HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 3567/2024

Narpat Surela Son Of Kishori Lal Surela, Aged About 29 Years, Address Kumharo Ka Mohalla, Tehsil Bansur, Alwar (Rajasthan) - 301402.

----Petitioner

Versus

The State Of Rajasthan, Through Additional Chief Secretary, Forest & Ors.

----Respondents

Connected With

1. S.B. Civil Writ Petition No. 3326/2024
2. S.B. Civil Writ Petition No. 3568/2024
3. S.B. Civil Writ Petition No. 3708/2024
4. S.B. Civil Writ Petition No. 3724/2024
5. S.B. Civil Writ Petition No. 4205/2024
6. S.B. Civil Writ Petition No. 4300/2024
7. S.B. Civil Writ Petition No. 5289/2024
8. S.B. Civil Writ Petition No. 5480/2024
9. S.B. Civil Writ Petition No. 5684/2024
10. S.B. Civil Writ Petition No. 5744/2024
11. S.B. Civil Writ Petition No. 5995/2024
12. S.B. Civil Writ Petition No. 17601/2024
13. S.B. Civil Writ Petition No. 17602/2024
14. S.B. Civil Writ Petition No. 17603/2024

For Petitioner(s) : Mr. Tribhuvan Narayan Singh
Mr. Sukhdev Singh Solanki
Mr. Vishwanath Karan Rathore with

Mr. Satya Prakash Sharma
Mr. Arvind Rana
Mr. R. B. Sharma, Ganthola

For Respondent(s) : Mr. Bharat Vyas, AAG with
Ms. Niti Jain Bhandari
Mr. Praveer Sharma &
Mr. Harsh Vardhan Katara
Mr. Archit Bohra, AGC
Mr. Akhil Simlote with
Mr. Ashvini Raj Tanwar &
Mr. Dikshant Jain
Mr. Prateek Mathur
Mr. Rajendra Kumar Salecha with
Ms. Tanisha Khubchandani,
Mr. Hitesh Kumar
Mr. Abhinav Srivastava &
Mr. Nikhil Kumawat
Mr. Raghu Nandan Sharma
Mr. Sandeep Pathak with
Ms. Jaya Pathak &
Mr. Akshat Sharma

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

REPORTABLE

Reserved on : 17/10/2024 & 27.11.2024

Pronounced on: 20/12/2024

Parts	Contents
A	**Prefatory Remarks**
B	**Relevant Statues, Rules and Acts**
C	**Factual narrative and background**
D	**Submissions by the counsel representing the petitioners**
E	**Submissions by the counsel representing the respondents** E.1 Submissions by the counsel representing the respondent-State. E.2 Submissions by the counsel representing the respondent-RSPCB E.3 Submissions by the counsel representing the respondent-IBPS. E.4 Submissions by the counsel representing the respondent-Selected candidates who appeared as interveners
F	**Issues and points of determination**
G	**Annotations**

H	**Discussions and findings** Auxiliary findings
I	**Conclusion**
J	**Directions**

A. PREFATORY REMARKS

1. Considering the fact that the instant batch of writ petitions warrant adjudication on common questions of law and fact; with the consent of learned counsel appearing on behalf of all the parties, **S.B. Civil Writ Petition No. 3567/2024** titled as **Narpat Surela vs. State of Rajasthan and Ors**, is being taken up as the lead petition. It is cautiously clarified that the instant judgment shall be applicable on all the petitions connected herein/henceforth on *mutatis mutandis* basis.

B. RELEVANT STATUES, RULES AND ACTS

Act, Statute or Rules	***Inter alia* relevant provision**
Constitution of India	Articles 14, 16, 21, 309, 311
The Right to Information Act, 2005	Sections 8(1)(d), 11
The Rajasthan Transparency in Public Procurement Act, 2012	Sections 3, 31
The Rajasthan State Control Board Employees Service Rules and Regulations, 1993	Rules 2(b), 2(f), 6, 18, 25
The Water (Prevention and Control of Pollution) Act, 1974	Sections 4(f), 12, 18, 20, 21, 22, 23, 24, 25, 35, 50, 62, 64
Air (Prevention And Control Of Pollution) Act, 1981	Section 54
The Rajasthan Stamp Act, 1988 and The Rajasthan Stamp Rules, 2004	Sections 3 and 39

C. FACTUAL NARRATIVE AND BACKGROUND

2. The respondents vide advertisement dated 05.10.2023 invited applications from the eligible candidates for the post of Junior Scientific Officer (JSO), Junior Environment Engineer (JEE) and Legal Officer – II (LO-II). Subsequently, the respondents issued a *vigyapti* dated 18.12.2023, corrigendum dated 01.02.2024 and information guidelines for the applicants. The said examination (for JSO) was scheduled on 09.01.2024. Consecutively, the provisional list of the shortlisted candidates for document verification for the post of JSO was released on 23.02.2024 (provisional list for other posts were released in-between 22.02.2024 and 24.02.2024). In the said list(s) the respondents have also issued the category wise cut-off marks i.e. qua GEN-UR, EWS, ST, BC and MBC along with the horizontal cut-off marks with respect to the categories like Persons With Disabilities and Ex-servicemen.

3. The controversy resulting to the instant petition(s) arose when the petitioners did not find their name in the provisional list. The primary grievance of the petitioners is that they did not receive the question booklet as the said examination was conducted via online mode nor any model answer key was published by the respondents. Therefore, the said examination is alleged to be biased, unfair and conducted in a non-transparent manner, bypassing the settled provisions of law.

D. SUBMISSIONS BY THE COUNSEL REPRESENTING THE PETITIONERS

4. At the outset, learned counsel have averred that the time line of events justify that the cause of action arose after the declaration of provisional results and the issuance of document verification order. The petitioners had a legitimate expectation that respondents would follow the established procedures however, when the same were not complied with, the petitioners without any delay have knocked the doors of the Court.

5. In this backdrop, learned counsel representing the petitioners have averred that the petitioners have raised their grievances before the respondents, have filed a representation via e-mail (dated 26.02.2024) and have even visited the office of respondent nos. 01, 02 and 03. However, no satisfactory response was tendered by the respondents and a cursory reply stating "your grievance regarding question is noted" was given. Subsequently, the respondents issued the score card of the petitioners wherein, the petitioner-Narpat Surela had scored 115 marks out of the maximum marks. Nevertheless, as per the self-evaluation made by the petitioner he was liable to secure more marks.

6. Therefore, it can be deduced that the respondents without following the due process of examination and without tendering an opportunity to raise objections; bypassing the principles of natural justice, in violation to the provisions enshrined under the Articles 14, 16 and 21 of the Constitution of India and ignoring the reminders made by the petitioners have culminated the said selection process.

7. At this nascent juncture learned counsel appearing for the petitioners have placed reliance upon a catena of judgments

passed by various High Courts and Hon'ble Apex Court. Some of the relied upon dictums amongst others were **Rishal Vs. RPSC & Ors.** reported in **(2018) 8 SCC 81**, **Meeta Sahai Vs. State of Bihar & Ors.** registered as **Civil Appeal No. 9482/2019**, **Ramjit Singh Kardam & Ors. Vs. Sanjeev Kumar & Ors.** registered as **Civil Appeal No. 2103/2020**, **Harkirat Singh Ghuman Vs. Punjab and Haryana High Court & Ors.** reported in **AIR 2022 SC 4060** and **Kanpur University, through Vice-Chancellor & Ors. Vs. Samir Gupta & Ors.** reported in **1983 AIR SC 1230**.

8. While placing reliance upon the afore-cited ratios learned counsel have further contended that in order to maintain the transparency and un-biasness in public objective type examinations, there should always be a provision of OMR answer sheet, which upon culmination of the examination should be handed over to the candidate along with a copy of the question booklet, thereafter, the provisional/model answer key should be published and objections should be invited; withal, answers/responses to the said objections should be tendered with reasonable justification within the stipulated period, by the expert committee so formulated by the exam-conducting agency and only after duly complying with the said procedure, the final score sheet/merit list of the candidate should be released. It was further averred that transparency, self-evaluation of the candidates and un-biasness are essential for any public recruitment.

9. Learned counsel have further contended that the respondents chose to omit the engagement of exam conducting

authorities like Rajasthan Public Service Commission, Rajasthan Staff Selection Board and MNIT (recognized Engineering College of Government), pursuant to Article 309 and 311 of the Constitution of India who have conducted the erstwhile recruitment process and have scheduled and culminated the said recruitment process in a great haste with the aid of Institute of Banking Personnel Selection (hereinafter referred to as IBPS). Moreover, the malice in law and irregularities of the respondents can also be corroborated from the fact that the respondents despite the fact that RSPCB is a Public Authority and RTI Act is applicable qua them, circumvented the provisions of the Right to Information Act, 2005 (hereinafter referred to as RTI Act) and the Rajasthan Transparency in Public Procurement Act, 2012 (hereinafter referred to as RTPP Act). For the sake of convenience the relevant provision from the Constitution of India is reproduced herein below:

> ***309. Recruitment and conditions of service of persons serving the Union or a State-*** *Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:*
>
> *Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and*

posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

10. Likewise, the engagement of IBPS as an examination conducting agencies lacks transparency and fairness hence by the said act of the respondents, the fundamental rights of the petitioners are vitiated. Learned counsel had further averred that the following are indispensable ingredients by which any public domain examination can be considered unprejudiced:

10.1 Disclosure of question booklets/ allow the candidates to take along the question booklets.

10.2 Publication of model answer key.

10.3 Inviting the objections by the candidates.

10.4 Formulation of an expert committee to address the objections.

10.5 Execution of memorandum of understanding (hereinafter referred to as MoU)

11. Howsoever, in the matter in hand no such procedure was followed by the respondents and the provisions of RTPP Act, the Rajasthan Stamps Act, Rules of 1993 etc. were bypassed. Learned counsel had further apprised this Court qua the fact that it was only brought in the knowledge of the petitioners, by the respondents whilst replying to the instant petitions that the MoU inter-se the respondent-authorities was effectuated on 04.10.2023 (one day prior to the issuance of the said advertisement) by which the respondent-IBPS was entrusted with the work of conducting of

the said examination. Nevertheless, the said MoU was not made available for the public perusal nor the said provision was included in the said advertisement. Moreover, the application forms that were downloaded by the petitioners do not have any URL referring/stating that the said examination shall be conducted by IBPS.

12. It was further contended that only under exceptional and emergent conditions the provisions of Section 31(h) of RTPP Act qua single source procurement can be invoked, however, herein the respondents have failed to justify any such exceptional circumstances for adopting single source procurement as per Section 31 (h) of the RTPP Act.

13. Consecutively, it was contended that the principles of acquiescence, waiver and estoppel will not by applicable upon the petitioners as the candidates appearing in any examination/selection process only accept the prescribed procedure nevertheless, failure in examination cannot debar a candidates to challenge the said recruitment process.

14. Albeit the provisions of the Rajasthan State Control Board Employees Service Rules and Regulations, 1993 (hereinafter referred to as Rules and Regulations of 1993) do not prohibit or restrict the issuance of model answer key, the invitation of objections or constitution/formulation of an expert committee, the respondents have failed to do so. Additionally, learned counsel have contended that it is a settled position of law that there is a distinction between the malice in law and malice in facts. When malice in law is referred then there is no necessity to make any

categorical allegations of malafides against anyone. Nonetheless, it is duty of the exam conducting agency to maintain transparency and fairness in recruitment process in consonance with Articles 14 and 16 of the Constitution of India.

15. Nevertheless, the RPSC and Rajasthan Staff Selection Board are confined to make recruitment only under the service rules framed under Article 309 of the Constitution of India and no single document was placed by the respondents to corroborate the same. Lastly, it was contended that a vigilant reading of the said provision indicates that it pertains to the recruitment and conditions of service of persons serving the Union or State and does not prohibit a public service commission from conducting examinations for any statutory autonomous body over which the State exercises pervasive control.

E. SUBMISSIONS BY THE COUNSEL REPRESENTING THE RESPONDENTS

E.1 SUBMISSIONS BY THE COUNSEL REPRESENTING THE RESPONDENT-STATE

16. *Per contra*, learned Additional Advocate General had stoutly opposed the contentions leveled by the counsel representing the petitioners and averred that the primary vital aspects necessitated for an efficacious adjudication of the matter in hand are that the Board decided to initiate a selection process on the vacant posts of JSO numbering 59 and 53 vacant posts of JEE. However, against the total cadre strength of 85 only 26 JSO's were manning the posts and similarly 88 posts of JEE could be filled. Thence, it can be deduced that the petitioners herein have

failed to qualify the said examination (petitioner-Narpat Surela secured approximately 38 marks less than the minimum cut-off marks).

17. At this nascent juncture, learned AAG had averred that Rajasthan Pollution Control Board (as an autonomous body) was established on 07.02.1975 under the provision of Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Act of 1974). With prior consent of the State government, the Rajasthan State Pollution Board Employees Service Rules and Regulations came into force (published in gazette on 30.03.1993). Subsequently, vide notifications published in Rajasthan Raj Patra dated 01.04.2010, 21.06.2012, 06.09.2013, 08.08.2014, 18.01.2016, 23.10.2019, 17.01.2023 and 21.08.2023 the Rules and Regulation of 1993 were amended.

18. Moreover, in the 147th Board meeting held on 22.10.2020 it was held that in exercise of the powers conferred under the provisions of Section 12 sub-section 3A of the Act of 1974 the power of the Central or State Board to make regulations, providing for method of recruitment and the terms and conditions of the service of the officers and employees except the member Secretary were delegated. It was further averred that the provision of Rule 18 of the Rules and Regulations of 1993 i.e. the procedure for Direct Recruitment were duly complied with.

19. Consequently, the Board vide letter no. 1471 dated 31.07.2023 requested the State to grant sanction to fill up the vacant seats. The said proposal along with a dummy file was sent to appropriate departments to attain requisite sanctions.

Nonetheless, the petitioners herein have failed to qualify the said examination.

20. Subsequently, the National Green Tribunal Principal Bench – New Delhi, took a cognizance of a news published in a daily newspaper dated 24.10.2023 and accordingly a suo-moto was registered. Therein, the Central Pollution Board filed a report on 22.11.2023 underlining the fact that all the PCBs across the country are under-staffed. A detailed chart was submitted in the aforesaid case outlining the total number of sanctioned posts available and the posts duly manned. As per the said report the RSPCB is sanctioned with 808 posts against which only 330 posts were duly filled, with total vacancy of 470 posts. Thereafter, vide order dated 24.04.2024 the Hon'ble Apex Court considered the chart submitted before it across the Bar detailing out the number of vacancies in the PCBs of Delhi, Haryana, Rajasthan and Uttar Pradesh and accordingly the State of Rajasthan was directed to act immediately by filing an affidavit. A subsequent direction was given to do the needful within a period of two months from 22.04.2024 (Annexure- RA/2 and RA/3).

21. Further, learned AAG had contended that the advertisement form qua the said examination was designed by respondent-IBPS and there was a disclosure clause at no. 23 in the MoU permitting the display of logo of IBPS on the candidate's instruction sheet. Nevertheless, the Board was merely the host of the URL and the said application form was designed and managed by the respondent-IBPS. Subsequently post examination for validation by the experts of the examining body respondent-IBPS

took around 45 days to address each and every grievance uploaded on the IBPS portal. Therefore, complying with the directions of the Hon'ble Apex Court and considering the fact that respondent-IBPS had always conducted the recruitment exams with utmost transparency and un-biasness, the respondent-RSPCB indulged respondent-IBPS.

22. Additionally, it was submitted that the State government and the Board were aware of the paucity of the work-force and therefore, the process of recruitment was undertaken with regard to the posts of JSO, JEE and Law Officer Grade II. The initial notification was issued by the Board inviting applications for 114 posts out of which 59 posts were for JSO, 53 posts for JEE and 2 posts were for Law Officer Grade II. The said examination was conducted through respondent-IBPS on 09.01.2024. It was further averred that the petitioners appeared in the examination without any demeanor and therefore, their rights to challenge the further proceedings stand forfeited on account of the principles of acquiescence, waiver and estoppel.

23. Likewise, the RPSC cannot carry out recruitment for the post carrying grade pay of Rs. 3600/- and below. Howsoever, the recruitment process in the matter in hand was for 114 posts carrying grade pay from Rs. 4800/- to Rs. 3600/- in the pay band of L-12 and L-10. Considering the said facts the said recruitment process could neither be conducted by the RPSC nor the RSSB. Moreover, the Rules and Regulations of 1993 promulgated by the Board had no provision permitting the recruitment process to be undertaken through Rajasthan Staff Selection Board, for the

concerned posts. Additionally, upon a bare perusal of the calendar and schedule of the said authorities it can be deduced that the MNIT and RSSB were already conducting examinations in the said period.

24. At this juncture, learned AAG had placed reliance upon a catena of judgments passed by various High Courts and Hon'ble Supreme Court. Some of the relied upon dictums amongst others were **Dalip Singh Vs. State of Uttar Pradesh and ors.** reported in **(2010) 2 SCC 114, Tajvir Singh Sodhi & Ors. Vs. the State of Jammu and Kashmir & Ors.** reported in **AIR 2023 SC 2014, Union of India Vs. S. Vinodh Kumar** reported in **(2007) 8 SCC 100, D. Sarojkumari Vs. R. Helon Thilakom** reported in **(2017) 9 SCC 478, Anupal Singh Vs. State of Uttar Pradesh** reported in **(2020) 2 SCC 173 and Madan Lal Vs. State of Jammu and Kashmir** reported in **(1995) 3 SCC 486.**

E.2 <u>SUBMISSIONS BY THE COUNSEL REPRESENTING THE RESPONDENT-RSPCB</u>

25. Learned counsel appearing for respondent-Board had averred that the condition no. 11 of the said advertisement makes it unambiguous that during the process of selection no information shall be provided to the candidates. However, upon completion of the said examination the score cards of the petitioners were duly released. Moreover, for the verification of documents the candidates were called in ratio of 1:2 and the cut-off marks qua the same were uploaded immediately after finalization. Hence, no depravity is caused by the respondents.

26. It was further averred that the provisional list for JSO for document verification was released on 23.02.2024 whereby, around two times candidates were called for document verification including all the tie-case candidates. Notwithstanding, the respondent-IBPS was indulged as the exam conducting authority after taking note of their spotless record qua the exams conducted by it in banking sectors as well as in energy department i.e. RVUN, RVPN, JVVN, AVVN of Rajasthan and the fact that the respondent-Board was facing a manpower scarcity.

27. It was further contended that the respondent-Board is an autonomous regulatory body, having its own service Rules and Regulation of 1993. In such cases the approval of the Finance Department and Government of Rajasthan is not required for the post falling vacant after 01.04.2021 as per the Government of Rajasthan circular dated 31.03.2023 (Annexure- RA/6) therefore, the selection of agency engaged by the Board is its prerogative as per the governing Rules. Likewise, as per the provisions of the MoU, the standard guidelines and policy adopted by respondent-IBPS is applicable for all its client organizations.

E.3 SUBMISSIONS BY THE COUNSEL REPRESENTING THE RESPONDENT-IBPS

28. Learned counsel appearing on behalf of IBPS had apprised the Court with the fact that the IBPS i.e. Institute of Banking Personnel Selection is a society floated by officials, at relevant of Reserved Bank of India, Central Public Financial Institutions and Public Sector Banks. Thereafter, in April 1984,

IBPS was recognized as a Scientific and Industrial Research Organization by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India. To support its functionaries, IBPS has experts drawn from various fields on its payroll and panel, including psychometrics, banking varied engineering backgrounds, Hindi etc.

29. Withal, IBPS from last four decades is rendering services/assistance to its client organizations in their recruitment, promotion and placement functions by adopting best practices and designs of suitable assessment tools, scoring and answering responses and processing results of examination with speed, accuracy and confidentiality. Moreover, IBPS is defined as an approved agency under Regional Rural Banks (Appointment of Officers and Employees) Rules, 2017 for conducting examinations.

30. Amongst the manifold submissions made by the learned counsel appearing for IBPS, a few of which were, that the respondent-RSPCB engaged services of IBPS to conduct the instant examination and to administer the same by providing technical and infrastructural support as the said examination was scheduled to be of online mode. To regularize the governing provisions and to draw consensus an MoU was signed by the parties (IBPS and RSPCB) on 04.10.2023 in Mumbai and in consonance with the ‘Standard Guidelines of IBPS’ the said examination was conducted (Annexure-9 in SBCWP No. 5289/2024). The vital points emerging from the MoU are tabulated herein below:

Clause No.	Internal Page No. of MoU	Text
3.5	6	As per IBPS policy, the test papers are not disclosed to anybody other than the candidates only during the examination. The test papers are also not shared with anybody even after the examination(s). In case of any dispute, IBPS shall provide the ad seriatim responses of aggrieved candidates, if any, and the corresponding right answers.
3.8	7	In case of RSPCB requiring to comply with statutory requirements under RTI Act, IBPS will make available dump of responses (answers marked by the candidate/right answer key for objective tests/papers only) to facilitate RSPCB to reply the same.

31. Qua the contentions made in referring to non-reply of the application under RTI Act, it was contended that the said advertisement under Part B Clause No. 11 unequivocally stated that the provisions of RTI Act won't be applicable qua the respondent-IBPS and the data stored with them. Moreover, the IBPS consults the subject experts, designs the question papers and take model answers in respect of each question papers; therefore, the same are original literary work and the respondent-IBPS has copyright in respect thereof as per the provisions of Section 8(1)(d) of RTI Act, 2005.

32. In support of the contentions made insofar learned counsel had placed reliance upon the judgments passed by Hon'ble Apex Court in **Anupal Singh Vs. State of Uttar Pradesh** reported in **(2020) 2 SCC 173, Union of India and Ors. Vs. S. Vinodh Kumar and Ors.** reported in **(2007) 8 SCC 100** and

Chandra Prakash Tiwari Vs. Shakuntala Shukla reported in **(2002) 6 SCC 127.**

E.4 SUBMISSIONS BY THE COUNSEL REPRESENTING THE RESPONDENT- SELECTED CANDIDATES WHO APPEARED AS INTERVENER

33. Learned counsel appearing on behalf of the respondents endorsing the contentions made herein above have further contended that the said examination was conducted with utmost cautiousness and transparency by IBPS using latest technologies like bio-metric scanning, iris scanners, on-site photo capturing & matching and CCTV surveillance over all the exam centers like Kota, Jodhpur, Udaipur and Jaipur. Upon successful conduct of the said examination and document verification, appointment letters were issued to the eligible 96 candidates, who as on date are rendering services at their respective place of posting.

34. To conclude the averments, learned counsel representing the respondents had averred that for justified reasons the provisions of Section 31(h) of RTPP Act, were invoked and single source procurement was made; moreover, no allegations of any malpractice or use of unfair means was/is reported. Therefore, it can be deduced that the said examination was culminated in the most suitable manner.

F. ISSUES AND POINTS OF DETERMINATION

35. This Court, after conducting prolonged day to day hearings, and having heard and considered the arguments

advanced by the learned counsel appearing on behalf of all the parties and upon assiduously scanning the records inclusive of the additional affidavits of the instant batch of petitions, has felt that it apposite to formulate the following issues and/or points of determination for this Court, adjudication of which shall inadvertently put a quietus to the *lis* before this Court. The issue/points of determination for this Court, are noted herein below:

I) Whether the Board had the authority under Rule 18 of the Rules of 1993 to delegate the powers and appoint respondent-IBPS as an examination conducting authority? Whether the said action is valid and legal?

II) Whether invoking the powers under Section 31(h) of the RTPP Act, for single source procurement by appointing respondent-IBPS were correct?

III) Whether MoU dated 04.10.2023 legally admissible?

IV) Whether the instant selection process of direct recruitment, conducted in a transparent, unbiased and legal manner, *sans* any malice in law?

V) Whether the petitioners are barred by the principle of estoppel, waiver and acquiescence? Whether the rules of game can be changed?

G. ANNOTATIONS

36. As a precursor to recording findings on the issues formulated herein-above, this Court deems it appropriate to jot down indubitable facts:

36.1 That vide advertisement dated 05.10.2023, issued by the respondents as per the provisions of Rules of 1993 and the amended Rules, direct recruitment qua the vacant posts of JSO, JEE and Legal Officer Grade II was initiated. The said advertisement unequivocally noted the eligibility criteria, number of vacancies and other requisite details. The relevant information qua the number of posts are tabulated herein below:

क्र.सं.	पद का नाम	गैर अनुसूचित क्षेत्र	अनुसूचित क्षेत्र	कुल योग
1.	विधि अधिकारी–द्वितीय (LO-II)	02	00	02
2.	कनिष्ठ वैज्ञानिक अधिकारी (JSO)	59	00	59
3.	कनिष्ठ पर्यावरण अभियन्ता (JEE)	50	03	53

36.2 That the said advertisement noted all the requisite instructions and guidelines; it was also categorically noted in clause 11 of the said advertisement that the provisions of RTI Act shall not be applicable on the said examination process until the conclusion of the recruitment process. The relevant guidelines and instructions is reiterated herein below:

> "*(7) आवेदक जिनके ऑनलाईन आवेदन पत्र, आवेदन–पत्र प्राप्ति की अंतिम दिनांक तक मण्डल की वेबसाईट पर पूर्ण सूचना सहित प्राप्त होंगे, ऐसे आवेदकों को मण्डल द्वारा अनन्तिम रूप से संबंधित भर्ती परीक्षा में प्रवेश दिया जाएगा। परीक्षा के लिये प्रवेश–पत्र जारी करने का यह अभिप्राय नहीं है कि मण्डल द्वारा उसकी उम्मीदवारी अंतिम रूप से सही मान ली गई है अथवा उम्मीदवार द्वारा आवेदन–पत्र में उल्लेखित प्रविष्टियाँ मण्डल द्वारा सही मान ली गई है। मण्डल द्वारा आवेदकों की पात्रता की जाँच अलग से की जाएगी। यदि अभ्यर्थी की किसी भी कारण से अपात्रता का पता चलता है तो इस परीक्षा हेतु उसकी उम्मीदवारी किसी भी स्तर पर रद्द की जा सकती है, जिसकी समस्त जिम्मेदारी स्वयं अभ्यर्थी की होगी।*
>
> *(8) आवेदक उक्त पद हेतु तभी आवेदन करें जब वह उक्त पद हेतु विज्ञापन में निश्चित निम्न व उच्च आयु सीमा के अन्तर्गत वांछित शैक्षणिक योग्यता से संबंधित सम्पूर्ण मानदण्ड/मापदण्ड पूर्ण करता हो।*

साथ ही इस विज्ञापन में दी गई उक्त वांछित शैक्षणिक योग्यता के अतिरिक्त अन्य किसी योग्यता एवं अनुभव को मण्डल द्वारा स्वीकार नहीं किया जायेगा।

(9) परीक्षार्थियों द्वारा ई–प्रवेश पत्र में उल्लेखित विस्तृत दिशा–निर्देशों की पालना सुनिश्चित किया जाना आवश्यक होगा।

(10) राज्य कर्मचारी को देय लाभ यथा आयु सीमा में छूट, आरक्षण इत्यादि केवल राजस्थान राज्य के कर्मचारियों को ही प्राप्त है। अन्य राज्य के कर्मचारी या केन्द्र सेवा के कर्मचारी सामान्य ही माने जायेंगे, उन्हें उक्त लाभ नहीं दिया जायेगा।

(11) भर्ती प्रक्रिया लम्बित रहने के दौरान सूचना के अधिकार अधिनियम, 2005 के तहत किसी भी प्रकार की सूचना भर्ती प्रक्रिया पूरी होने तक उपलब्ध नहीं करवायी जायेगी। भर्ती प्रक्रिया पूरी होने पर वांछित सूचना नियमानुसार उपलब्ध करायी जा सकेगी।

(12) यह भर्ती प्रक्रिया पूर्व में मण्डल द्वारा की गई भर्ती के सम्बन्ध में विभिन्न न्यायालयों में विचाराधीन विधिक प्रकरणों में जारी किये गये आदेश/निर्णय के अधीन रहेगी।"

36.3 That for the said examination/selection process, the results were released in-between 22.02.2024 and 24.02.2024 and subsequently, appointment letters were issued to the eligible candidates (Approximately 96 in number), who as on date are rendering services at the allotted place of posting.

36.4 That as per the provisions of Section 12 sub section 3A of the Act of 1974 read with Section 54 of the Air (Prevention And Control Of Pollution) Act, 1981 it is indisputable that the method of recruitment and the terms and conditions of service of the officers and other employees of the State Board shall be such as may be determined by regulations made by the State Board.

*"**12. Member-secretary and officers and other employees of Board**.—(1) The terms and conditions of service of the member-secretary shall be such as may be prescribed.*

(2) The member-secretary shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board or its chairman.

(3) Subject to such rules as may be made by the Central Government or, as the case may be, the State Government in this behalf, a Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions.

(3A) The method of recruitment and the terms and conditions of service (including the scales of pay) of the officers (other than the member-secretary) and other employees of the Central Board or a State Board shall be such as may be determined by regulations made by the Central Board or, as the case may be, by the State Board: Provided that no regulation made under this sub-section shall take effect unless,— (a) in the case of a regulation made by the Central Board, it is approved by the Central Government; and (b) in the case of a regulation made by a State Board, it is approved by the State Government……..”

36.5 That by a conjoint reading of the Rules 2(b), 2(f), 18(4) and 25 of the Rules of 1993 it can be deduced that one of the methods for recruiting candidates qua the vacancies will be ‘direct recruitment’; wherein, the Board/appointing authority shall issue an advertisement by way of a public notice or paper publication. In the matter in hand, the *lis* before this Court also falls under the ambit of the said mode of recruitment under the provision stated as “In such manner, as it may be deemed fit”. For the sake of handiness and convenience the aforementioned provisions qua the definitions are reproduced herein below:

"2. Definitions: (b) "Appointing Authority" *in respect of the Executive posts means the "Chairman" and in respect of Subordinate Service or other Ministerial & class IV posts means the Member Secretary or such other officer to whom this power may, with any conditions be delegated by the Board in respect of certain categories of posts.*

(f) "Direct Recruitment" *means recruitment made according to the procedure prescribed in Part-IV of these rules.*

6. Methods of recruitment.
(1) Recruitment to the posts in the Service after the commencement of these rules shall be made by the following methods in proportion as indicated in columns 3 and 4 of Schedules :-

(a) By direct recruitment in accordance with procedure prescribed in Part IV of these rules; and
(b) By promotion in accordance with procedure prescribed in Part V of these rules.
(c) By deputation or temporary transfer of an officer of the Government or local authority or Government controlled body.

Provided that:
(i) If the Board is satisfied in consultation with the Government Where necessary that suitable persons are not available for appointment by either method of recruitment in a particular year, appointment by the other method in relaxation of the prescribed proportion may be made in the same manner as specified in these rules,
(ii) The person not covered by Rule 5, who were appointed to the posts included in Schedules on adhoc or officiating or urgent temporary basis and who have been continuously holding such posts for at least one year on the date of commencement of these rules shall be screened by a Committee referred to in Rule 26 for adjudging their suitability on the posts held provided they possessed the requisite qualification prescribed in the rules either for direct recruitment or promotion or the prescribed qualification on the basis of which persons were selected for adhoc/officiating urgent temporary

appointment. This provision shall be subject to the following conditions viz:-

(a) A person appointed on adhoc basis shall not be entitled to screening for a post higher than that to which he was initially appointed if a person senior to him on a lower post who fulfilled qualifications prescribed for the post was either not given such adhoc appointment or is not entitled to screening under this rule. Seniority for this purpose shall be determined according to length of continuous service on post.

(b) The committee appointed under these rules for adjudging suitability by screening either as an exception to general methods of recruitment or as initial constitution of service, may ex-gratia recommend, if any of the Employees with more than three years of service on a post for which he is to be screened is not adjudged suitable and if thereafter has no right to be appointed on a lower post for such lower post being offered to him by absorption and there upon such an employee shall be treated as surplus employee, and such employee may be absorbed on the lower post on the recommendation of the Committee subject to such conditions as may be laid down by it.

Note. - The provision of screening under proviso (ii) of Rule 6 has been intended to be the first step and after exhausting the vacancies required for screened persons irrespective of direct recruitment and promotion quota, the direct recruitment and promotion quota shall be applied.

(2) Notwithstanding anything contained in these Rules the recruitment appointment promotion seniority and confirmation etc. of a person who joins the Army/Air Force/Navy during an Emergency shall be regulated by such orders and instructions as may be issued by the Government, from time provided that these are regulated mutatis mutandis according to the instructions issued on the subject by the Government, of India.

18. Inviting of Applications: *Application for direct recruitment to posts in the service shall be invited by the Board/Appointing Authority by advertising the vacancies to be filed in the news-paper & notifying it*

to the Employment Ex-Change or in such other manner as may be deemed fit.

25. Selection by the Appointing Authority. *(1) Subject to the number of posts specified in the notice issued under Rule 19 and subject to reservations of posts in favour of candidates belonging to Scheduled Caste/Scheduled Tribes, physically handicapped persons in respect of posts included in schedules, the Appointing Authority shall select candidates who stand highest in the order of merit in the list prepared by the committee under Rule, 23.*

Provided that inclusion of a candidate's name in the list confers on right to appointment unless the Appointing Authority is satisfied after such enquiry as may be considered necessary that such candidate is suitable in all other respect for appointment to the post concerned

Provided further also that the Appointing Authority, may further select, against addition vacancies in the order of merit from the list prepared under Rule 23 by the Board/Appointing Authority as the case may be for appointment to posts in the service specified in schedules, candidates upto the number of vacancies intimated by them to the Board/Appointing Authority before final declaration of the result of the interview conducted by the Board/Appointing Authority.

(2) If persons, selected under sub-rule (1) above and appointed to a post concerned in accordance with these Rules & Regulations against the vacancies of a particular year for which the interview was conducted by the Board/Appointing Authority in accordance with these rules does not join on that event the said vacancies shall be treated as a fresh vacancy."

36.6 That as per the provisions of Rule 22 of the Rules of 1993, the ultimate decision qua the eligibility, cut-off and other requisites for the candidates shall be decided by the Board/appointing authority. Accordingly, in the matter in hand the respondents have scrutinized the candidates, drawn their merits and strictly in accordance with the same have selected the

candidates, who as on date are rendering services. The Rule 22 of the Rules of 1993 is reproduced herein below:

> *"**22. Scrutiny of Application.** The Appointing Authority shall scrutinize the application received by it and require as many candidates qualified for appointment under these rules & regulations as seems to it desirable to appear before it for interview:*
>
> *Provided that the decision of the Appointing Authority as the case may be, regarding eligibility or otherwise of a candidate shall be final."*

36.7 That the RPSC cannot carry out recruitment for the post carrying grade pay of Rs. 3600/- and below. Howsoever, the recruitment process in the matter in hand was for 114 posts carrying grade pay from Rs. 4800/- to Rs. 3600/- in the pay band of L-12 and L-10. Considering the said facts the said recruitment process could neither be conducted by the RPSC nor the RSSB. Moreover, the Rules and Regulations of 1993 promulgated by the Board had no provision permitting the recruitment process to be undertaken through Rajasthan Staff Selection Board, for the concerned posts.

36.8 That the petitioners have failed to qualify the said examination and have scored much less than the cut-off marks under respective categories.

36.9 That in compliance of the directions of this Court (vide order dated 31.07.2023), the relevant file in the Department of Environment and Climate Change, Government of Rajasthan, Jaipur bearing file no. F.I. (9) Env/15/Part-II alongwith the E-file 00305 being a dummy file were furnished and analyzed.

H. DISCUSSIONS AND FINDINGS

I) Whether the Board had the authority under Rule 18 of the Rules of 1993 to delegate the powers and appoint respondent-IBPS as an examination conducting authority? Whether the said action is valid and legal?

37. Upon a bare perusal of the relevant provisions i.e. the Rules and Regulations of 1993, it can be deduced that the Board being the appropriate appointing authority has in its prerogative and jurisdiction to carry out, delegate its powers and conduct the recruitment as per the direct recruitment. Nevertheless, Rules 2(b), 6 and 18 of the said Rules corroborate and provide the procedure to carry out recruitment by direct method. It is pertinent to note that as per the requirements of Rule 18 of Rules of 1993, for providing direct recruitment to the posts in the service, the Board shall invite applications from the eligible candidates by advertising vacancies in the news-papers and notifying the same to the employment exchange or 'any such manner as may be deemed fit'.

38. Additionally, Rule 19 of the said Rules provides for the contents of the Notice as stated under Rule 18 of the Rules and Regulations of 1993. Sections 20, 21, 22, 23, 24 and 25 of the Act of 1974 provide the procedure that is to be adopted in this regard. Rule 18 exists in terms of the original notification dated 30.03.1993 and as amended by the amendment notification dated 01.04.2010.

39. From the scheme of Rules it is clear that the Board is under an obligation to invite applications vis-à-vis recruitment on

vacant posts through notification published in the manner prescribed and for further it may advert to other methods including engaging agency for conducting the recruitment/selection examination.

40. Thence, it can be concluded that once a committee is formulated as per the provisions of Rule 26 of the Rules and Regulations of 1993 under the Chairman-ship of the member-Secretary, the present mechanism of direct recruitment through respondent-IBPS is valid and unerring.

II) Whether invoking the powers under Section 31(h) of the RTPP Act, for Single Source procurement by appointing respondent-IBPS were correct?

41. Precursory to comment upon the said issue, for the sake of convenience the relevant provision from the RTPP Act is reiterated herein below:

> *"**31. Single source procurement.-** (1) A procuring entity may choose to procure the subject matter of procurement by the method of single source procurement, if-*
> *a) xxxx*
> *b) xxxx*
> *c) xxxx*
> *d) xxxx*
> *e) xxxx*
> *f) xxxx*
> *g) xxxx*
> *h) Subject matter of procurement is of such nature as requires the procuring entity to maintain confidentiality, like printing of examination papers……."*

42. During the course of pleadings no substantive documents are placed on record elucidating as to why the Single

Source procurement was favored over an open competitive bidding. Moreover, there is a notable absence of documentation regarding the negotiations conducted in good faith with the bidder. Moreover, Circular dated 31.03.2023 falls short in justifying and addressing the exceptional, emergent circumstances and administrative reasons purportedly justifying the departure from the standard bidding procedures.

43. As per the provisions of Section 3 of the RTPP Act, to regulate the public employment and with the main objective of ensuring transparency, fairness and un-biasness; to promote fair competition among all the bidders, and to enhance efficiency and economy the State government has formulated the RTPP Act, 2012. While taking note of the provisions of Section 3(2)(d) of the Act, it can be deduced that the Board herein falls under the ambit of "procuring entity".

> *"**3. Application-** (1) This Act shall apply to all procuring entities referred to in sub-section (2).*
> *(2) For the purposes of this Act, "procuring entity" means,-*
> *(a) xxxx*
> *(b) xxxx*
> *(c) xxxx*
> *(d) any body or board or corporation or authority or society or trust or autonomous body (by whatever name called) established or constituted by an Act of the State Legislature or a body owned or controlled by the State Government……."*

44. Subsequently, while considering the provisions of Sections 2, 20 and 31(h) of the RTPP Act, it can be noted that the 'service' will not include appointment of any person made by a 'procuring entity'. The mode of procurement as per Section 31(h)

of the RTPP Act, can only be made permissible when prospective bidder is having exclusive right in respect of the subject matter, there is a sudden unforeseen event which requires an urgent need. However, when the main tender is already under consideration/available and additional supplies are warranted against the existing contract, and issue like national security is involved or the subject matter is of confidential nature, only then can the single source procurement method be used.

45. Notwithstanding anything stated herein above, in the matter in hand neither the procurement was pertaining to appointment of any person by the procuring entity nor was it pertaining to printing of examination paper, rather the MoU executed inter-se the parties pertained to conducting the entire recruitment/selection examination. Likewise, no contract or bid pertaining to printing of examination papers was executed.

46. Even momentarily it is assumed that the Single Source procurement was valid, the provisions of Rule 17 of the RTPP Rules, 2013 were violated *in-toto*. Section 17 of the RTPP Act, makes it mandatory to exhibit the invitation to bid from single source procurement portal, negotiations and to show bona-fides. However, *sine qua non* the aforementioned procedure the Single Source procurement could not be initiated. The said Rule is reproduced herein below:

> *"**17. Single source procurement.-** (1) In addition to the conditions enumerated in sub-sec. (1) of Sec. 31, a procuring entity may procure the subject matter by the method of single source procurement, if-*

(a) Hiring of the services of consultant or professional is required, for a maximum period of twelve months and up to financial limit of Rupees five lakh in each case, subject to delegation of financial powers for the departments of State Government or its attached or subordinate offices and in case of all other procuring entities above limit shall be ***Rupees twelve lakh*** *in each case, subject to delegation of financial powers; or*

(b) Price of subject matter of procurement is administered by the State Government or the Central Government.

(2) The procedure for single source procurement shall be as under:-

(a) The procuring entity shall solicit a bid from the single prospective bidder and shall also exhibit the invitation to bid on the State Public Procurement Portal if the value of procurement is rupees one lakh or more. The procuring entity shall not exhibit the invitation to bid on the State Public Procurement Portal, if it is of the opinion that subject matter for procurement is of nature specified in clause (e) or (h) of sub-sec. (1) of Sec.31.

(b) The procuring entity may engage in negotiations in good faith with the bidder.

(c) The single source may be selected out of the list of empanelled/ registered bidders for the subject matter of procurement with the procuring entity or with any other procuring entity, where procuring entity uses the list of registered bidders of other procuring entity in terms of sub-sec. (5) of Sec. 19 or suitable bidders identified through other reliable sources.

(d) Bid security shall not be obtained in case of single source procurement.

(e) Except as otherwise provided in this rule and provisions of Chapter-V relating to pre-qualification proceedings, bid security, publication of Notice Inviting Bids in the news papers, price of bidding documents, sale of bidding documents, pre-bid clarifications, exclusion of bids, comparison of rates of firms outside and those in Rajasthan, price/purchase preference in evaluation and dividing quantities among more than one bidder at the time of

award, all other provisions of Chapter-V shall mutatis mutandis apply, but in case of matters covered under sub-rule (1) performance security shall not be obtained.
(3) Notwithstanding anything contained in sub-rule (2), in the emergent situation arising out of floods and other natural calamities, the subject matter of procurement may be procured up to the ceiling rates. The committee consisting of the following, shall decide the ceiling rates for subject matter of procurement on the basis of rates received during the last six months or the prevailing market rates analysis, namely:-
(a) District Collector – Chairman
(b) District level officer of the concerned department – Member
(c) Treasury Officer – Member Secretary
(d) Special invitee, if required - Member"

47. In the same subject it is also noted that the minutes of the meeting undersigned by the concerned authorities are also furnished in a cursory manner, as the same are not heralded/preceded by any agenda, numbered or tendering justification qua the rationale so adopted. Nevertheless, the rules of carrying out business and execution were violated. Form the said action of the respondents it is *prima facie* assumed that the engagement of IBPS is a sheer attempt to overshadow the lapses violating the provisions of RTPP Act and allied provisions.

III) Whether MoU dated 04.10.2023 legally admissible?

48. From a bare perusal of the said MoU dated 04.10.2023 it is noted that the same cannot be considered as admissible evidence as the said document violates the provisions of the Stamps Act, 1899, Rajasthan Stamp Act, 1998 and the Rajasthan Stamp Rules, 2004. As per the provisions of Section 3 of the

Rajasthan Stamp Act, 1998 read with the Schedule Serial no. 5, agreements and memorandum of agreements fall under the definition of 'instruments' and are henceforth liable to be executed along with the requisite stamp duty or otherwise as per the provisions of Section 39 of the Rajasthan Stamp Act, 1998 the same shall not be considered as admissible before the Court. The relevant provisions is reproduced herein below:

> *"**3. Instrument chargeable with duty** - Subject to the provisions of this Act and the exemptions contained in the Schedule, the following instruments shall be chargeable with duty of the amount indicated in the Schedule as the proper duty therefore respectively, that is to say,-*
>
> *(a) every instrument mentioned in that Schedule, which not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act;*
>
> *(b) every instrument mentioned in that Schedule, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in the State and is received in the State:*
>
> *Provided that no duty shall be chargeable in respect of, - (i) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;*
>
> *(ii) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered*

under the Merchant Shipping Act, 1958 (Act No. 44 of 1958), as amended by subsequent Acts."

49. It is undisputed that the respondents who were parties to the said MoU i.e. the RSPCB and IBPS have a stupendous legal teams and counsel who have formulated and articulated the said MoU on 04.10.2023 when the examination that is *per se* the primary subject matter was advertised a day later on 05.10.2023. It can be inferred that the undersigning parties to the said MoU would have barely negotiated as per the terms and conditions of the RTPP Act, and the provisions of the governing Stamp Act(s).

50. Thence, the said MoU cannot be considered as a substantive piece of evidence as the same has not complied with the provisions of the Stamps Act, the Rajasthan Stamps Act.

IV) Whether the instant selection process of direct recruitment, conducted in a transparent, unbiased and legal manner, *sans* any malice in law?

51. Albeit from the aforementioned discussions in paragraph no. 37 to 40 of the instant judgment it is elucidated that the direct recruitment in the matter in hand is valid; the respondents *sans* stating any justification have ousted the recruitment agencies/exam conducting authorities like RPSC, RSSB, MNIT and other agencies.

52. Legal precedents affirm that the right to a fair and impartial selection process is fundamental, irrespective of an individual's score. A transparent recruitment process safeguards an individual's interest and bolsters public confidence. The ultimate goal of any recruitment examination is to secure the best

and the most suitable person based on merit, tested impartially and objectively.

53. It is also germane to note that the respondents have bypassed the settled position of law and the directions spelled out by Hon'ble Apex Court in the dictum of **Harkirat Singh Ghuman (Supra)**.

54. Accordingly, it can be deduced that at the drop of the hat, the respondents have rushed to conclude the said selection process and the same reflects the malice in law and violation of provisions of RTPP Act and Article 309 of the Constitution of India and other allied provisions. It is noted that no objections were called by the respondents subsequent to the release of provisional answer key, no proper rationale and explanations are tendered by the expert committee, if so formulated. Therefore, the respondents have failed to comply with the directions spelled out in **Harkirat Singh Ghuman (Supra)** and **Ramjit Singh Kardam (Supra).** Withal, there are certain disputed questions of facts which cannot be dealt by this Court at this nascent juncture, while exercising powers as a writ court.

V) Whether the petitioners are barred by the principle of estoppel, waiver and acquiescence? Whether the rules of game can be changed?

55. It is noted that the examination conducting authority restrained them from coming up front with the fact that the said examination was conducted by which examination agency. Moreover, when the eligibility criteria for instance cut-off dates,

scores etc. were not published at an appropriate juncture, it cannot be expected that the candidate-petitioners will be barred from assailing the said irregularities. Therefore, in the matter in hand neither the doctrine of estoppel nor acquiescence can be made applicable, as the impugned advertisement, conduct of the authorities and the arguments mad insofar have made an impression that the instant selection process was not conducted in a transparent manner, concealing vital aspects of the examination.

56. In support of the said view, reliance is placed upon the ratio encapsulated in **Ramjit Singh Kardam (Supra):**

> **"***39. The above preposition has been reiterated in other judgments of this Court noted above. In the present case, whether the Respondents-writ Petitioners are estopped from challenging the selection? While noticing the facts of the case, we have noted above that both Appellants and the Respondents had submitted applications in pursuance of advertisement dated 28.07.2006 No. 6/2006. In advertisement, it was provided that the Commission may shortlist the candidates for interview by holding a written examination or on the basis of a rational criteria to be adopted by the Commission. The Commission on 28.12.2006 published the criteria for calling the candidates for interview. Notice dated 28.12.2006 provided that written examination shall be held for post of PTI on 21.01.2007, on 100 objective type multiple choice questions, each question carrying two marks. The notification also prescribed the minimum qualifying marks- 50% for General category, SC BC and ESM 45% and 25% marks was assigned to the viva voice. The above criteria was implemented and written examination*

was conducted on 21.01.2007, which examination was cancelled citing complaints regarding malpractices in the written examination. Further notice dated 11.06.2008 was published fixing 20.07.2008 for written examination as per criteria earlier notified. Before the above examination could take place, by public notice dated 30.06.2008, it was cancelled. Another public notice dated 11.07.2008 was published where Commission decided to shortlist eight times the candidates of the advertised post with minimum weightage secured in each category. The said shortlisting was also given up by notice dated 31.07.2009 when it was decided to call all eligible candidates for interview. ***Commission did not publish any criteria or marks on the basis of which interview was to be held. The criteria, which was published by the Commission on 28.12.2006, 11.06.2008 and 11.07.2008 were given up step by step and no criteria was published for interview, which was scheduled to take place in from 2nd September to 17th October, 2008. When Commission had not published any criteria on the basis of which candidates were going to be subjected for selection process and the candidates participated in the selection without knowing the criteria of selection, they cannot be shut out from challenging the process of selection when ultimately they came to know that Commission step by step has diluted the merit in selection.*** *When candidate is not aware of the criteria of selection under which he was subjected in the process and the said criteria for the first time is published along with final result dated 10.04.2010, he cannot be estopped from challenging the criteria of selection and the entire process of selection. Further when the*

written examination as notified earlier was scrapped and every eligible candidate was called for interview giving a go bye to a fair and reasonable process for shortlisting the candidates for interview, that too only by Chairman of the Commission whereas decision regarding criteria of selection has to be taken by Commission, the candidates have every right to challenge the entire selection process so conducted. This Court in Raj Kumar and Ors. v. Shakti Raj and Ors.: (1997) 9 SCC 527 held that when glaring illegalities have been committed in the procedure to get the candidates for examination, the principle of estoppel by conduct or acquiescence has no application. Referring to judgment of this Court's judgment in Madan Lal (supra), this Court laid down following in paragraph 16:

16. ...The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal v. State of J & K,: (1995) 3 SCC 486 and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered

under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.

40. One more judgment of this Court which supports the view taken by the High Court is Bishnu Biswas and Ors. Union of India and Ors.: (2014) 5 SCC 774. An advertisement was published calling applications for appointment to the post of Group D staff. The Recruitment Rules only provided for a written examination having 50 maximum marks. After holding written examination notice was issued calling the successful candidates for interview. Although such interview was not part of the recruitment process, a select list was published which was challenged in the Tribunal. The Tribunal returned a finding that the manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The High Court upheld the reasoning of the Tribunal but modified the order to the extent of continuing the recruitment process from the point it stood vitiated. This Court laid down following in paragraphs 19 and 20:

19. ***In the instant case, the Rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process.*** *The marks allocated for the oral interview had been the same as for written test i.e. 50% for each. The manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview while a large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another*

candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact that today the so-called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.

20. Thus, in the facts of this case the direction of the High Court to continue with the selection process from the point it stood vitiated does not require interference. In view of the above, the appeals are devoid of merit and are accordingly dismissed. No costs.

41. The Division Bench of the High Court is right in its conclusion that the selection criteria, which saw the light of the day along with declaration of the selection result could be assailed by the unsuccessful candidates only after it was published. Similarly, selection process which was notified was never followed and the selection criteria which was followed was never notified till the declaration of final result, hence, the writ Petitioners cannot be estopped from challenging the selection. We, thus, hold that the writ petitions filed by the Petitioners could not have been thrown on the ground of estoppel and the writ Petitioners could very well challenge the criteria of selection applied by the Commission, which was declared by the Commission only at the time of declaration of the final result. We, thus, answer point Nos. 1 and 2 as follows:

(i) The writ Petitioners, who had participated in the selection are not estopped from challenging the selection in the facts of the present case.

(ii) The writ Petitioners could have very well challenged the criteria of selection, which was

declared by the Commission only in the final result declared on 10.04.2010

54. As noted above the decision of Chairman of the Commission dated 30.06.2008 not to hold the written examination was claimed to have been taken due to "administrative reasons", but what were "administrative reasons" have never been disclosed or brought on record by the Commission. The decision to change the selection process as notified on 28.06.2006 was a major decision not only affecting the applicants who had to participate in the selection on the basis of criteria as notified on 28.12.2006 but had adverse effect on merit selection as devised for 1983 posts of PTI.

55. As per advertisement dated 20.07.2006, the Commission had published the criteria for selection on 28.12.2006 which was implemented also, hence, there was no occasion to give up the merit selection in midway. ***Further, when no reasons are forthcoming to support the so called 'administrative reasons' in the decision dated 30.06.2008 which was so stated by Chairman for the scrapping the written test, we have to hold the said decision arbitrary and without reason.*** *The written test consisting of 100 objective type of multiple choice questions out of which 60 questions relating to academic knowledge of the respective subjects including skill and method of teaching ability and 40 questions relating to general knowledge, general English and Hindi upto matric standard was well thought screening test, easy to conduct and easy to evaluate. The Commission being recruiting body abdicated its obligation of screening out the best candidates; The competitive examination, are means by which equality of opportunity was to be united with efficiency. By the*

above method favoritism was to be excluded and the goal of securing the best man for the job was to be achieved. We, thus, conclude that decision dated 30.06.2008 for not holding the written examination and steps taken consequent thereto were all arbitrary decisions, unsustainable in law.

57. We having held that change in criteria of selection was never notified by the Commission and about the change in process of selection candidates were kept in total dark and for the first time the criteria applied in selection process was published along with result dated 10.04.2008, the writ Petitioners cannot be estopped in challenging the arbitrary criteria so applied. The submission of Shri Sibal cannot be accepted. The Petitioners have never questioned the criteria which was published on 28.12.2006 i.e. written test of 200 marks and viva voice of 25 marks, merely because they participated in the process of selection after the change of criteria, their right to challenge the arbitrary change cannot be lost. Estopping the Petitioners from challenging the change of criteria will be giving seal to arbitrary changes affected by Chairman as noted above."

(Emphasis laid)

57. Nevertheless, it is not denied that the respondent-IBPS has an expertise in conducting examinations and provide technical and infrastructural support for conduct of examinations through online mode. The MoU signed inter-se between the respondent-RSPCB and respondent-IBPS was signed primarily considering the following factors:

57.1 That the said examination was to be conducted via online mode and for the same the instant MoU and the Standard procedure of IBPS was idealistic.

57.2 That as per the directions of Hon'ble Supreme Court and the National Green Tribunal the recruitment qua the vacant posts under the said department was to be filled within the stipulated time.

57.3 That IBPS in whilom circumstances had already successfully conducted examinations for RVUN, RVPN, JVVN, AVVN and others.

57.4 That the MNIT has not replied to the correspondence dated 29.06.2022 sent by the RSPCB and RPSC was not available on the said dates as per its calendar.

57.5 That the pay scale matrix qua which exams can be conducted by the RPSC could not match the requisites required by the respondent-RSPCB.

57.6 That the said engagement was made on Single Source Procurement basis as per the provisions of Section 31 of the RTPP Act.

57.7 That the said MoU was sent to the appropriate authorities i.e. the Finance Department for ultimate sanction and only after attaining the same, the respondent-IBPS was engaged.

58. The IBPS successfully conducted the said examination on 09.01.2024 at various centers including in the Districts like Jaipur, Jodhpur, Udaipur and Kota. In-between 22.02.2024 and 24.02.2024 the results were released and subsequently the document verification was scheduled on 29.02.2024. Form the

said time-line it can be deduced that the said recruitment albeit conducted with utmost cautiousness; was concluded in a grate haste, probably to prevent leakage of any question papers or crucial confidential data.

59. Further, reliance can be placed upon the ratio passed by the Hon'ble Apex Court in **Civil Appeal No. 2634/2013** titled as **Tej Prakash & Ors. vs. the Rajasthan High Court & Ors.** and **Manjusree v. State of Andhra Pradesh and another** reported in **(2008) 3 SCC 512;** wherein it is categorically opined that the rules of the games cannot be changed once the concerned examination/ recruitment process has already commenced.

60. Considering the observations noted herein above it can be deduced that the writ petitioners and the instant batch of petitions are not hit by the principles of estoppel, waiver and acquiescence as the petitioner-candidates had approached the Court within appropriate time and no lapses are identified in the conduct of the petitioners which bars/estopps them.

61. It can also be inferred that when the examination authority has failed to publish any criteria moreover, the candidates had a legitimate expectation that the respondents would follow the settled position of conducting recruitment examination. Thence, the candidates cannot be obstructed from assailing the recruitment process and the same shall not be restricted by the doctrine of estoppel. To substantiate the said view this Court deems it apposite to place reliance upon the judgment enunciated in **Meeta Sahai Vs. the State of Bihar**

and Ors. registered as **Civil Appeal No. 9482 of 2019 :** judgment dated 17.12.2019.

AUXILIARY FINDINGS

62. Learned counsel appearing for the petitioners had averred that the said MoU and engagement of IBPS as an exam conducting authority was brought to their notice at a relatively belated stage. At this stance, it is noted that the said MoU was not duly stamped as per the provisions of the Rajasthan Stamp Act, 1998, the Stamp Act, 1899 and the Rajasthan Stamp Rules, 2004.

63. Reliance is also placed upon the judgment dated 09.08.2011 passed by the Hon'ble Apex Court in **Central Board of Secondary Education Vs. Aditya Bandopadhayay** registered as **Civil Appeal No. 6454/2011,** wherein it was held that the scope of RTI Act shall be made applicable upon the question papers of public employment.

64. At this nascent juncture, taking note of the issues qua the applicability of the provisions of RTI Act, and the standards which are ought to be followed while conducting any public examination, this Court deems it apposite to place reliance upon the ratio enunciated in **Harkirat Singh Ghuman (Supra).**

> *"20. So far as the objection with regard to his application submitted under the Right to Information Act, 2005 is concerned, learned Counsel submits that the marks of the written examination could not be made available until the process of selection is finalised and that was the reason which was communicated to him by the Public Information*

Officer (PIO) by a communication dated 6th January, 2020 taking recourse to Rule 4(2) of the High Court of Punjab and Haryana (Right to Information) Rules, 2007 and, if at all, he is aggrieved by the communication made dated 6th January, 2020, ***inbuilt mechanism has been provided under the Right to Information Act, 2005 and even if the marks are not made available, it would, in no manner, defeat the process of selection held by the Respondents.***

26. That all the candidates who had appeared in Paper VI (General Knowledge) had a common level playing field and in the absence of any material on record in rebuttal, the submission is not sustainable and deserves rejection. But to keep transparency in the process of holding examination, particularly in such cases where there is a multiple-choice question paper, ***it is always advisable that for such question papers, there shall always be an OMR sheet which may be provided to the candidates so that the question paper can be retained by each of the participants and after the examination is held, a provisional answer key is to be uploaded inviting objections from the candidates who had participated in the selection process, to be furnished within a reasonable time and after collating such objections, the same be placed before a subject expert committee to be constituted by the recruiting/competent authority and after the report is submitted by the subject expert committee, the same be examined by the recruiting authority and thereafter the final answer key is to be uploaded.*** *We make it clear that no presumption is to be drawn that the result has to be declared, but at least the candidates may be*

provided the final answer keys to enable them to make their own assessment. ***This is one of the mechanisms by which fairness and transparency which is a sine qua non in the public employment can be resorted to."***

(Emphasis laid)

65. Additionally reliance can be placed upon the dictum encapsulated in **Kanpur University (Supra).**

"15. The findings of the High Court raise a question of great importance to the student community. ***Normally, one would be inclined to the view, especially if one has been a paper setter and an examiner, that the key answer furnished be the paper setter and accepted by the University as correct, should not be allowed to be challenged.*** *One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses.* ***If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence.*** *The publication of the key answer has unravelled an happy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system."*

(Emphasis laid)

66. Withal, reliance is also placed upon the dictum encapsulated in **Rishal and Ors. (Supra).**

> *"18. The key answers prepared by the paper-setter or the examining body is presumed to have been prepared after due deliberations.* ***To err is human. There are various factors which may lead to framing of the incorrect key answers. The publication of key answers is a step to achieve transparency and to give an opportunity to candidates to assess the correctness of their answers.*** *An opportunity to file objections against the key answers uploaded by examining body is a step to achieve fairness and perfection in the process. The objections to the key answers are to be examined by the experts and thereafter corrective measures, if any, should be taken by the examining body. In the present case we have noted that after considering the objections final key answers were published by the Commission thereafter several writ petitions were filed challenging the correctness of the key answers adopted by the Commission. The High Court repelled the challenge accepting the views of the experts. The candidates still unsatisfied, have come up in this Court by filing these appeals."*
>
> *(Emphasis laid)*

67. From the afore-relied upon ratios it can be deduced that to maintain transparency in the public employment especially where multiple choice question-answer pattern is followed, the question papers should be provided to the candidates after the conclusion of the said examination; provisional/model answer key should be released; objections should be called; expert committee

should be constituted and reasonable explanation and justification should be tendered to the dubious questions; and only after following the said procedure the final answer key should be released. Nonetheless, it is noteworthy that under the garb of technicalities, the said procedure is not followed in the impugned recruitment process.

68. That the advertisement dated 05.10.2023 in Part B clause no. 11 has categorically stated that the provisions of RTI Act shall not be applicable upon the instant recruitment process during its currency. Moreover, the same resultant to the terms and conditions of the MoU dated 04.10.2023. The relevant extract from the same is reproduced herein below:

> *''भर्ती प्रकिया लम्बित रहने के दौरान सूचना के अधिकार अधिनियम, 2005 के तहत किसी भी प्रकार की सूचना भर्ती प्रकिया पूरी होने तक उपलब्ध नहीं करावायी जायेगी। भर्ती प्रकिया पूरी होने पर वांछित सूचना नियमानुसार उपलब्ध करायी जा सकेगी।''*
>
> **MoU dated 04.10.2023.**
>
> *"As per IBPS policy, the test papers are not disclosed to anybody other than the candidates only during the examination. The test papers are also not shared with anybody even after the examination(s). In case of any dispute, IBPS shall provide the ad seriatim responses of aggrieved candidates, if any and the corresponding right answers.*
>
> *In case RSPCB requiring to comply with statutory requirements under RTI Act, IBPS will make available dump of responses(answers marked by the candidate/right answer key for objective tests/papers only) to facilitate RSPCB to reply the same."*

69. It is noteworthy that the vide letter dated 13.03.2024 undersigned by the Deputy General Manager (Admin/Legal) the respondent-IBPS had apprised/replied to the respondent-RSPCB vis-a-vis the letter dated 12.03.2024 (received via e-mail) and has admitted that as per the MoU and the contents of intellectual property of IBPS, the said exam conducting authority does not display the data stored with it, to any authority apart from the necessary data it required for adjudication of any dispute. Upon a perusal of the said letter it is also noted that therein, it was categorically noted that "there is no requirement of publishing or calling objections after examination".

I. CONCLUSION

70. In summation of the aforementioned this Court takes it upon itself to reiterate the following key takeaways:

70.1 That upon a perusal of the MoU dated 04.10.2023 and the letter dated 13.03.2024 it can be inferred that the provisions of the RTI Act, 2005 were surpassed and bypassed by the respondents;

70.2 That as per the consensus drawn in-between the parties (by MoU dated 04.10.2023), IBPS was engaged as the exam conducting authority for the recruitment *vis-a-vis* advertisement dated 05.10.2023 (pertinent to note that the MoU was signed just a day precedent to the issuance of the said advertisement);

70.3 That the respondent-RSPCB chose to engage IBPS instead of RPSC, RSSB or MNIT considering the vital aspects of the said examination;

70.4 That the mode of recruitment adopted herein as per the provisions of Rules and Regulations of 1993 more particularly Rule 18 was direct recruitment and the same is permissible as it falls under the ambit of "In such other manner as may be deemed fit";

70.5 That the respondent-RSCPB falls under the ambit of Section 3 of the RTPP Act and *sine qua non* the provisions of Sections 17 and 18 of the RTPP Act and Rule 17 of the RTPP Rules, the respondents initiated Single Source Procurement under Section 31(h) *sans* tendering any rationale or administrative reasons;

70.6 That it is stated that in compliance with the directions of the Hon'ble Apex Court and the National Green Tribunal, the respondents were in a haste to culminate the said recruitment;

70.7 That the proper manner i.e. issuance of model answer key, inviting of objections, constitution of experts committee and issuance of final answer key was not followed in the instant recruitment process, and the same has violated the fundamental rights of the petitioners as enshrined under the provisions of Article 14, 16 and 21 of the Constitution of India;

70.8 That the writ petitioners are not barred by the principles of acquiescence, estoppel and waiver;

70.9 That as the MoU dated 04.10.2023 is not appropriately stamped and the same falls under the ambit of Section 3 of the

Rajasthan Stamp Act, 1988, the same cannot be considered as admissible evidence in Court;

70.10 That albeit the confidentiality of the said examination was maintained, an efficacious, transparent manner as per the ratio encapsulated in **Harkirat Singh Ghuman (Supra)** was not followed. Moreover, the rules of business were also bypassed along with the provisions of Articles 309-311 of the Constitution of India and the legitimate expectation that is drawn as per Articles 14, 16 and 21 of the Constitution of India.

70.11 That the vide letter dated 13.03.2024 undersigned by the Deputy General Manager (Admin/Legal) the respondent-IBPS has apprised/replied to the respondent-RSPCB vis-a-vis the letter dated 12.03.2024 (received via e-mail) and has admitted that as per the MoU and the contents of intellectual property of IBPS, the said exam conducting authority does not display the data stored with it, to any authority apart from the necessary data it required for adjudication of any dispute. Therefore, the provisions of RTI Act were surpassed.

71. Therefore, in light of the foregoing facts and circumstances this Court has precisely formulated that once a committee is formulated as per the provisions of Rule 26 of the Rules and Regulations of 1993, the present mechanism of direct recruitment through respondent-IBPS is valid and unerring; that albeit the engagement of IBPS as an exam conducting authority is valid, respondents have erred by not following the *inter alia* provisions of Rule 17 of the RTPP Rules, 2013, Section 17 and 18

of the RTPP Act and Article 309-311 of the Constitution of India; by signing the MoU in closed doors *sans* publishing it/bringing it to the public notice within the stipulated period, moreover, the said MoU is an inadmissible piece of evidence as it is improperly stamped, hence is in violation of the Rajasthan Stamps Act; by not following the due procedure as per the advisory guidelines formulated in the dictum encapsulated in **Harkirat Singh Ghuman (Supra)** and **Ramjit Singh Kardam (Supra)** and conducting the said recruitment examination in a non-transparent and unfair manner, bypassing the rules of business and execution; by not rendering requisite clarification qua the 'administrative reasons' due to which the said recruitment was initiated under provisions of Section 31(h) of RTPP Act despite the fact that the respondent-RSPCB falls under the ambit of the provisions of Section 3 of the RTPP Act. It is also noted that in a hastiness to culminate the said recruitment examination and to create third party rights respondents have within a short-span of time have issued the appointment letters qua approximately 96 candidates *sans* calling nay objections qua the disputed questions.

J. DIRECTIONS

72. Considering the fact that the matter in hand is one of the exceptional situations wherein, the petitioners who have scored much less than the cut-off marks under their respective categories have alleged that the instant recruitment process was initiated and culminated *dehors* the settled position of law and the usage that is followed from a period this Court after diligently

scanning the records and taking note of the fact that as on date the impugned recruitment examination is already over and a number of candidates are working as probation trainees at their respective place of postings, deems to apposite to jot down the following directions:

72.1 The examination/recruitment supervising authority, the respondent-RSPCB and the respodnent-IBPS are directed to carry out the selection process, strictly in accordance with law and as per the ratio held in paragraph no. 26 of the judgment titled as **Harkirat Singh Ghuman (Supra).** For the sake of brevity the relevant extract/directions from the afore-cited ratio is reproduced herein below:

> *26. That all the candidates who had appeared in Paper VI (General Knowledge) had a common level playing field and in the absence of any material on record in rebuttal, the submission is not sustainable and deserves rejection. But to keep transparency in the process of holding examination, particularly in such cases where there is a multiple-choice question paper,* ***it is always advisable that for such question papers, there shall always be an OMR sheet which may be provided to the candidates so that the question paper can be retained by each of the participants and after the examination is held, a provisional answer key is to be uploaded inviting objections from the candidates who had participated in the selection process, to be furnished within a reasonable time and after collating such objections, the same be placed before a subject expert committee to be constituted by the***

recruiting/competent authority and after the report is submitted by the subject expert committee, the same be examined by the recruiting authority and thereafter the final answer key is to be uploaded. *We make it clear that no presumption is to be drawn that the result has to be declared, but at least the candidates may be provided the final answer keys to enable them to make their own assessment.* ***This is one of the mechanisms by which fairness and transparency which is a sine qua non in the public employment can be resorted to."***

(Emphasis laid)

72.2 The direction mentioned in paragraph no. 72.1 shall be complied with and concluded within an upper limit of two months from the date of passing of this judgment.

72.3 The candidates who are already selected; were allotted appointment letters and are working as probation trainees shall not be bound to refund any amount qua the salary or other benefits. No recovery proceedings shall be initiated against the said probation trainees. The said probation trainees will be rendering services undisturbed, till unbiased outcome of the instant recruitment is released as per the directions noted herein however, it is made clear that the services of the said candidates shall not be confirmed till the unbiased outcome of the instant recruitment, as per the directions of this Court is released.

72.4 Upon conducting the said exercise, a fresh merit list shall be prepared and if any meritorious students (from the instant writ petitioners) are found eligible the benefits granted to the probation trainees shall be made applicable qua the fresh

meritorious candidates from retrospective date along with the consequential benefits.

72.5 It is made clear that if the directions noted herein are not complied within the stipulated period, the entire selection process *vis-a-vis* advertisement dated 05.10.2023 shall be declared null and void.

73. In light of the foregoing facts and circumstances, the instant bath of petitions is disposed of with the aforementioned directions. No order is made as to costs. Pending applications, if any, shall stand disposed of.

(SAMEER JAIN),J

Pooja /162-173