Dr. G. Sarana

Vs

University of Lucknow and Others

Civil Appeal No. 861 of 1975

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

28.07.1976

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by special leave is directed against the judgment and order dated March 31, 1975, of Lucknow Bench of the Allahabad High Court dismissing the Writ Petition No. 405 of 1975 filed by the appellant challenging the recommendation made by the Selection Committee of the Lucknow University (hereinafter referred to as 'the University') for appointment of respondent No. 8 as Professor of Anthropology in the Faculty of Arts of the university.

2. The facts giving rise to this appeal are : Towards the end of the year 1973, the university put up an advertisement inviting applications from candidates possessing the following qualifications to fill up a vacant post of Professor of Anthropology :

> Essential : First or high second class Master's degree and Doctorate in the subject concerned with a good academic record, experience of teaching post-graduate classes for not less than 7 years and/or having conducted and successfully guided research work for 7 years in recognised institution and having published work of high standard in the subject concerned.
>
> Preferential : High academic distinctions.

3. The appellant and respondent No. 8 were the only two candidates who applied for the post in response to the advertisement. Their respective qualifications are as set out hereunder :

> #S. Name Age Qualifications andNo. experience :-1. Dr. G. Sarana, Head of 38 years H.S. (U.P.Bd.) 1949 - I Div. Deptt. of Anthropology, Inter (B.H.U.) 1951 - I Div. Karnatak University, Dharwar. B.A. (L.U.) 1953 - I Div. M.A. (L.U.) 1955 - I Div. Ph. D. (Harvard U.) 1966. Published 28 research papers and 3 books. Worked as :- (1) Temp. Lecturer in Anthropology L.U. July, 1955 - April, 1962. (2) Lecturer in Anthropology - Punjab U. - April-August, 1962. (3) Visiting Lecturer - Univ. of California at Santa Barbara - July 1965 - June, 1966. (4) Karnatak University (September 1966 upto date) as Reader and since 27 June 1970 - as Professor.2. Dr. K. S. Mathur, Ready and 44 H.S. (U.P. Bd.) 1944 - I Div.years Head of the Deptt. of Inter (U.P. Bd.) 1946 - I Div.Anthropology Lucknow University. B.Com. (L.U.) 1948 - II Div. M. A. (L.U.) 1950 - I Div. Ph.D. (Australian national U.) - 1960. Published several research papers. Worked as :- (1) Lecturer in Anthropology - L.U. - 1951-64.

(2) Reader in Anthropology - L.U. - 1964 - continuing. (3) Sociologist - Notional Council of Appl. Economic Research, New Delhi - March-September, 1960.##

4. On February 27, 1974, a Selection Committee consisting of Shri A. K. Mustafi, Vice-Chancellor of the university, Dr. K. N. Shukla, Dean, Faculty of Arts and Professor and Head of the Department of Hindi of the university, and three experts viz. Dr. S. C. Dube, Dr. S. R. K. Chopra and Dr. T. B. Nayak, respondent Nos. 3, 4, 5, 6 and 7, respectively met to interview the candidates and to make their recommendation to the Executive Council of the university. After interviewing the aforesaid two candidates, the Selection Committee resolved to recommend respondent No. 8 herein for appointment to the aforesaid post of Professor of Anthropology.

5. On coming to know of the recommendation, the appellant filed the aforesaid petition under Article 226 of the Constitution challenging the recommendation mainly on the ground that two out of the aforesaid three experts viz. Dr. S. C. Dube and Dr. S. R. K. Chopra were biased against him and in favour of respondent No. 8. It was alleged by the appellant that the respondent had close relations with the aforesaid two experts as he was instrumental in obtaining many remunerative assignments for them. It was further averred by the appellant that whenever Dr. Dube visited Lucknow, he stayed with respondent No. 8. It was also averred by the appellant that Dr. Chopra had strained relations with him on account of straight election contest between him and the latter for the office of the President of Anthropology Section of the Indian Science Congress for 1974. The appellant further averred that in 1968 when he was serving in the Punjab University as a Lecturer in the Department of Anthropology headed by Dr. Chopra, the latter stubbornly opposed him application for leave to avail of the offer of fellowship from Harvard University and stopped forwarding his salary bills to the Executive Council with the ulterior object of depriving him of the opportunity to attain higher academic qualification and thereby better his future prospects with the result that he was compelled to resign his job and surrender three months salary in lieu of notice to avail of the offer.

6. The petition was vigorously contested by respondent No. 8. On consideration of the material placed before it, the High Court, however, dismissed the application holding that though respondent No. 8 was the head of the department of Anthropology, he was not the only person responsible for bestowing various assignments either on Dr. Dube or on Dr. Chopra and that it was the Executive Council and the Academic Council which were responsible for giving those assignments to Dr. Dube and Dr. Chopra. It was further held by the High Court that there was nothing unusual in Dr. Dube and Dr. Chopra's knowing and enjoying the hospitality of respondent No. 8. The fact that the appellant had an election contest with Dr. Chopra was also, in the opinion of the High Court, of no significance, as such like contests were very common and it could not be said that Dr. Chopra had developed such a degree of ill-will and hostility against the appellant for the latter's standing as a candidate against him so as to render him incapable of acting impartially when the task of selecting the best candidate was assigned to him and that it was not possible to presume that Dr. Dube and Dr. Chopra was in a position to influence the decision of the entire Selection Committee by injecting bias in the minds of the other members. The High Court finally held that from the facts relied upon by the appellant, bias could not be spelt out. In arriving at its decision, the High Court relied upon be spelt out. In arriving at its decision, the High Court relied upon the following observations made by Frank, J. of the United States of America in Re Linahan ((1943) 138 F 2nd 650, 652) :

> If, however, "bias" and "partiality" be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial, and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are

> born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices.

7. The High Court also held that the appellant having submitted to the jurisdiction of the Selection Committee, he could not be permitted to turn round and denounce the constitution of the committee.

8. Counsel for the parties have reiterated before us the contentions raised on behalf of their clients before the High Court. In addition, it has been contended by Counsel for respondent No. 8 that the impugned recommendation being in the nature of an interlocutory proceeding, neither the writ petition nor the appeal arising therefrom could be maintained.

9. It is needless to emphasize that the principles of natural justice which are meant to prevent miscarriage of justice are also applicable to domestic enquiries and administrative proceedings. (See A. K. Kraipak v. Union of India ((1969) 2 SCC 262 : (1970) 1 SCR 457).) It cannot also be disputed that one of the fundamental principles of natural justice is that in case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias by which is meant an operative prejudice, whether conscious or unconscious towards one side or the other in the dispute. (See Nageswara Rao v. A. P. State Road Transport Corporation (1959 Supp 1 SCR 319 : AIR 1959 SC 308) and Gullapalli Nageshwar Rao v. State of A. P. ((1960) 1 SCR 580 : AIR 1959 SC 1376).)

10. It would be advantageous at this stage to refer to the following observations made by this Court in Manak Lal v. Prem Chand (1957 SCR 575 : AIR 1957 SC 425) :

> Every member of a tribunal that sits to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and the essence of judicial decisions and judicial administration is that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

11. Again as held by this Court in A. K. Kraipak's case, reiterated in S. Parthasarthi v. State of Andhra Pradesh ((1974) 1 SLR 427 : (1974) 3 SCC 459 : 1973 SCC (L&S) 580) and followed by the High Court of Jammu and Kashmir in Farooq Ahmad Bandey v. Principal, Regional Engineering College (1975 J&K LR 427), the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or board is bound to influence the other, more so if the member concerned is a person with special knowledge. His bias is likely to operate is a subtle manner.

12. At page 156 of Principles of Administrative Law by J. A. C. Griffith and H. Street (Fourth Edition), the position with regard to bias is aptly and succinctly stated as follows :

> The prohibition or bias strikes against factors which may improperly influence a judge in deciding in favour of one party. The first of the three disabling types of bias is bias on the subject-matter. Only rarely will this bias invalidate proceedings. "A mere general interest in the general object to be pursued would not disqualify" said Field J., holding that a magistrate who subscribed to the Royal Society for the Prevention of Cruelty to Animals was not thereby disabled from trying a charge brought by that body of cruelty to a horse. There must be some direct connection with the litigation. If there is such prejudice on the subject-matter that the court has reached fixed and unalterable conclusions not founded on reason or understanding, so that there is not a fair hearing, that is bias of which the courts will take account, as where a justice announced his intention of convicting anyone coming before him on a charge of supplying liquor after the permitted hours . . . .

Secondly, a pecuniary interest, however, slight will disqualify, even though it is not proved that the decision is in any way affected.

The third type of bias is personal bias. A judge may be a relative, friend or business associate of a party, or he may be personally hostile as a result of events happening either before or during the course of a trial. The courts have not been consistent in laying down when bias of this type will invalidate a hearing. The House of Lords in Frome United Breweries v. Bath Justices (1926 AC 586 : 161 LT Jo 387 HL) approved an earlier test of whether "there is a real likelihood of bias". The House of Lords has since approved dictum of Lord Hewart that "justice should not only be done, but should manifestly and undoubtedly be seen to be done" although it did not mention another test suggested by him in the same judgment : Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.

13. At page 225 of his treatise on Judicial Review of Administrative Action (Third Edition), Prof. S. A. de Smith has stated as follows with regard to reports and preliminary decisions :

> The case-law on the point is thin, but on principle it would seem that where a report or determination lacking final effect may nevertheless have a seriously judicial effect on the legally protected interests of individuals (e.g. when it is a necessary prerequisite of a final order) the person making the report or preliminary decision must not be affected by interest or likelihood of bias.

14. From the above discussion, it clearly follows that what has to be seen in a case where there is an allegation of bias in respect of a member of an administrative board or body in whether there is a reasonable ground for believing that he was likely to have been biased. In other words whether there is substantial possibility of bias animating the mind of the member against the aggrieved party.

15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The

following observations made therein are worth quoting :

> It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.

16. It is also difficult to understand how the writ petition or for that matter the present appeal before us is maintainable when the recommendation of the Selection Committee has still to be scrutinized by the Executive Council of the university and either accepted or rejected by it and other remedies by way of representation to the Executive Council and an application for reference of the matter under Section 68 of the Uttar Pradesh Universities (Re-enactment and Amendment) Act, 1974, to the Chancellor are still open to the appellant and have not been exhausted.

17. For the foregoing reasons, we find ourselves unable to allow the appeal. In the result, the appeal fails and is hereby dismissed but in the circumstances of the case without any order as to costs.

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