

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2580/2022
CM No. 3213/2023

Reserved on: 18.08.2023
Pronounced on: 31.08.2023

Vinkal Sharma and others Petitioner/Appellant(s)

Through:- Mr. Rohit Matoo, Advocate.
Mr. Abhishek Gupta, Advocate.

V/s

UT of J&K and othersRespondent(s)

Through:- Mr. Amit Gupta, AAG.
Mr. Abhinav Sharma, Sr. Advocate
with Mr. Sidhant Gupta, Advocate.
Mr. Pranav Kohli, Sr. Advocate with
Mr. Rahul Sharma, Advocate.

CORAM: HON'BLE MRS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

01. There can be no better prologue to this judgment than the words of George Orwell: "**If you want to keep a secret, you must also hide it from yourself.**"

02. By this petition, the petitioners herein are seeking a fair process of recruitment with absolute secrecy, not only by the recruiting agency but also by the agency conducting the examination. They have raised this Orwellian concern about the alleged possibility of modern technology being misused and abused by respondent Nos. 2 and 3.

03. The petitioners, who are 40 in number and are aspirants, have responded to the advertisement for various examinations to be conducted by the Jammu and Kashmir Service Selection Board (hereinafter to be referred to as 'JKSSB'). The petitioners, during the pendency of the petition, have already participated in two examinations, i.e., Junior Engineer (Civil), Jal Shakti Department and Sub-Inspectors, Home

Department. This Court has been called upon to examine the apprehensions with respect to the alleged abuse or misuse by respondent No. 2, i.e., M/s Aptech Limited.

04. The petitioners have called into question the contract given by respondent No. 1 in favour of respondent No. 2 pursuant to e-Tender Notice No. 19 of 2022 dated 30.09.2022, for the conduct of various examinations through online Computer Based Test (hereinafter to be referred to as 'CBT') in favour of respondent No. 2 on the ground that respondent No. 2 has a tainted past record and has also been blacklisted once.

05. The petitioners have also challenged the contract given by respondent No. 1 in favour of respondent No. 3, pursuant to e-Tender Notice No. 20 of 2022 dated 17.10.2022, for selection of service provider for review/audit of examination process of CBT in favour of respondent No. 3.

Factual matrix:

06. In the year 2021, the tender was allotted by respondent No. 1 for conduct of its various examinations through CBT mode in favour of NSEIT Ltd. Company and after the complaints of various irregularities and malpractices were pointed out by the aspirants in the conduct of exam, the mode was shifted from CBT to Optimal Mark Recognition (OMR) mode. Accordingly, fresh tenders were floated for conduct of examinations based on OMR mode on 07.12.2021. The tender was allotted to MeritTrac Services Pvt. Ltd., overlooking the fact that it was already blacklisted.

07. The result of three examinations conducted by MeritTrac Services Pvt. Ltd., i.e., Junior Engineer(Civil), Jal Shakti Department, Sub-Inspectors, Home Department and Finance Account Assistant (FAA) were

scrapped, owing to various malpractices, cheating and irregularities in which the CBI has already filed its charge-sheet.

08. The mode of examination was shifted from OMR to CBT and fresh e-Tender Notice No. 18 of 2022, dated 05.09.2022, was issued by respondent No. 1, for the conduct of examinations through CBT mode in which one of the conditions in affidavit was that the agency must not be previously blacklisted. The said condition of the affidavit is reproduced as under:

“3. The firm has never been blacklisted in the past by any Govt./Private Institution of the country and there is no case pending in any Investigation agency.”

09. Later the corrigendum No. 01 dated 14.09.2022 was issued and this condition was changed to that the agency must not be blacklisted ‘as on date’. The said amendment is reproduced below:

“9. At Annexure C-Affidavit (page No. 38), Condition no. 3 is recasted as "The Firm/ Agency is not involved in any ongoing investigation by any investigating agency related to conduct of CBT exams. Further, Firm/ Agency is not blacklisted/ debarred by any govt. Body/ Govt Institution/ Board/ PSU of the country as on date”.

10. The aspirants raised concern over the corrigendum issued and approached respondent No. 1, accordingly, the e-Tender Notice No. 18 of 2022 was cancelled and fresh e-Tender Notice No. 19 of 2022 dated 30.09.2022, was issued with the same condition as in Corrigendum No. 01 dated 14.09.2022. Condition No. 2.8 of the Evaluation Criteria of e-Tender No. 19 of 2022 being relevant is reproduced as under:

2.8	<p>Affidavit- The agency must certify that –</p> <ol style="list-style-type: none"> 1. It is not under a Declaration of Ineligibility for corrupt or fraudulent practices with any Government departments/agencies/ministries or PSU's and is not blacklisted by any government departments/agency/Ministries or PSU's. 2. If successful, the bidding agency will undertake assignment in accordance with the scope of work and provide a dedicated, well qualified team for the purpose. 3. All the documents enclosed are true and nothing has been fabricated. 	A declaration sworn by the authorized representative of bidding Agency to be submitted as Annexure C.
-----	---	---

11. The tender has been allotted to respondent No. 2, being the lowest bidder.

12. It is stated by the petitioners that M/s Aptech Ltd. has already been involved in various malpractices and irregularities and has been blacklisted by the Uttar Pradesh Power Corporation Limited (UPPCL). It is stated that after this, it was also involved in malpractices in the Rajasthan Police Constable Recruitment Exams, which were cancelled. Later, large-scale anomalies were also found in the exams of the Assam Irrigation Department and the Allahabad High Court paper leak of Assistant Review Officers and Review Officers. The examinations of the Delhi University LLB Course conducted by M/s Aptech Ltd. was also cancelled due to leak of examination papers and the said firm was imposed a fine of Rs. 10,00,000/- by the Delhi High Court.

13. The petitioners filed a representation on 04.11.2022 before respondent No. 1, stating irregularities and malpractices being conducted by respondent No. 2 in past and sought cancellation of the allotment of tender in favour of respondent No. 2. It is also stated by the petitioners that tender for

audit of the CBT mode examinations has also been allotted in favour of a tainted agency, which was recently fined a \$100 Million penalty for cheating on CPA Ethics Exams and for misleading the investigation.

14. It is stated that the nature of conducting public examinations requires secrecy and fairness, as the future of millions of aspirants depends upon the examination and if respondent No. 2 conducts the examination for respondent No. 1, then fairness in the selection process and anomalies cannot be ruled out. It is stated that the selection process to be initiated by respondent No. 1 is against the basic principles of fairness and equality. The conduct of public examinations by Government or any of its instrumentalities is a matter of trust and utmost faith and the aspirants cannot repose any confidence in a blacklisted agency for conducting a selection process.

15. *Per contra*, respondent No. 1 has raised a preliminary objection with respect to the *locus standi* of the petitioners. It is stated that the JKSSB is the prime recruiting agency in the Union Territory of Jammu and Kashmir and has been making constant efforts to improve the efficacy of the recruitment process by infusing technology-based interventions like CBT mode of examination, which is relatively more secure and transparent than the traditional OMR-based test. The CBT mode of examination reduces human involvement in the process, thereby decreasing the chances of paper leakage, as the cumbersome process of printing and transportation of examination material involved in OMR-based examination is eliminated. Major examination-conducting agencies like the Staff Selection Commission (SSC), Railway Recruitment Board (RRB), Institute of Banking Personnel

Selection (IBPS), National Testing Agency (NTA) etc. have all shifted to CBT mode of examinations.

16. The respondent No. 1, with regard to the amendment in the blacklisting clause, has stated that in the pre-bid meeting, the participant agencies highlighted the issue of blacklisting clause in the tender document and requested that the clause must mention the time limit of the blacklisting and should be re-casted as 'not blacklisted as on date' instead of 'never blacklisted in past'. The agencies, in support of their claim, produced the tender documents of Railway Recruitment Board, Income Tax Department, Controller General of Defence Accounts, Uttarakhand Public Service Commission, Bihar Technical Service Commission etc., wherein all these agencies have used 'as on date' phrase in the blacklisting clause.

17. It is stated that the said issue was discussed by the Committee in the light of the guidelines on Debarment of Firms from Bidding issued by the Ministry of Finance and GFR 2017, Rule 151, wherein the maximum upper limit of debarment is mentioned as three years only and the Ministry of Finance vide O.M. No. F.1/20/2018-PD dated 02.11.2021 has further clarified that the 'blacklisting of a firm/agency by a Ministry/Department shall be applicable only for the procurements made by such bodies.' Further, where a Ministry/Department is of the view that business dealings with a particular firm should be banned across all the Ministries/Department by debarring the firm from taking part in any bidding procedure floated by the Central Govt. Ministries/Departments, the Ministry/Department concerned should, after obtaining the approval of the Secretary concerned, forward it to DoE, a self-contained note stating out all the facts of the case and justification for the proposed debarment,

along with all the relevant papers and documents and the DoE will issue the necessary orders after satisfying itself that the proposed debarment across the Ministries/Departments is in accordance with Rule 151 of GFRs, 2017 but in the instant case, DoE has not issued any order which reflects that the said debarment/blacklisting was restricted to the Uttar Pradesh Power Corporation Ltd. (UPPCL) only.

18. This effectively means that M/s Aptech Ltd. was not barred from participating in the bidding process initiated by any other Government Body, accordingly, the pre-bid queries were taken into consideration and Corrigendum No. 01 to e-Tender No. 18 of 2022 was issued, which included a re-casting of the condition with respect to the blacklisting along with eight other conditions based on the suggestions made by the prospective bidders during the pre-bid meeting.

19. It is further stated by respondent No. 1 that the bids received against e-Tender No. 18 of 2022 were cancelled as all the four agencies, who participated in the bidding process, were found ineligible at the technical qualification stage and, consequently, the tender was cancelled, however, M/s Aptech Ltd's tender was rejected for the reason that the affidavit filed by it was attested by a Notary instead of the First Class Magistrate, whereas the other participating agencies had submitted many deficient documents and also as per the eligibility conditions, only M/s Aptech Ltd. had a turnover exceeding Rs. 20 Crore out of the four agencies.

20. After the cancellation of the said tender, fresh tender, i.e., e-Tender Notice No. 19 of 2022 dated 30.09.2022 was issued and the turnover clause was relaxed from 20 Crores to 10 Crores, in order to invite more competition. Five agencies filed their bids in response to the fresh tender but

out of these, only two agencies namely M/s Aptech Ltd. and Eduquity Career Technologies Pvt. Ltd. were found eligible for Stage II, i.e., Technical Evaluation and Presentations. Accordingly, both agencies were evaluated as per the terms and conditions of the tender and based upon the scores obtained in the Technical and Financial Stages of the bid, the Purchase Committee constituted by the General Administration Department vide Government Order No. JK (GAD)-1117 dated 28.09.2022 recommended awarding the contract in favour of M/s Aptech Ltd., being the highest-scoring agency as per the tender conditions.

21. The respondent No. 1 has further stated that disallowing any agency who has completed the period of blacklisting would mean permanent blacklisting for any such agency, which is impermissible in law, as held by Hon'ble Apex Court in '**B.C. Biyani Projects Pvt. Ltd. Vs. State of Madhya Pradesh and others**', passed in Civil Appeal No. 6632 of 2016 decided on 22.07.2016, that the order of blacklisting a company permanently is impermissible in law.

22. It is further stated that the agency hired by respondent No. 1, i.e., M/s Aptech Ltd. has been and is executing prime projects in other Government Bodies also and has successfully completed many CBT-based examinations for the JKSSB namely Horticulture Technician Grade-IV, Junior Scale Stenographer, Junior Engineer (Jal Shakti), Sub-Inspectors (Home Department), Labour Inspector/Labour Officer/Driver/Election Assistant/Inspector Fisheries/Deputy Inspector Fisheries, where lacs of candidates have participated and these examinations were conducted in fair and transparent manner and the results of the candidates for the post of

Horticulture Technician Grade-IV and Junior Scale Stenographer stands declared and select list is being finalized.

23. It is stated that these examinations were conducted in a transparent and secure manner after taking into account many steps, i.e., (i) necessary inputs were obtained from CID and some centres were deleted from the list and exams were not conducted at such centres; (ii) a third party namely Ernst and Young LLP was engaged for reviewing/auditing the examination processes; (iii) low frequency Jammers were installed after obtaining requisite permission from the authority concerned; (iv) Civil & Police Administration supervised the conduct of examinations; (v) Senior Officers were appointed as Observers for overseeing the conduct of these exams; (vi) the concerned Deputy Commissioners were appointed technical persons as Observers for each examination centre, moreover, Magistrates were also deployed for each centre and; (vii) I.T Department appointed Technical persons for assisting the Board in conducting the CBT examination to ensure transparency and safety.

24. Mr. Amit Gupta, learned AAG, appearing on behalf of respondent No. 1, has placed reliance on the judgment of the Hon'ble Apex Court in '**M/s Chauhan Builders Raibareli Vs. State of U.P and others**', 2022 LiveLaw (SC) 694, '**State of Odisha and others Vs. M/s Panda Infracore Ltd.**', 2022 LiveLaw (SC) 206 and '**Pooja Thapaliyal and another Vs. State of Uttarakhand and others**', passed by the High Court of Uttarakhand in Writ Petition (S/S) No. 1165 of 2021, decided on 10.09.2021.

25. It is further stated that the blacklisting in its commercial sense is a decision taken by a particular tendering authority/employer, not to work with

a company/firm for any reason, for a specific period. However, once said specified period of blacklisting is over, the right of such company/firm to participate in the tender gets revived and the tender inviting authorities are well within their rights to allow such companies to participate in the tendering process. In the instant case also, the respondent's taking into consideration this very concept of blacklisting allowed the companies/firms which were not blacklisted 'as on date' to participate in the tendering process. It is also stated that the tender conditions were uniformly applied to all the bidders and wide publicity was given to the tender so that more and more bidders could participate and maximize the competition. Besides floating of tenders on e-Tendering portal, i.e., www.jktenders.gov.in, the notice inviting tender was also published in two local newspapers and two national newspapers. The entire tendering process was transparent and fair and there were no *mala fides*, at any stage of the tendering process, as contended by the petitioners.

26. The respondent No. 1 has stated that the instant writ petition is based only on apprehensions and no writ can be issued on the basis of apprehensions. The petitioners have no *locus* to challenge the contract already executed between the two contracting parties and the fact that none of the bidder has raised any doubt about the tendering process which itself speaks about the transparency of the procedure and also the process was governed by general financial rules. Based upon deliberations/interaction with the Exam Conducting Agencies, the tender was issued on Quality-cum-Cost Based Selection (QCBS) basis for CBT mode and in the QCBS process, the technical bid submitted by the agency is not only qualifying in nature but due weightage is given to the technical

parameters. The respondent further submits that if the writ petitioners are entertained at the instance of persons having apprehensions, it would seriously impact on the freedom of the Government to formulate the tender conditions and enter into contracts.

27. The respondent No. 2, in his reply, has stated that the writ petition is not maintainable as it is based on factually incorrect aspersions cast upon respondent No. 2 which are far away from the actual situation. It is stated that the petitioners did not comprehend the true important scope of the evaluation process, technical as well as financial, that was conducted by the JKSSB. The respondent-Board issued a Tender Notice on 05.09.2022 on Quality-cum-Cost Based Selection (QCBS) basis. In the QCBS process, the technical bid submitted by the agency is not only qualifying in nature but due weightage is given to the technical parameters viz. technical capabilities, prior experience, prior turnover, technical, certifications, technical presentations, etc.

28. The weightage of technical and financial bid was set at 70% and 30% respectively. The respondent-Board, after following due process of pre-bid meetings and its queries, amended and substituted several terms and conditions based on commercial and contractual purposes and issued corrigendum as per process to bring more competition amongst bidding parties and hence the tendering process initiated against the tender notice, i.e., e-NIT No. 18 dated 05.09.2022 was subsequently cancelled by the JKSSB in view of deficient documents being submitted by all the bidders which shows that since the beginning the respondent-Board was following due process thereafter, for the same scope of work, the JKSSB invited fresh tenders vide e-NIT No. 19 dated 30.09.2022 and out of several

participants, respondent No. 2-Company was declared as successful bidder by respondent-Board and the contract was awarded to respondent No. 2 after following the due process.

29. It is stated that in e-NIT No. 18 of 2022, one of the tender conditions was that bidder must have an average turnover of Rs. 20 Crores for conducting the CBT exams. The respondent No. 2 was the only company which was qualifying in the aforesaid turnover and rest of the firms, who participated in the e-NIT No. 18 of 2022, were not qualifying the said turnover condition. It is stated that if the intention of the respondent-Board was to award contract in favour of respondent No. 2 only, then it would have retained the original tender condition to ensure that no other company qualifies even first stage of technical evaluation.

30. It is stated that the writ petition deserves to be dismissed on the ground that the same is based only on mere apprehensions and assumptions. The petitioners have no *locus standi* to challenge the contract already executed between the two contracting parties. It is further stated that the petitioners without any factual as well as legal basis have misinterpreted the concept of blacklisting qua respondent No. 2-Company, thereby causing severe prejudice to the reputation and integrity of the respondent No. 2-Company. It is settled principle of law that once the period of blacklisting is over, the party cannot be made to face further consequences of the same as an order of debarment operates to the prejudice of a commercial person not only in *presenti* but also puts a taint which attaches far beyond and may well spell the death knell of the organization/institution for all times to come and is generally associated with civil death.

31. It is stated that during the period of debarment, respondent No. 2-Company has in fact delivered/conducted several successful examinations for several Central/State agencies and undertakings, High Courts, Government Departments and other across various States and Union Territories in India. It is stated that principles of judicial review have been deliberately ignored and intentionally overlooked by the petitioners while challenging the contract executed between the respondent-Board and respondent No. 2-Company.

32. Mr. Abhinav Sharma, learned Senior Advocate, appearing on behalf of respondent No. 2, has relied upon the judgments of the Hon'ble Apex Court in '**M/s Chauhan Builders Raebareli Vs. State of Uttar Pradesh and others**', (2022) Live Law (SC) 694, and '**M/s Kulja Industries Ltd. vs. Chief General Manager W.T. Proj. BSNL and others**', (2014) 14 SCC 731.

33. It is stated by the respondent No. 2 that the debarment order has ceased to operate from May 2022 and respondent No. 2-Company is expunged from such order of blacklisting as on date. It is stated that the debarment, in its commercial sense, is a decision taken by a particular tendering authority/employer, not to work with the company/firm for any reason and for a specific period. However, once the said specified period of debarment is over, the right of such company/firm to participate in the tender gets revived and order for debarment is automatically revoked, which is also given in the Guidelines on Debarment of Firms from Bidding dated 02.11.2022 issued by the Department of Expenditure, Ministry of Finance vide OM No. F.1/20/2018-PDD

34. The respondent Nos. 4 to 62, who have been impleaded by this Court, have stated in their reply that they are also the aspirants who have applied for the post of Sub-Inspectors in Jammu and Kashmir Police, advertised by Advertisement No. 06 of 2021 dated 21.10.2021. It is stated that the private respondents, being eligible in all respects, were issued admit cards by the Service Selection Board for appearing in the CBT for the post of Sub-Inspectors which was held on 07.12.2022 and 08.12.2022, in which some of the private respondents participated, however, before CBT as scheduled on other dates could be completed, this Court by its judgment dated 08.12.2022, allowed the writ petition and issued several directions, *inter alia* cancelling the conduct of examination to be conducted by the Service Selection Board through respondent No. 2, for all the posts, including the post of Sub-Inspectors.

35. However, the said judgment was challenged by respondent No. 1, before the Division Bench of this Court in LPA No. 141 of 2022, which vide order dated 09.12.2022, allowed the Service Selection Board to proceed with the selection process of Junior Engineer (Jal Shakti) and Sub-Inspector (Home Department). Accordingly, the CBT of leftover candidates, including some of the private respondents for the post of Sub-Inspectors (Home Department) was conducted on notified dates but the result has not been declared till date, in view of interim direction passed by this Court.

36. It is stated that the private respondents have done fairly well in CBT and have highest probability of making it to the Physical Test, which could not be conducted till date, in view of the matter being *subjudice* before this Court.

37. It is further submitted that the petitioners have levelled allegations of malpractices in allotment of tender to respondent No. 2 by respondent No. 1, however, the private respondents while participating in the CBT have not seen or observed any suspicious activity which would make them to believe that there were any malpractices or anomalies in conduct of examination. As a matter of fact, the security arrangements in the examination centres were unparalleled and the private respondents who had earlier also participated in various examinations, have not witnessed such security arrangements and strictness, as such, there is no reason for them to doubt credibility of the examination conducted.

38. Mr. Pranav Kohli, learned Senior counsel for the respondents, has relied upon the judgment of the Hon'ble Apex Court in '**M/s N.G. Projects Ltd. vs. Vinod Jain and others**', 2022 LiveLaw (SC) 302.

39. The petitioners have filed the rejoinder to the objections filed by respondent Nos. 1 and 2 and have stated that a fair and reasonable selection process is a fundamental requirement under Articles 14 and 16 (1) of the Constitution of India. The petitioners seek an equal opportunity and participation in public employment which is not possible, if an agency, having tainted record, is given the contract and conducts examination involving public employment. The instant case not only revolves around M/s Aptech Ltd. but also casts a huge shadow of doubt on the conduct of Jammu and Kashmir Service Selection Board which conducts various public employment examinations involving lacs of aspirants, as such, it requires a thorough investigation by an independent agency.

40. The petitioners have also mentioned various irregularities found in the different examinations which were conducted by M/s Aptech Ltd. and

the same reflects that M/s Aptech Ltd. was involved in various malpractices done in examinations around the country, some of them are as follows:

- (i) UP Jal Nigam recruitment scam, Aptech hired in 2016, mass irregularities and malpractices, 1188 appointments cancelled out of 1300 posts in 2020 after investigation by the Special Task Force (STF).
- (ii) Rajasthan Police Constable Recruitment scam, Aptech was hired and exam held in 2017, irregularities found in 2018, FIR filed, exam was cancelled.
- (iii) UP Power Corporation Ltd. (UPPCL) hired Aptech Ltd. for exam in 2018 and after irregularities via system monitoring and various other modes reported by STF exam was scrapped and Aptech was blacklisted for a period of three years from May 2019 to May 2022.
- (iv) Assam Irrigation Department, Aptech conducted the exam in August 2020, irregularities were found, investigation is under process.
- (v) Delhi University LLB exam 2018 conducted by Aptech was also cancelled due to leak of papers.
- (vi) Fined Rs. 10,00,000/- by the Delhi High Court due to concealment of the fact by Aptech Ltd. in their blacklisting clause showing malpractice and involvement being at the top tier level of Aptech Ltd.
- (vii) CBSE – Central Teacher Eligibility Test (CTET), January 2023 exam conducted by Aptech, paper was leaked and irregularities came out in Meerut and Lucknow. State Task Force arrested person in this regard. Paper was rescheduled.
- (viii) Kendriya Vidyalaya Sangathan – KVS PGT, KVS TGT, KVS PRT all three exams were conducted by Aptech Ltd. on behalf of CBSE, KVS in February 2023. All three papers were leaked. Irregularities came out in Bihar, Varanasi (22 arrested), Ambala (9 arrested), Leh (3 arrested) and Panipat, Haryana (5 arrested), including arrest of City Head Varanasi of Aptech Ltd.
- (ix) Securities & Exchange Board of India (SEBI), in the year 2021, on 30th April slapped Rs. 1 Crore penalty on Aptech for violating insider trading rules.

- (x) In Kanpur, in the year 2021, Aptech Learning Institute, a subsidiary of Aptech Ltd. cheated around 200 students with lacs of rupees, closed its office and ran away.
- (xi) UGC NET paper was also leaked.

41. Heard learned counsel for the parties, considered the submissions and perused the material on record.

42. In the present petition, these pivotal issues fall for consideration of the Court:

- (i) Whether the writ petition, under Article 226 of the Constitution of India is maintainable, in absence of any *locus standi* or without being covered under the definition of an “aggrieved person”?
- (ii) Whether a company blacklisted for a specific period of time can be allowed to participate in the tendering process after completion of the period of debarment?
- (iii) Whether the writ petition is maintainable under Article 226 of the Constitution of India with respect to the judicial scrutiny of the eligibility criteria/tender conditions on the basis of apprehension and allegations by the aspirants?

43. *Locus standi* is a legal concept that is intended to ensure that only those who have a legitimate interest in the case can bring a legal action. It is a fundamental principle in every legal system. A person has to establish the essentials of *locus standi* which includes injury in fact, causation and redressability. It is a legal concept that is intended to ensure that only those who have a legitimate interest in a case can bring a legal action. The question as to maintainability of the writ petition under Article 226 of the Constitution of India, seeking a writ to certiorari or a writ of mandamus by a person who is not aggrieved as on date and has no *locus standi* has

been a subject matter of discussion in number of cases before the Hon'ble Supreme Court.

44. The Hon'ble Apex Court in '**Jasbhai Motibhai Desai vs. Roshan Kumar and others**', 1976 (1) SCC 671, has held as under:

“10. Article 226 of the Constitution empowers the High Court to issue to any person or authority, including the Government, within its territorial jurisdiction, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of fundamental rights and for any other purpose.

11. As explained by this Court in 286300 the founding fathers of the Constitution have designedly couched the article in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. In a sense, the scope and nature of the power conferred by the Article is wider than that exercised by the writ courts in England. However, the adoption of the nomenclature of English writs, with the prefix "nature of" superadded, indicates that the general principles grown over the years in the English Courts, can, shorn of technical procedural restriction and adapted to the social conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by this Court, be usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well-recognised rules of practice.

12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question: Who is an "aggrieved person"? And what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its feature can be described a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest and the. nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction.

13. We will first take up that line of cases in which an "aggrieved person" has been held to be one who has a more particular or peculiar interest of his own beyond that of the general public, in seeing that the law is properly administered. The leading case in this line is (1870) 5 QB 466 Queen v. Justices of Surrey decided as far back as 1870. There, on the application by the highway board the Justices made certificates that

certain portion of three road were unnecessary. As a result, it was ordered that the roads should cease to be repaired by the parishes.”

45. In '**Ghulam Qadir vs. Special Tribunal and others**', 2002 (1)

SCC 33, the Hon'ble Apex Court has held that:

“There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea-change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.”

46. The Hon'ble Apex Court in '**A. Subash Babu vs. State of Andhra Pradesh and another**', (2011) 7 SCC 616, held as under:

“The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict right of filing complaint to the first wife and there is no reason to read the said Section in a restricted manner as is suggested by the learned Counsel for the Appellant. Section 494 does not say that the complaint for commission of offence under the said section can be filed only by wife living and not by the woman with whom subsequent marriage takes place during the life time of the wife living and which marriage is void by reason of it taking place during the life of such wife. The complaint can also be filed by the person with whom second marriage takes place which is void by reason of it taking place during the life of first wife.”

47. In '**Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and others**', (2013) 4 SCC 465, the Hon'ble Supreme Court has held as under:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad &Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal &Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar &Ors., (2009) 2 SCC 784).

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression, 'next friend' means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Vide: Charanjit Lal Chowdhury v. The Union of India &Ors., AIR 1951 SC 41; Sunil Batra (II) v. Delhi Administration, AIR 1980 SC 1579; Mrs. Neelima Priyadarshini v. State of Bihar, AIR 1987 SC 2021; Simranjit Singh Mann v. Union of India, AIR 1993 SC 280; Karamjeet Singh v. Union of India, AIR 1993 SC 284; and Kishore Samrite v. State of U.P. &Ors., JT (2012) 10 SC 393).

14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process

of court and that, “ordinarily meddlesome bystanders are not granted a Visa”. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: P.S.R. Sadhanantham v. Arunachalam & Anr., AIR 1980 SC 856; Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114; State of Uttaranchal v. Balwant Singh Chauhal & Ors., (2010) 3 SCC 402; and Amar Singh v. Union of India & Ors., (2011) 7 SCC 69)

15. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors., AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of Maharashtra, AIR 2005 SC 540; and Neetu v. State of Punjab & Ors., AIR 2007 SC 758).”

48. In the instant case, the petitioners have not been able to establish their *locus standi* to challenge the process being conducted by the respondents for allotment of tender for conduct of various examinations through CBT mode in favour of respondent No. 2. If at all, anyone had any reason to challenge the process of allotment of tender to respondent No. 2, then only the company who has not been selected and allowed tender had a right to challenge the allotment but not the petitioners herein. The petitioners are also not covered under the expression of ‘aggrieved person’ on account of the fact that the petitioners have not only responded to the advertisements issued by the respondents but have also participated in the said process.

49. As far as *blacklisting* is concerned, it is settled by the Supreme Court that one cannot be blacklisted for life. The order of blacklisting has to be specified for a particular period of time. The debarment is never permanent and the period of debarment would invariably depend upon the nature of offence committed by erring contractor.

50. The Hon’ble Apex Court in ‘**M/s Chauhan Builders Raebareli Vs. State of Uttar Pradesh and others**’, (2022) Live Law (SC) 694, has held as under:

“6. One cannot be blacklisted for life. The order of blacklisting to the extent that it has not specified the period cannot be sustained. Since the order was passed way back in 2013 and the writ petition was dismissed on 05.09.2018, we deem it appropriate to exercise the powers under Article 142 of the Constitution to pass an order of blacklisting the appellant for a period of five years from the date the order was passed.”

51. In ‘**M/s Kulja Industries Ltd. vs. Chief General Manager W.T. Proj. BSNL and others**’, (2014) 14 SCC 731, the Hon’ble Apex Court has held as under:

“17. That apart the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because ‘blacklisting’ simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ Court. The legal position on the subject is settled by a long line of decisions rendered by this Court starting with *Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr.* (1975) 1 SCC 70 where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the Authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed:

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

24. Suffice it to say that ‘debarment’ is recognized and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the ‘debarment’ is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.”

52. Admittedly, respondent No. 2 was blacklisted by UPPCL in the year 2019 for a period of three years, which expired on May 2022, as

such, the respondent No. 2 was fully eligible before the tender notice was issued in the month of September, 2022.

53. It is also stated by the learned counsel for the respondents that the other company, i.e., Eduquity was also blacklisted at one point of time, therefore, the respondent No. 2 could not have been debarred for being blacklisted by UPPCL which had already outlived its life in May 2022.

54. Learned counsel for the respondent No. 1 has placed on record the affidavit filed by respondent No. 2, wherein it is stated that the firm/agency is not involved in any ongoing investigation by any central investigating agency related to conduct of CBT exams as on date and further the firm/agency is not blacklisted/debarred by any Government Body/Government Institution/Board/PSU of the country as on date of bid submission.

55. As far as *maintainability* of the writ petition under Article 226 of the Constitution of India with respect to the judicial scrutiny is concerned, it is a settled principle of law that the owner or the employer of a project having authored the tender document is the best person to understand and appreciate its requirements and interpret its documents. It is not for the Court to substitute its opinion and should refrain itself from imposing its decision over the decision of the employer.

56. It is well settled by the Apex Court that the terms and conditions of the invitation to the tenderer are within the domain of tenderer/tender-making authority and are not open to judicial scrutiny, unless they are arbitrary, discriminatory or *mala fide*. The Government/ tender-making authority must have a free hand in setting the terms of the tender. The Courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would

have been fair, wiser or logical. Furthermore, it is also been held that the Courts does not have the expertise to examine the terms and conditions, the present-day economic activities of the State and should be even more reluctant in interfering with contracts involving technical issues as there is requirement of necessary expertise to adjudicate upon such issues.

57. The Hon'ble Supreme Court in '**M/s N.G. Projects Ltd. vs. M/s Vinod Kumar Jain and others**', 2022 LiveLaw (SC) 302,

"23. In view of the above judgments of this Court, the Writ Court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present-day Governments are expected to work."

58. It is clear from the judgment (supra) that the judicial scrutiny is very limited to the extent of eligibility criteria/tender conditions laid by the Government is concerned.

59. In '**Tata Motors Limited vs. The Brihan Mumbai Electric Supply & Transport Undertaking (Best) and others**', 2023 LiveLaw (SC) 467, the Hon'ble Apex Court has held that:

"48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of

judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer."

60. In '**Airport Authority of India vs. Centre for Aviation Policy, Safety and Research (CAPSR) and others**', 2022 LiveLaw (SC) 814, the Hon'ble Supreme Court has held as under:

"7. While considering the scope and ambit of the High Court under Article 226 of the Constitution of India with respect to judicial scrutiny of the eligibility criteria/tender conditions, few decisions of this Court are required to be referred to, which are as under:

In the case of Maa Binda Express Carrier (supra), in paragraph 8, this Court observed and held as under:

"8. The scope of judicial review in matters relating to award of contracts by the State and its instrumentalities is settled by a long line of decisions of this Court. While these decisions clearly recognise that power exercised by the Government and its instrumentalities in regard to allotment of contract is subject to judicial review at the instance of an aggrieved party, submission of a tender in response to a notice inviting such tenders is no more than making an offer which the State or its agencies are under no obligation to accept. The bidders participating in the tender process cannot, therefore, insist that their tenders should be accepted simply because a given tender is the highest or lowest depending upon whether the contract is for sale of public property or for execution of works on behalf of the Government. All that participating bidders are entitled to is a fair, equal and nondiscriminatory treatment in the matter of evaluation of their tenders. It is also fairly well settled that award of a contract is essentially a commercial transaction which must be determined on the basis of consideration that are relevant to such commercial decision. This implies that terms subject to which tenders are invited are not open to the judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or class of tenderers. So

also, the authority inviting tenders can enter into negotiations or grant relaxation for bona fide and cogent reasons provided such relaxation is permissible under the terms governing the tender process.”

In the case of Michigan Rubber (India) Ltd. (supra), after considering the law on the judicial scrutiny with respect to tender conditions, ultimately it is concluded in paragraph 23 as under:

“23. From the above decisions, the following principles emerge: (a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities; (b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited; (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted; (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”

In the aforesaid decision, it is further observed that the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. It is further observed that the courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical.

Similar views have been expressed in the case of Educomp Datamatics Ltd. (supra) and Meerut Development Authority (supra).”

61. It is also settled by the Hon’ble Supreme Court that no writ petition can be filed on apprehension or without any cause of action which admittedly has not been accrued to the petitioners as on date in the present case.

62. The Hon’ble Apex Court in ‘**Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant,**’ AIR 2001 SC 24, has held as under:

“The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and

necessary conclusion drawn there from - In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Loca bail case (supra).

Having discussed the issue as above in the contextual facts, we do feel it expedient to record that the action of the Managing Director in the matter of withdrawal of authority as noticed above and subsequent introduction of charges, in particular, the last of the charges as noted above and the further factum of issuance of an eighteen page letter of termination on the self same date and within a few hours after the pretended hearing was given, cannot but be ascribed to be wholly and totally biased."

63. The plea of alleged bias against respondents is a plea permissible in law to impugned action, however, such a plea has to be found on substantial material and by a person who is aggrieved and has any *locus standi*. This petition is based on apprehensions and assumptions that respondent No. 2 would fail in conducting the examination fairly on the basis of alleged malpractices and irregularities and also having been blacklisted once by UPPCL in the past, in the year 2019. As far as aspirants, i.e., private respondent Nos. 4 to 62 are concerned, they have absolute faith on the respondents.

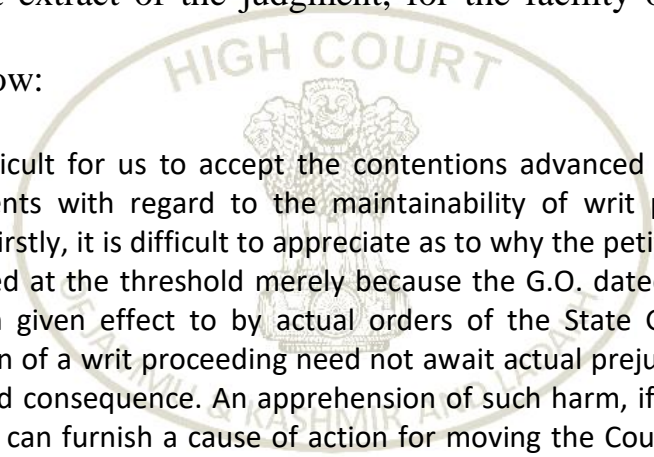
64. Learned counsel for the petitioners has placed on record Government order No. 487-JK (GAD) of 2023 dated 22.04.2023, whereby sanction has been accorded to the constitution of a High-Level Committee to review the functioning of the Jammu and Kashmir Service Selection Board.

65. The Committee was directed to examine whether the process of tendering followed by JKSSB, in which the examination conducting company, namely, M/S Aptech Ltd. which was selected to conduct the examinations was consistent with the extant Financial Rules/Acts, and, if

all the relevant norms were fully complied with. The Review Committee has been directed to submit its report within fifteen days.

66. Learned counsel for respondent No. 1 has stated that no report could be submitted in terms of the order dated 22.04.2023 because of the pendency of the writ petition.

67. The Apex Court in '**Adi Saiva Sivachariyargal Nala Sangam vs. The Government of Tamil Nadu**, (2016) 2 SCC 725, has observed that institution of writ proceedings need not await actual prejudice and adverse effect and consequences. In the said case, the writ petitioners had assailed certain orders and ordinances issued by the Government of State of Tamil Nadu. Relevant extract of the judgment, for the facility of reference, is reproduced below:



"It is difficult for us to accept the contentions advanced on behalf of the respondents with regard to the maintainability of writ petitions on two counts. Firstly, it is difficult to appreciate as to why the petitioners should be non-suited at the threshold merely because the G.O. dated 23.05.2006 has not been given effect to by actual orders of the State Government. The institution of a writ proceeding need not await actual prejudice and adverse effect and consequence. An apprehension of such harm, if the same is well founded, can furnish a cause of action for moving the Court. The argument that the present writ petition is founded on a cause relating to appointment in a public office and hence not entertainable as a public interest litigation would be too simplistic a solution to adopt to answer the issues that have been highlighted which concerns the religious faith and practice of a large number of citizens of the country and raises claims of century old traditions and usage having the force of law. The above is the second ground, namely, the gravity of the issues that arise, that impel us to make an attempt to answer the issues raised and arising in the writ petitions for determination on the merits thereof."

68. Though, the instant petition is only based on allegations and apprehensions but the appointments to public posts should be made strictly in consonance with Articles 14 and 16 of the Constitution of India. A fair and reasonable process is a fundamental requirement of equality of opportunity. As on date, no prejudice has been caused to the petitioners but they have an apprehension of adverse consequences from the selection

process conducted by the respondents. The grievance of the petitioners has already been taken note of by the Government by constituting the Review Committee to look into the conduct of JKSSB and M/S Aptech Ltd., in order to build confidence of the aspirants. The Review Committee should have submitted the report by now, which could have either washed away the apprehensions of the petitioners or enhanced faith in the respondents.

69. The Hon'ble Apex Court in '**Sachin Kumar and others vs. Delhi Subordinate Service Selection Board (DSSSB) and others**', LiveLaw 2021 SC 128, held as under:

"A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in mal-practices and to penalize them for their wrongdoing, it would be unfair to impose the burden of their wrong-doing on those who are free from taint. To treat the innocent and the wrong-doers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles that it becomes appropriate to advert to the precedents of this Court which hold the field."

70. Since the Government has already addressed the apprehensions alleged by the petitioners by constituting the Review Committee vide Government Order No. 487-JK (GAD) of 2023 dated 22.04.2023, therefore, it would be appropriate to direct the Review Committee to submit its report after deliberating into the issues in the said Government Order, as such, this

Court is refraining from exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

71. In view of the factum of the constitution of the Review Committee by the Government and keeping in view the fact that the said decision has neither been challenged by the petitioners nor by the aspirants, this Court deems it appropriate to dispose of the writ petition to a limited extent as indicated above by directing as under:

- (i) The Review Committee constituted in terms of Government Order No. 487-JK (GAD) of 2023 dated 22.04.2023, shall submit its report within a period of ten days from the date of passing of this judgment.
- (ii) The Chief Secretary shall take a decision on the basis of the report/recommendations made by the Review Committee within a period of ten days thereafter.
- (iii) The decision of the Chief Secretary shall be communicated to the Secretary, JKSSB, who is directed to proceed strictly in accordance with the decision taken by the Government.
- (iv) However, till the final decision is taken by the Government, the JKSSB shall not proceed with the selection process.

72. **Disposed of** accordingly.

(Moksha Khajuria Kazmi)
Judge

Jammu:

31.08.2023

Michael Sharma

Whether approved for speaking : *Yes*
Whether approved for reporting : *Yes*