimate selection made by the 1st respondent High Court.

G 66. The learned senior counsel then relied upon *K. Manjusree*
(supra), wherein a question arose as to whether the
procedure adopted by the Full Court in preparing a fresh
selection list by applying the requirement of minimum marks for
an interview, was legal and valid. It was in that context this court
ultimately held that introduction of minimum marks for interview,
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would amount to changing the rules of the game, after the game was played, which was clearly impermissible. At the very outset it will have to be pointed out that the facts of that case was entirely different with what we are concerned. In the present case, no such minimum marks in the interview, was prescribed for the purpose of selection. What all was done by the Selection Committee based on the power vested in the High Court, under Rule 7 and what was prescribed in para 9 (iv) of the advertisement, was a pattern of selection in which the 25 marks allotted for interview was simply applied. No minimum marks to be secured in the interview, was prescribed afresh after the selection process commenced and thereby, for anyone to state that there was any change in the 'rule of the game' in order to interfere with the selection. We therefore, do not find any scope to apply the said decision also to the facts of this case.

67. The learned senior counsel then relied upon *All India Judges' Association and others* (supra), in particular para 37 to point out that:

"37. Subject to the various modifications in this judgment, all other recommendations of the Shetty Commission are accepted."

68. The learned senior counsel, while referring to the said para, relied on para 10.97 of the Shetty Commissions Report, which is extracted as under:

"10.97 The Commission has received innumerable complaints that the selection by only viva-voce has more often led to arbitrariness if not whimsical selection, unjust if not unreasonable. With respect to High Courts, we do not want to carry any such impression. But we do feel that there is less transparency and objectivity in the selection process. We would, therefore, like to recommend the following procedure to reduce degrees of subjectivity and arbitrariness and to promote more fairness and objectivity:

A (i) There shall be written examination followed by viva-voce.

(ii) Written Examination must carry 200 marks on the subject/subjects prescribed by the High Court. The paper should be of a duration of minimum two hours.

B (iii) The cut off marks in the Written Examination should be 60% or corresponding grade for general candidates and 50% or corresponding grade for SC/ST candidates. Those who have secured the marks above the cut off marks shall be called for viva-voce test.

C (iv) The viva-voce test should be in a thorough and Scientific Manner and it should be taken anything between 25 and 30 minutes for each candidate. The viva-voce shall carry 50 marks. There shall be no cut off marks in viva-voce test.

D (v) The merit list will be prepared on the basis of marks/grades obtained both in the Written Examination and viva-voce."

E 69. Sub para (i) – (v) have been set out to show how while holding a written examination and a viva voce examination, prescription of marks and other aspects are to be followed. In fact those sub paragraphs, contained in para 10.97 of the Shetty Commission Report, can at best be stated to be a
F guideline, which any High Court should keep in mind, while resorting to selection for filling up the posts in the higher judicial service. In this context, in para 28, this court while prescribing the extent to which a direct recruitment to the higher judicial service for the post of higher judicial service for the District
G Judges can be made, also said that appropriate rules should be framed by the High Courts at the earliest possible time. Therefore, once the Rules come into place it will have to held that what all that can be expected of the high Court, would be to follow the said Rules. We have in this judgment held that by

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virtue of Rule 7 and para 9(iv), the 1st respondent High Court had every authority to prescribe the procedure, while making the selection to the post of higher judicial service and that such procedure followed was also rational.

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70. The learned senior counsel then relied upon *Ramesh Kumar* (supra). The said decision in fact followed the principle that the rule of the game cannot be changed after the game was over as has been held in *K. Manjusree* (supra). Therefore, the said decision does not improve the case of the petitioners.

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71. Mr. Shrivastava, learned senior counsel appearing for the High Court, referred to para 27 of the decision reported in *All India Judges' Association and others* (supra), wherein this court has emphasized the necessity for ensuring a high degree of efficiency in the matter of recruitment to the higher judicial service, while holding the competitive examination and viva voce examination. There can be no two opinions about the said principle and for that very reason we have held that the selection and appointment finalized and made by the 1st respondent High Court, does not call for interference.

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72. The learned senior counsel rightly placed reliance upon *K.H. Siraj* (supra). In para 50, this court has highlighted as to how the High Court was justified in evolving its own procedure, while making a selection to fill up a post in the higher judicial service. Para 50 has already been extracted above.

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73. Applying the principles laid down by this court, we find that the procedure adopted by the 1st respondent High Court was well in order and the same does not call for interference.

74. Having regard to our above conclusions, we do not find any merit either in Writ Petitions or in the Civil Appeals and the same are therefore dismissed.

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ALTAMAS KABIR, CJI. 1. Having had the opportunity of going through the judgment prepared by my learned brother,

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A Fakkir Mohamed Ibrahim Kalifulla, J., I fully concur with the same. I just, however, wish to emphasise the fact that there is no material on record in support of Ground 'D' taken in the Writ Petition, wherein it has been mentioned that "To top it all, the minimum percentage requirement for final selection was increased to 50% at the final stage." [Emphasis Supplied].

2. Nowhere in the advertisement inviting applications for filling up the 20 posts in the Madhya Pradesh Higher Judicial Service by direct recruitment from the Bar, has it been indicated as to what would be the minimum percentage of marks, which would be required for final selection. The only place where reference has been made to the said figure is in the Resolution of the Selection Committee adopted on 23rd March, 2007, wherein in paragraph 1 it has been indicated that on the basis of the evaluation made by District Judges, Scheduled Castes and Scheduled Tribes candidates would have to secure 35% marks and other candidates would have to secure 40% marks in the first paper and in the second paper in order to qualify for the viva-voce. Apart from the above, there is no mention anywhere in the materials placed before us that 40% marks was the bench-mark for the purpose of appointment in any of the vacant posts. It may be mentioned that all candidates who had obtained more than 40% marks in either of the two papers were called for the interview and were allotted separate marks in the interview.

3. Thereafter, on the aggregate of the marks obtained by the candidates, only Shri Axay Kumar Dwivedi, placed at Serial No.1 of the merit list, was found suitable to be recommended for appointment as a District Judge on probation. However, the problem was caused by the note written by the Registrar General of the High Court indicated at the bottom of the final Select List, wherein it was mentioned that Shri Axay Kumar Dwivedi, who had obtained more than 50% marks, was found suitable to be recommended for appointment. The said note has given cause for Ground 'D' to the Writ Petition, although,

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there is nothing, even in the note, to suggest that previously 40% of the total marks had been declared or accepted to be the bench-mark for appointment. The note is merely a statement which indicates that the selected candidate, Shri Axay Kumar Dwivedi, had obtained more than 50% marks. The same does not either indicate or pre-suppose that there was a lower bench-mark for the Petitioners to claim in Ground 'D' that the bench-mark had been increased to 50%.

4. In that view of the matter, the Writ Petitions and the Civil Appeals cannot succeed and have to be dismissed, as has been indicated by my learned brother, Fakkir Mohamed Ibrahim Kalifulla, J.

Bibhuti Bhushan Bose

Matters disposed of.