

HIMACHAL PRADESH HIGH COURT

D.K. Khanna

Vs.

Union of India

Civil Writ Petns. Nos. 5 and 11 of 1972

(R.S. Pathak, C.J. and C.R. Thakur, J.)

03.10.1972

JUDGMENT

R.S. PATHAK, C.J.

1. The petitioners in the two writ petitions before us challenge the validity of the Select List of the year 1971 prepared under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

2. Sri D.K. Khanna, who has filed Civil Writ Petition No. 5 of 1972, joined the Punjab Civil Service (Executive Branch) as a Magistrate in 1954, and was confirmed in the Service with effect from May 8, 1958. Kr. Sita Ram, who has filed the connected Civil Writ Petition No. 11 of 1972, entered the Patiala and East Punjab States Union Administrative Service in 1955, and upon the merger of that Union into Punjab on November 1, 1956, he was absorbed into the Punjab Civil Service (Executive Branch). With effect from November 1, 1966, the two petitioners, Sh. D. K. Khanna and Kr. Sita Ram, were provisionally allotted to the Union Territory of Himachal Pradesh under Section 82 (1) of the Punjab Reorganisation Act, 1966.

3. At the time the only Civil Service in the Union Territory was the Delhi Himachal Pradesh and Andaman and Nicobar Islands Civil Service (conveniently described as the Dhanic Service). It was created and governed by the Delhi, Himachal Pradesh and Andaman and Nicobar Islands Civil Service Rules, 1965. The Punjab Civil Service Officers provisionally allotted to Himachal Pradesh claimed that they should be considered for promotion to the Selection Grade of the Dhanic Service, but on July 19, 1967, the Government of India stated that they could be so considered only after they were appointed to that Service and their seniority fixed therein. On August 17, 1967, the Government of India wrote to the Chief Secretary of the Himachal Pradesh Government that the question of amending the Dhanic Service Rules, 1965, for the purpose of absorbing the Punjab Civil Service Officers finally allotted to Himachal Pradesh in the Dhanic service was under consideration. It was laid down that the seniority of those officers would be determined with reference to their date of appointment to the Punjab Civil Service.

4. A provisional integrated seniority list covering the allotted Punjab Civil Service Officers as

well as the existing members of the Dhanic Service was circulated for comments by the officers concerned. On December 23, 1967, an order was made under Section 82 (2) of the Punjab Reorganisation Act by the Central Government declaring that all the persons belonging to the Punjab Civil Service (Executive Branch) who were required provisionally to serve in the Union Territory of Himachal Pradesh were finally allotted to that Union Territory, with effect from November 1, 1966. On September 20, 1968, the Himachal Pradesh Government issued a list of the finally allotted officers, and the list included the petitioners.

5. The Dhanic Service Rules were amended by the inclusion of Rule 31-A, and pursuant to it the Central Government by its notification dated February 21, 1969, appointed the permanent members of the Punjab Civil Service (Executive Branch), who had been finally allotted for service in Himachal Pradesh, to the Dhanic Service. The officers were appointed with effect from November 1, 1966.

6. Thereafter, the integrated seniority list was finalised and issued on September 10, 1970, the seniority being determined as on November 1, 1966. In the seniority list the petitioners, Sh. D.K. Khanna and Sri S.R. Kanwar, were shown at serial Nos, 24 and 27 respectively.

7. The petitioners were granted the Selection Grade in the Dhanic Service, Sh. D. K. Khanna with effect from December 23, 1967 and Sri Sita Ram Kanwar with effect from January 19, 1968.

8. The Indian Administrative Service (Appointment by Promotion) Regulations, 1955 were promulgated by the Central Government for the purpose of promoting members of the State Civil Services to the Indian Administrative Service. The Regulations provide for the constitution of a Committee (Reg. 3) which is entrusted with the duty of ordinarily meeting at least once a year to consider cases of members of the State Civil Service eligible for promotion to the Indian Administrative Service (Reg. 4) and to prepare a list of suitable officers from among them (Reg. 5). The State Government is required to forward the list to the Union Public Service Commission for its approval (Reg. 6). The list as finally approved by the Commission forms the Select List of the members of the State Civil Service (Reg. 7). Appointments of members of the State Civil Service from the Select List to posts borne on the State cadre of the Indian Administrative Service have to be made in accordance with Rule 9 of the cadre Rules, and in making such appointments the State Government has to follow the order in which the names of such officers appear in the Select List (Reg. 8). Appointments of members of the State Civil Service to the Indian Administrative Service are made by the Central Government on the recommendation of the State Government in the order in which the names of members of the State Civil Service appear in the Select List for the time being in force (Reg. 9).

9. The Committee constituted under the aforesaid Regulations held a meeting on March 11, 1967 and thereafter the Committee met on December 23, 1970. The petitioners say that in the meeting of the Committee of March 1967 the case of the petitioners could not be considered because they had not been appointed to the Dhanic Service until then. It is alleged that they were also not considered in the meeting of the Committee held on December 23, 1970.

10. On January 25, 1971, the Union Territory of Himachal Pradesh was replaced by the State of Himachal Pradesh. The Himachal Pradesh Administrative Service was constituted, and to its

cadre the Central Government allocated 74 members of the Dhanic Service, the first 17 in order of seniority being:

1. Sri Bishan Das
2. " Parkash Chand Sharma
3. " I. K. Suri
4. " Harish Chandra
5. " H. K. L. Dhingra
6. " R. C. Sharma
7. " D. K. Khanna
8. " S. R. Kanwar
9. " B. D. Thapar
10. " J. S. Chaudhary
11. " S. R. Mahantan
12. " S. S Thakur
13. " H. S. Negi
14. " Swarupa Nand
15. " K. N. Kashyap
16. " V. K. Agnihotri
17. " Lal Singh

Sri Bishan Dass, at serial No. 1, retired on May 25, 1971. Sri P. C. Sharma, Sri I. K. Suri. Sri Harish Chandra and Sri H.K.L. Dhingra, at serial Nps. 2, 3, 4 and 5 were appointed to the Indian Administrative Service as a result of the selection made by the Committee in December 1970.

11. The next meeting of the Committee for selecting members of the Himachal Pradesh Administrative Service for promotion to the Indian Administrative Service was proposed for December 22, 1971. On October 11, 1971, the Government of Himachal Pradesh ordered the transfer and posting of Sri K. N. Kashyap, respondent No. 14, as Deputy Secretary (A. P. C's Branch) which was a senior duty post of the Indian Administrative Service. The petitioners considered that they had been superseded by that order and, it is said, they represented to Sri K. N. Channa, Chief Secretary to the Government of Himachal Pradesh respondent No. 6. against their supersession.

12. The Committee met on October 22, 1971. It consisted of :

Sri R.C. Sarkar, Chairman, Union Public Service Commission, New Delhi, Respondent No. 4.
Sri K. Subramanian.

Joint Secretary, Department of Personnel, Cabinet Secretariat Government of India, New Delhi,
Respondent No. 5.

Sri K. N. Channa.

Chief Secretary to the Government of Himachal Pradesh, Simla, Respondent No. 6.

Sri. L. Hmingliana Tochwawng.

Financial Commissioner and Secretary (Revenue) to the Government of Himachal Pradesh,

Simla, Respondent No. 7.

Sri K.C. Pandeya, Agricultural Production Commissioner, Himachal Pradesh. Simla, Respondent No. 8.

and

Sri B.C. Negi, Secretary (GAD) to the Government of Himachal Pradesh, Simla. Respondent No. 9.

13. At the time, the seniority list of the Himachal Pradesh Administrative Service showed.

- (1) Sri R. C. Sharma
- (2) Sri D. K. Khanna
- (3) Sri S. R. Kanwar
- (4) Sri B. D. Thapar
- (5) Sri S. R. Mahantan
- (6) Sri H. S. Negi
- (7) Sri Swarupa Nand
- (8) Sri K. N. Kashyap
- (9) Sri V. K. Agnihotri and
- (10) Sri Lal Singh

14. The Committee took into account that three substantive vacancies had come into existence and decided upon and Select List containing the names of six members of the State Service. It examined the records of the first 24 officers in order of seniority, including the petitioners, and considered their suitability for selection. It selected the following six officers :

- (1) Sri R. C. Sharma
- (2) Sri B. D. Thapar
- (3) Sri H. S. Negi
- (4) Sri Swarupa Nand
- (5) Sri K. N. Kashyap and
- (6) Sri Lal Singh

The Committee considered the cases of officers who had attained the age of 52 years as on November 1, 1971. They were :

- (1) Sri D.K. Khanna
- (2) Sri S. R. Kanwar
- (3) Sri S. R. Mahantan
- (4) Sri H. S. Negi and
- (5) Sri Swarupa Nand.

The Committee considered that although Sri H. S. Negi and Sri Swarupa Nand had attained the age of 52 years on January 1, 1971, they were officers of such exceptional merit and suitability as to justify their inclusion in the Select List. The Committee observed that the remaining officers who were above the age of 52 years were not of such exceptional merit and suitability and there

were no special or extraordinary circumstances in their case to warrant a departure from the rule that the Committee should not ordinarily consider the cases of members of the State Civil Service who had attained the age of 52 years.

15. The List prepared by the Committee was approved by the Union Public Service Commission on November 12, 1971, and it became the Select List in terms of Regulation 7 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.

16. The validity of that Select List is challenged by the present writ petitions.

17. The first contention for the petitioners is that the presence of Sri B. C. Negi, respondent No. 9, as a member of the Committee on October 22, 1971 vitiated its deliberations because one of the officers selected, Sri H. S. Negi, respondent No. 12, was related to him as his father-in-law. The petitioners contend that Sri B. C. Negi was personally interested in ensuring that Sri H. S. Negi was brought on the Select List and in such a position of seniority as to render certain that he would be appointed to one of the three vacancies then available in the Indian Administrative Service. That, the petitioners urge, could not have been assured unless they had been removed from the scene by denying them a place in the Select List. The petitioners, it is pointed out, were granted the Selection Grade in the Dhamic Service while Sri H. S. Negi and Sri Swarupa Nand were not. The petitioners also say that when the Committee met in December 1970. Sri H. S. Negi and Sri Swarupa Nand were not found to possess any exceptional merit or suitability nor were there any special or extraordinary circumstances discovered in their case to warrant their selection.

18. The respondents admit that Sri H. S. Negi was the father-in-law of Sri B. C. Negi, but they assert that the Committee was a high-powered body presided over by the Chairman of the Union Public Service Commission and all the members of the Committee were senior or superior in status to Sri B. C. Negi and therefore not amenable to his influence that he was only one of six members of the Committee and that the decision with regard to the selection of Sri H. S. Negi was made on the unanimous recommendation of the entire Committee. Further, it is pointed out, the recommendations of the Committee were considered by the Union Public Service Commission, a body, independent of the Government of India and of the Government of Himachal Pradesh and not open to the influence of any Government Officer. The approval of the List by the Union Public Service Commission, it is urged, should remove any fear that, the List prepared by the Committee was influenced by bias.

19. An affidavit has been filed by Sri B. C. Negi. He affirms that he adjudged the work of the petitioners and Sri S. R. Mahantan, who had served under him as "very good" and no question could arise of his playing down these remarks or attempting to boost the case of Sri H. S. Negi. He states that during the deliberations he supported the inclusion of the petitioners and Sri Mahantan because of their merit, and when the case of Sri H. S. Negi was taken up for consideration he refrained from expressing any opinion, because he was related to him and because Sri H. S. Negi had never worked under him so that he could judge his work. He avers that he could have left the Committee Room but on second thoughts he decided to remain there quietly lest three members who were not aware of the relationship might construe it as an attempt to influence them. He denies that he attempted in any manner to influence the members of the Committee in favor of Sri H. S. Negi or against the petitioners. He submits that there was no

need for him to do so because the Select List was to consist of six officers and Sri H. S. Negi, the sixth candidate in order of seniority, was bound to have been selected on his merit even if the two petitioners and Sri S. R. Mahantan had been included in the Select List. Another factor, he states, which weighed greatly with the Committee was the question of the relative age of officers above 52 years. It is said that the Chairman observed that normally a person placed on the Select List should be able to render three years of service as on January 1 of the year in which the selection was made, that the Chairman explained that originally the age of 52 had been fixed because the retirement age was 55 at that time, but as the age of superannuation was now 58 he would make an exception in the case of an officer who still had three years or more of service left on January 1 of the relevant year and it would hardly be of any use to place an officer on the Select List who had less than two years of service left. That view, it is said, commended itself to the other members of the Committee and they agreed with it.

20. There is also an affidavit of Sri K. C. Pandeya, respondent No. 8, another member of the Committee. He denies that Sri B. C. Negi attempted in any manner to influence the members of the Committee in favor of Sri H. S. Negi or against the petitioners. He affirms that Sri H. S. Negi was selected, even though only 52 years of age, because of his, exceptional merit. There was the further consideration that Sri H. S. Negi belonged to a Scheduled Tribe of the tribal area of Kinnaur District and was entitled to "one grading higher than the grading otherwise assignable to him on the basis of his record of service" and therefore he was entitled to be treated as superior to the petitioners. Reference is made to page 28 of the "Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Service, Chapter XII". He confirms that the Chairman made a suggestion favoring the selection of an officer who had three years or more of service left and the acceptance of that suggestion by the other members of the Committee.

21. We shall now turn to the law. "Nemo debet esse iudex in propria sua causa" - No man can be judge in his own cause. This legal maxim, rooted in natural justice, is of ancient verity and has remained undoubted through the years. It forms the broad foundation upon, which the doctrine against bias is based. The doctrine, in its modern expression, has been enlarged by judicial decisions to include the principle that justice should not only be done but must manifestly and undoubtedly be seen to be done. It is not necessary that the Judge should in fact be biased, it is sufficient to invalidate his decision if there is a real likelihood of bias. In *R. v. Sunderland Justices*¹, A. L. Smith M. R. observed :

"If there is such a likelihood then it is clearly in accordance with natural justice and common sense that the justices likely to be so biased should be incapacitated from sitting."

And, Vaughan Williams L. R. said in *R. v. Woodhouse*²,

¹(1901) 2 KB 367

²(1906) 2 KB 501

".....the question is not whether the Justices were really biased or in fact, decided partially, but whether there was a real likelihood of bias."

An important case is *R. v. Sussex Justices; ex parte McCarthy*³, The facts were these. Arising out

of a collision between a motor vehicle driven by the applicant and a motor vehicle belonging to Whitworth the applicant was convicted on a charge of dangerous driving. At the hearing, the acting clerk to the Justices was a member of a firm of solicitors who were acting for Whitworth in an action against the applicant for damages received in the collision. When the Justices retired for consultation at the conclusion of the hearing, the acting clerk retired with them in case they should wish to refer to his notes of the evidence or to be advised on the law, but the Justices did not consult him and he abstained from referring to the case. Lord Hewart, C. J., while accepting that the Justices came to their decision without consulting the acting clerk and that the acting clerk scrupulously abstained from referring to the case in any way, observed :

"There is no doubt, as has been said in a long line of cases, that it is not merely of some importance. but of fundamental importance, that justice should both be done and be manifestly seen to be done. The question is not whether in this case this gentleman, when with the Justices, made any observation or offered any criticism which he could not properly make or offer; the question is whether he was so related to the case by reason of the civil action as to be unfit to act for the Justices in the criminal proceedings. The answer to that question depends not on what actually was done but on what might appear to be done. The rule is that nothing is to be done which creates such a suspicion that there has been an improper interference with the course of justice." (Emphasis ours)

Lush, J., in a separate judgment, said :

".....It is irrelevant to enquire whether the clerk did or did not give advice and influence the justices. What is objectionable is his presence there at all when he is in a position which necessarily makes it impossible for him to give absolutely impartial advice. I have no doubt that the Justices here did not intend to do anything irregular or wrong, but they placed themselves in an impossible position....."

The observation of Lord Hewart, C. J. received the approval of the House of Lords in *Franklin v. Minister of Town and Country Planning*⁴, Reference may also be made to *Rex v. Essex Justices; ex parte Perkins*⁵,

22. The doctrine has found place in our jurisprudence also. In *Manik Lal v. Dr. Prem Chand Singhvi*⁶, the Supreme Court accepted the validity of the principle "nemo debet esse judex in propria sua causa", and held that the principle applied not only to Judges but to all Tribunals and bodies which were given jurisdiction to determine the judicial rights of the parties. On the content of the principle, the Supreme Court pointed out that the test was not whether in fact a bias affected the judgment but "the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the

³(1924) 1 KB 256

⁵(1927) 2 KB 475

⁴1948 AC 87

⁶ AIR 1957 SC 425

Tribunal might have operated against him in the final decision of the Tribunal". And reference was made to the observations of Viscount Cave L. C. in *Frome United Breweries Co. v. Bath Justices*⁷, "This rule has been asserted not only in the case of Courts of Justice and other judicial tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act

as Judges of the rights of others." The Supreme Court laid down that actual proof of prejudice was not necessary.

23. The doctrine is not confined to cases where judicial powers, in the strict sense, are exercised. It is properly extended to all cases where an independent mind has to be applied to arrive at a fair decision between the rival claims of parties. Justice is not the function of the Courts alone, it is the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to Courts of justice are now coming to be applied increasingly to administrative bodies. For example in *Re Wolverhampton Borough Council's Aldermanic Election*⁸, the Queen's Bench held that a Mayor could not properly preside at a meeting for the holding of an Aldermanic election at which he was himself a candidate. In India, the Supreme Court observed in *A. K. Kraipak v. Union of India*⁹, in a judgment which has become a classic in our times, that the dividing line between an administrative power and a quasi judicial power was quite thin and was being gradually obliterated, and that for the concept of the rule of law to retain its vitality in a welfare State where the jurisdiction of administrative bodies was increasing at a rapid rate it was necessary that instrumentalities of the State should be charged with the duty of discharging their functions in a fair and just manner. It was pointed out that the procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate, if not ensure, a just and fair decision. Rules of natural justice were applicable to administrative inquiries in order to prevent miscarriage of justice. The Supreme Court, in that case, was concerned with the validity of selections made to the Indian Forest Service. Pursuant to the Indian Forest Service (Initial Recruitment) Regulations 1966, the Central Government constituted a special Selection Board for selecting officers to the Indian Forest Service from those serving in the Forest Department of the State of Jammu and Kashmir. The Selection Board consisted of a Chairman, who was the nominee of the Chairman of the Union Public Service Commission, the Inspector-General of Forest of the Government of India, one of the Joint Secretaries in the Government of India, the Chief Secretary to the State Government of Jammu and Kashmir and one Naqishbund, the acting Chief Conservator of Forests, Jammu and Kashmir. The selections finally made by the Board were accepted by the Union Public Service Commission. Naqishbund was also one of the candidates for selection to the All India Forest Service. He did not sit on the Selection Board at the time his name was considered for selection, but he did sit on the Board and participated in its deliberations when the names of his rival officers were considered for selection, and took part in the deliberations of the Board while preparing the list of the selected candidates in order of preference. The Supreme Court held that the presence of Naqishbund invalidated the selection.

24. Bias has been classified into different categories. We are concerned here with personal bias. Personal bias may arise from personal hostility to one party or from personal friendship or family relationship with the other. In the case of family

⁷1926 AC 586

⁹AIR 1970 SC 150

⁸(1962) 2 QB 460

relationship, the challenge to the proceeding need only establish so close a degree of relationship as to give rise to the reasonable likelihood of the Judge espousing the cause as his own. However, in England in 1572 a Court upheld an objection, in *Vernon v. Manners*¹⁰, to the validity of a proceeding in which the Sheriff who had summoned the jury was related in the ninth degree to one of the parties. Closer relationship has invariably led to the invalidation of the proceedings. In *Bridgman v. Holt*¹¹, Holt, C. J. withdrew from a case in which his brother was a party. Reference

may be made to *R. v. Rand*¹². In *Becquet v. Lampriere*¹³, the Privy Council disqualified the jurat of the Royal Court of Jersey from hearing a case in which his deceased wife's nephew was a party.

25. In this state of the law, let us examine the case before us. Sri H. S. Negi was one of the candidates for inclusion in the List prepared for the purpose of appointment to the Indian Administrative Service. Sri B. C. Negi was a member of the Committee charged with the duty of drawing up the List, Sri H. S. Negi was the father-in-law of Sri B. C. Negi. The relationship in our opinion, was sufficiently close to bring the doctrine against bias into play. No doubt Sri B. S. Negi as a member of the Committee was not sitting in judgment on his own cause, as happened in *A. K. Kraipak*, AIR 1970 Supreme Court 150 (supra). But the nearness of the relationship could reasonably give the impression to the other candidates that there was a real likelihood of Sri B. C. Negi espousing his father-in-law's cause as his own.

26. It is said that Sri B. C. Negi remained silent when the case of Sri H. S. Negi was considered, and that he could have left the Committee but. on second thoughts he decided to remain there quietly lest the members who were not aware of his relationship might construe it as an attempt to influence them. He denies that he attempted in any manner to influence the members of the Committee. Nonetheless, the case still falls within the prohibition of the doctrine to which we have referred. The law is not concerned with whether Sri B. C. Negi in fact participated in the consideration of his father-in-law's candidature or spoke to the prejudice of the petitioners for that reason. The law is concerned with determining whether there was a reasonable likelihood of bias. We have cited cases above where the relationship in question was more remote than the one we have before us, but in none of those cases did the Courts hesitate to strike down the validity of the decision challenged before them.

27. We may also point out that the silence of Sri B. C. Negi when the case of his father-in-law was considered makes no difference. Reference may be made to what the Supreme Court said in *A. K. Kraipak*, AIR 1970 Supreme Court 150 (supra) :

"It is true that he did not participate in the deliberations of the Committee when his name was considered. But then the very fact that he was a member of the Selection Board must have its own impact on the decision of the selection board. Further, admittedly, he participated in the deliberations of the Selection board when the claims of his rivals.....were considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board, there was a conflict between his interest and duty.....The real question is not whether he was

¹⁰(1572) 2 Plowd 425

¹²(1866) 1 QB 230

¹¹(1693) 1 Show PC 111

¹³(1830) 1 Kinnapp 376

biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.....There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct....."

It will also appear that the circumstance that some of the members of the Committee were not aware of the relationship between Sri B. C. Negi and Sri H. S. Negi is of no material significance. In (1924) 1 KB 256 (supra) the Justices were unaware that the acting clerk was a member of the firm of solicitors who were acting for Whitworth in the civil action against the applicant, and there was also the fact that the Justices did not even consult the acting clerk when arriving at their decision. In (1927) 2 KB 475 (supra) the facts were that in a dispute between a husband and his wife, the wife had consulted the solicitor's clerk in connection with a deed of separation from her husband. No material mention of the matter was made to the solicitor himself. Subsequently the solicitor acted as a clerk to the Justices who tried the case. He stated on affidavit that when acting as a clerk to the Justices he had no knowledge that his firm had acted for the wife and that he was in no way adverse to the husband. Avory, J., while holding that the Justices could not have been influenced even remotely by the solicitor acting as their clerk, nevertheless proceeded to observe :

"Though the clerk to the Justices and the Justices did not know that his firm had acted for the applicant's wife, the necessary, or at least reasonable impression on the mind of the applicant would be that justice was not done seeing that the Solicitor for his wife was acting with the Justices and advising on the hearing of summons which he had taken against her."

28. Then, it is urged that Sri B. C. Negi was the junior-most of the members of the Committee and could not have influenced them. It seems to us that the contention does less than justice to the position which Sri B. C. Negi held on the Committee. He was an equal member with the others on the Committee, and his contribution to the deliberations of the Committee must be assumed to have been no less valuable than that of the other members. Admittedly, he had occasion to judge the work of some of the candidates, including the petitioners and Sri S. R. Mahantan. An opinion expressed by Sri B. C. Negi in respect of such candidates would have merited serious consideration. Before the Supreme Court in A. K. Kraipak, AIR 1970 Supreme Court 150 (supra) affidavits were filed, as in the present case before us, that Naqishbund had in no manner influenced the decision of the other members of the Board. The Supreme Court observed :

"In a group deliberations, each member of the group is bound to influence the other, more so if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of the selection board functioned like computers....."

29. It is then contended that the recommendations of the Committee were considered by the Union Public Service Commission and approval of the list by the Commission indicates that the preparation of the list was not influenced by bias. Such a contention was also raised before the Supreme Court in A. K. Kraipak, AIR 1970 Supreme Court 150 (supra), and was repelled with

the observation :

"It is true that the list prepared by the selection board was not the last word in the matter of the selection in question. That list along with the records of the officers in the concerned cadre, selected as well as not selected, had to be sent to the Ministry of Home Affairs. We shall assume that as required by Regulation 5, the Ministry of Home Affairs had forwarded that list with its observations to the (Union Public Service) Commission and the Commission had examined the records of all the officers afresh before making its recommendations. But it is obvious that the recommendations made by the selection Board should have weighed with the Commission. Undoubtedly, the adjudging of the merits of the candidate by the selection board was an extremely important step in the process."

Upon the aforesaid considerations, in our opinion, the petitioners could have legitimately believed there was a reasonable likelihood of bias in favor of Sri H. S. Negi and to the detriment of the petitioners because of the presence of Sri B.C. Negi on the Committee. It seems to us that the unfortunate position in which Sri B. C. Negi found himself could have been avoided only by his being exempted altogether from the entire deliberations of the Committee. The learned Advocate General has referred to *Mewa Ram v. Narain*¹⁴, and *Sohrab Palanji Kapadia v. Emperor*¹⁵, In both cases, the Court held that mere friendship between the Judge and a party would not invalidate the judgment. Both were cases on their own facts and, to our mind, are of little service in the present proceeding. Reference was also made to *K. R. Chari v. Secunderabad Cantonment Board*¹⁶, but that was a case of a Departmental proceeding and the Court pointed out that it was not a case of a dispute between two parties which had to be decided by a third. The learned Advocate General also urges that abuse of power by High ranking officers should not be easily assumed, and we are referred to *Chinta Lingam v. The Govt. of India*¹⁷, In our opinion, the principle of that case does not apply here.

30. The learned Advocate General then points out that a Select List of six names had to be prepared, and in the order of seniority in the State Administrative Service the name of Sri H. S. Negi stood at serial No. 6. Consequently; in any event he would have, on his merit, been included in the List and no question could arise of having to keep the petitioners for that reason out from the List. The argument although attractive, does not bear closer examination. From the original record produced before us it is clear that there were three vacancies to be filled up in the Indian Administrative Service. Of the first six officers in order of seniority Sri R. C. Sharma and Sri B. D. Thapar had not attained the age of 52 years on January 1, 1971. They stood at serial Nos. 1 and 4 and could have filled two of the three vacancies. Unless the petitioners, who stood at serial Nos. 2 and 3 were out of the way, there was no possibility of Sri H. S. Negi, even though shown in the Select List, being adjusted against the third vacancy. It cannot, therefore, be said that Sri H. S. Negi did not stand to benefit from the exclusion of the petitioners from the Select List.

¹⁴ AIR 1918 All 391

¹⁶ AIR 1961 And Prad 37

¹⁵ AIR 1931 Bom 206

¹⁷ AIR 1971 SC 474

It must be remembered that the order in which the names were put on the List was of material significance. In order that Sri H. S. Negi should fill a vacancy it was necessary that his name should appear among the first three on the Select List. Had it figured lower, there was no

certainty that he would be absorbed into the Indian Administrative Service. The Regulations contemplate a new Select List for each year, and it is not possible to predict how those put on the Select List for one year would fare in comparison when considered with officers coming in as fresh names for consideration with each succeeding year.

31. It is next contended by the respondents that the entire Select List does not become invalid but only the inclusion of Sri H. S. Negi in it. The contention cannot be accepted. We do not know how far the opinions expressed against the petitioners and Sri S. R. Mahantani operated incidentally to the benefit of Sri Swarupa Nand. Then, with Sri H. S. Negi as a candidate, according to the considerations of law to which we have adverted Sri B. C. Negi would not have been a member of the Committee at all. And if that had been so, it is not possible to say what a differently constituted Committee might have thought of the merit and suitability of the officers whose cases were under consideration, including those who were actually selected. The entire Select List is thrown into doubt, and it is not possible for a Court to predicate, nor indeed is it open to it to do so who would have been selected and who would not.

32. It is also urged by the learned Advocate General that as officers junior to Sri H. S. Negi were included in the Select List and their merit has not been challenged, therefore, the inclusion of Sri H. S. Negi who was senior to them could not be challenged. The contention is plainly without substance. The inclusion of Sri H. S. Negi in the List was effected in circumstances rendering the entire Select List invalid, and it is not necessary for the petitioners to show that officers junior to Sri H. S. Negi should not have been appointed having regard to their merit.

33. A number of other contentions have been raised by the petitioners. It is urged that the Select List was not prepared in accordance with the criteria laid down in the Regulations and the test of "exceptional merit and suitability" has been applied on the case of the petitioners while the Regulations merely speak of "merit and suitability". It is also pointed out that even as between officers who had attained the age of 52 years a further classification was created by preferring officers between 52 years and 55 years of age. Further, it is said, no reasons have been recorded for the supersession of the petitioners when preparing the Select List. It is also contended that the petitioners were excluded also for the purpose of bringing in Sri K. N. Kashyap on the Select List. It seems unnecessary for us to go into these questions in view of the finding reached by us that on account of the presence of Sri B. C. Negi on the Committee during its deliberations the entire Select List is invalid.

34. The writ petitions are allowed. The Select List prepared consequent to the deliberations of the Committee on October 22, 1971 is quashed. A fresh list will now be prepared on the basis of the position as it obtained in October, 1971. The petitioner in each writ petition is entitled to his costs from the respondent No. 1, which we assess at Rs. 200/- for each petitioner.
Petitions allowed.