
(2001) 07 J&K CK 0012
In the Jammu And Kashmir High Court
Case No : Writ Petition No. (S) 670 of 1999

Ajay Sharma

APPELLANT

Vs

State and ors.

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 3 SCT 1076

Hon'ble Judges : Tejinder Singh Doabia, J

Bench : Single Bench

Advocate : M.K. Bhardwaj, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.

1. ""Even an Act of Parliament made against natural equity as to make a man Judge in his own case is void in itself."" Such was the strong expression

of opinion in a case reported as Day v. Savadge, (1614) Hob. 85 at page 87, quoted in 'A Second Miscellany at Law' by the Hon'ble Sir Robert

Megarry, First Indian Reprint, at page 19. This is the precise argument raised in this petition.

2. The petitioner submits that in this case, the private respondent No. 5 came to be selected because of his close relationship with respondent No.

4 who was the Convenor of Jammu and Kashmir Subordinate Service Selection Recruitment Board. It is submitted that respondent No. 5 is

nephew of respondent No. 4. It is on account of this relationship the respondent No. 5 is said to have been given the benefit and said to have

stolen a march over the petitioner. Petitioner's further case is that the percentage of marks obtained by the petitioner so far as academic

qualification is concerned is 64.6 percent. It is submitted that the petitioner was high up in the merit list which was prepared by the respondent

authorities and it was on this basis he was interviewed. It is, however, submitted that while making selection, the respondent No. 5 was selected on

the basis of percentage obtained by him in final year of his examination i.e. 64. It is thus submitted that so far as aggregate percentage is concerned,

the respondent No. 5 is possessing low percentage as compared to the petitioner. It is in this manner, the respondent No. 5 is said to have stolen a

margin over the petitioner.

3. Petition stands admitted.

4. Notices were issued to the respondents. Respondent No. 1 stood served. Counter affidavit has not been filed. So far as other respondents are

concerned, registered notices were sent to them. As per the office note dated 16th Feb and 1st March 2000 service has been effected on them.

5. There can be no dispute with the proposition that if a close relation of a candidate takes part in the process of selection, then the said process

would stand vitiated. Such a view was expressed by the Supreme Court in the case reported as 1969(2) SCC 262, A.K. Kraipak and others v.

Union of India and others. In the above case, one member of the Selection Board was also being considered for selection. He had not participated

in the deliberations. His name was being considered. Notwithstanding this, it was observed that "it is against all canons of justice to make a man

judge in his own cause." It was observed "that even if such a person did not participate in the deliberations of the Committee when his name was

considered, the fact that he was a member of the Selection Board must have had its own impact on the decision of the selection board, particularly

when he participated in the deliberations when the names of his rivals were considered and was a party to the preparation of the list of candidates

in order of preference. At every stage of his participation in the deliberations of the Board there was a conflict between his interest and duty and it

could not be believed that he could have been impartial.

6. The aforementioned decision would be fully attracted to the facts of this case. Even otherwise, the respondents have not put in appearance.

7. The further question arises as to what relief, the petitioner is entitled to.

8. The only factor which can be said to have vitiated the process of selection is

the participation of respondent No. 4 in the selection process in which respondent No. 5 came to be selected. Therefore, at this belated stage, with a view to do justice to the parties, a direction is given that the result of the selection would now be governed on the basis of parameters by ignoring the result of oral interview. The marks given on the basis of educational attainments would be taken into consideration. If the petitioner is able to steal a march over respondent No. 5 while taking into consideration the academic qualification, then, he would be given the requisite relief of appointment. Let this exercise be completed within a period of two months from the date a copy of this order is made available to the respondent authorities by the petitioner.

9. Order accordingly.