

(2000) 01 GUJ CK 0010
In the Gujarat High Court

Case No : Letters Patent Appeal No. 604 of 1999 in Special Civil Application No. 4428 of 1996

Bharatbhai Punabhai Chavda

APPELLANT

Vs

Manojkumar Dhranga

RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:

Citation : (2000) 2 GLR 455

Hon'ble Judges : D.H. Waghela, J;B.C. Patel, J

Bench : Division Bench

Advocate : Harin P. Raval, for the Appellant; Mukesh H. Rathod and S.P. Hasurkar, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, J.—The respondent No.4 being aggrieved by the order passed by the learned Single Judge in Special Civil Application No.4428 of 1996 has preferred this appeal. The brief facts leading to the present proceedings are required to be narrated, which are as follows: On 30.4.1996, an advertisement was published in the newspaper inviting applications for the post of a Teacher from qualified candidates as mentioned in the said advertisement. The Gujarat Secondary Education Act, 1972 (hereinafter referred as the Act) vide Chapter VI enacts the provisions relating to services in registered private secondary schools. Section 34 of the Act refers to recruitment and conditions of service of persons appointed in registered private secondary schools. Section 35 of the Act refers to a Selection Committee for selection of staff. The relevant provision is given hereunder:

"35(1). For every registered private secondary school there shall be following two committees, namely:-

(a) a school staff selection committee for the purpose of recruiting the teaching staff of the school other than the head master,

(b) a special school committee for the purpose of recruiting the head master, and

for the purpose of the initial recruitment of the headmaster and the teaching staff of a school started after the appointed day.

(2) The school staff selection committee shall consist of the following members, namely:-

(i) Two representatives of the management of the school to be nominated by the management;

(ii) The headmaster of the school;

(iii) In the case of a school the total number of teachers in which is more than six, two teachers to be elected by the teachers of the school from amongst themselves, and in the case of a school the total number of teachers in which is or is less than six, one teacher to be elected by the teachers of the school from amongst themselves; and

(iv) One representative of the Board to be nominated by the Board.

(3) The special school committee shall consist of the following members, namely:-

(i) Two representatives of the management of the school to be nominated by the management;

(ii) Two representatives of the Board to be nominated by the Board.

(4) Subject to the provisions of sub-section (1) of section 34, the school staff selection committee or, as the case may be, the special school committee shall select persons for appointment as teachers of the school from amongst the persons who are qualified to be appointed as such in accordance with the regulations made in this behalf;

Provided that for the purpose of such selection preference shall be given to a protected teacher, if he is otherwise eligible.

(5) The special school committee shall select persons for appointment to the post of headmaster of the school from amongst persons referred to in sub-section (4) or from amongst the teachers in the school;

Provided that for the purpose of such selection, preference shall be given to a senior teacher serving in the school or schools under the same management, if he is otherwise eligible and suitable.

(6) Whenever the persons from amongst whom a teacher or a headmaster is to be selected includes a person who is related to any member of the governing body or other body in charge of the management of the school or to any member of the school staff selection committee or, as the case may be, the special school committee, the member concerned of such committee, shall disclose the fact of such relationship to the members of the Committee, and if any such person is selected by the Committee, his selection shall be subject to approval by an

officer of the Board authorised in that behalf. Such approval shall be sought by the Committee within a week from the date of selection of the persons concerned and the authorised officer of the Board shall communicate his decision within fifteen days from the date of receipt of the reference by him.

(7) Any appointment of a head master or a teacher made in contravention of the provisions of this section shall be ineffective.

Explanation: For the purpose of sub-section (6), a person shall be said to be related to a member if he is related to him in any of the following capacities, namely:-

Son, grandson, son-in-law, brother, daughter, grand-daughter, wife, nephew, first cousin (paternal or maternal), wife's brother, sister's husband, husband, husband's brother, husband's sister, wife's sister, daughter-in-law, and sister-in-law.

Thus, it was necessary to have a staff selection committee for considering the applications of eligible candidates.

2. As said earlier about the applications being invited, original petitioner, respondent No.4 and others were interviewed. Original respondent No.3, the father-in-law of respondent No.4 was a member of the Selection Committee which interviewed all the candidates. After selection process, respondent No.3 vide Annexure-G requested D.E.O., the respondent No.1, to approve the selection.

3. The petitioner made a grievance before the learned Single Judge that the appointment of respondent No.4 as an Assistant Teacher in the subject of Physical Education in Gram Prathamik Shala/ Vinay Mandir was vitiated on the ground that the father-in-law of original respondent No.4 was a member of the selection committee. There is no dispute before us that the father-in-law of a selected candidate, the appellant herein, the original respondent No.3 in the petition, participated in the selection process. In view of this, it was contended that the selection being illegal and not in accordance with law, it must be quashed. So far as the relations between original respondent No.4 with original respondent No.3 are concerned, the same are also not in dispute.

4. It was submitted on behalf of the appellant that, in the instant case, the learned Single Judge erred in not appreciating and considering the fact that the original petitioner approached the court with false averments in the petition and suppressed material facts. On behalf of the original respondent No.4, the appellant herein, it is further contended that, the Court in a matter like this ought not to have used its discretion in favour of the petitioner who had not come to the Court with clean hands. It was further submitted that the procedure required to be followed for selection had not been violated in the selection.

5. There is no dispute about constitution of the Committee. It was submitted that in view of sub-section (6) of section 35 of the Act, what the school was required

to do was to forward names of the candidates selected by the Committee and, if any near relative was in the Committee, the same was required to be indicated and it was for the District Education Officer to approve the selection or not to approve. It was further submitted that in view of the provisions contained in section 35 of the Act, respondent No.3 conveyed information to the members of the committee about the fact that his son-in-law was to appear before the Committee as a candidate. On the record, copies of relevant letters have been produced in support of this contention. Under the circumstances, it is submitted that, in view of sub-section (6) of section 35 of the Act, when facts were disclosed about the relationship of a candidate to be interviewed to the members of the committee and such candidate was selected by the committee, then, the selection of that candidate was subject to approval by an officer of the Board authorised in that behalf. If approval was sought in accordance with law and the approval was granted, then, the selection cannot be said to have been vitiated or contrary to law. It is pointed out that, in view of sub-section (6) of section 35 of the Act, within a period of one week, approval was sought for and the same was granted within the time specified in sub-section (6).

6. In light of the facts, two questions are required to be considered at this stage: (i) Whether approval was sought by the Committee within one week from the date of selection of the person concerned? and (ii) whether the approval, which is pleaded before us to have been granted, is granted in accordance with law ?

7. So far as the approval is concerned, it is submitted that the approval was sought by the Committee within a period of one week. The letter addressed to the District Education Officer on 27.5.1996 at Annexure-G to the petition is required to be considered for this purpose. The letter is addressed by the Sarpanch of the Gram Panchayat to the District Education Officer, Junagadh. Reading the contents of this letter, it appears that the Sarpanch conveyed information to the District Education Officer that interviews were held on 25.5.1996 and the Committee selected one Bharatbhai Punabhai Chavda. It is further pointed out that the said selected candidate happens to be the son-in-law of Naran Raja Danga, the Sarpanch of the Gram Panchayat. The members of the Selection Committee were also informed of this fact by a letter under a copy to the District Education Officer. It was further pointed out in the letter that, in view of the provisions contained in the Gujarat Secondary Education Act, the selection may be approved. Thus, from the contents of this letter it appears that the letter was written by the Sarpanch and not by the Committee. A xerox copy of one letter dated 7.6.1996 was produced before the learned Single Judge at page 49 of the petition. From the contents thereof it appears that the same was addressed to a member of the Committee. It appears that the respondent No.3 addressed one letter and the appellant before us is contending that that should have been taken into consideration to say that the formalities were complied with as required under sub-section (6) of section 35 of the Act.

8. So far as the second question is concerned, it is also interesting to note that,

even if the letter dated 10.6.1996 which is produced on record before us is read, it becomes clear that there was non application of mind by the District Education Officer, particularly when he was informed about the objections in writing. It was his duty to consider the provisions contained in sub-section (6) of section 35 and the Explanation before granting any approval. It appears to us that merely because the Sarpanch addressed a letter seeking approval, the District Education Officer has mechanically granted approval by adding a clause in the letter stating that the approval was being granted as per the regulations; and despite that, if any Court proceedings were initiated, it would be the responsibility of the addressee (Sarpanch). When the District Education Officer was called upon to examine the procedure followed by the Committee in selecting a person, the District Education Officer was required to be more careful and he should have applied his mind. Even in the Explanation to Section 35 of the Act, "relations" are indicated. If a person sitting in the Committee was closely related to a candidate appearing in the interview, then, it was expected of him not to participate in the interview process so that interview of others, if any, could be taken into consideration. But, in the instant case, he himself has interviewed his son-in-law while sitting as a member of the committee.

9. It is required to be noted that as observed by the Apex Court in case of Union of India (UOI) and Another Vs. P.K. Roy and Others, , "The extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket formula. The application of the doctrine depend upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme, and policy of statute and other relevant circumstances disclosed in the particular case." In a case like this the question of bias is relevant. When some one has interest in the subject matter, the same is to be viewed differently. Impartial decision without any bias is important.

10. In case of J. Mohapatra and Co. and Another Vs. State of Orissa and Another, , some of the members of the committee set up for selecting books for educational institutes were themselves authors whose books were to be considered for selection. It was held by the Apex Court that possibility of bias cannot be ruled out. It was observed: "It is not the actual bias in favour of the authormember that is material, but the possibility of such bias."

11. In case of Kumkum Prakasham Vs. State of Gujarat and Others, , the books of father-in-law were placed for selection before a committee of which daughter-in-law was the member, was considered. Father-in-law was a great author, the court considered the question of bias and pointed out that however much her father-in-law be a great author and the books be of standard quality, the fact that there will be reasonable apprehension of bias in the minds of party aggrieved cannot be ruled out.

12. The doctrine of bias operates equally whether it is a selection of candidate for the post or the selection of certain books for acceptance, the Court pointed out

that, the test is not whether in fact a bias 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 or a body might have operated against him in the final decision.

13. Another aspect to be borne in mind is that more than financial interest, the personal interest of the party will have greater force. If such party is present in the selection committee, there may be an indirect influence upon the other members. It is, therefore, that the approval is to be sought by the committee and such approval with reasons only would stand the test and not otherwise. As committee has not requested for approval as contemplated in the provision, the resultant effect as provided in sub-clause (7) of section 35 would be ineffective selection.

14. The District Education Officer, who was required to consider this aspect, has not considered it at all and without application of mind entertained the letter. It was necessary for him to consider the fact whether the application for approval was forwarded by the Selection Committee or not and if it was forwarded by the Selection Committee, then, he was required to consider the same and give reasons as to why he was granting approval. As indicated earlier, in the letter dated 7.6.1996, the District Education Officer has replied to the Sarpanch stating that the Sarpanch was permitted to be a member of the Selection Committee but, in case of court proceedings, it would be his responsibility. It is required to be noted that this letter was written after the selection process was over. Under what circumstances the District Education Officer had addressed the letter is not stated by him. He has not bothered even to appear before the learned Single Judge. At this juncture it is relevant to point out the observations made by the learned Single Judge in the judgment, which are as under:

" The State of Gujarat has put appearance only as a guest artist which we are having in the cinemas. Total contribution of the State of Gujarat in this case is non-cooperative attitude though it is a very very serious matter and despite of raising protest by the petitioner in this matter, the D.E.O. concerned has not taken any action. The State of Gujarat could have taken appropriate disciplinary action against the said officer. Be that as it may."

At this stage it is required to be noted that, even before this Court, Mr. Hasurkar, learned Additional Government Pleader, stated that he has not been instructed in the matter and he has received a copy of the memo of L.P.A. only. It is not explained as to why the District Education Officer has not instructed the Government Pleader. Even before the learned Single Judge, no affidavit has been filed by the District Education Officer. This speaks volumes about the conduct on the part of government servants. Even the appellant has not placed on record the complete set of the annexures which were before the learned Single Judge. However, since the record was available before us, we have perused the same. The shocking aspect in the instant case is the procedure adopted by the Selection Committee. At page 46 of the special civil application, a copy of the

marks etc. has been produced. It appears that 4 candidates were interviewed. So far as the person interviewed at serial No.2 (who is the respondent herein) is concerned, all the five members of the Committee have given 14.94 marks. So far as the candidate interviewed at serial No.3 is concerned, three members have given 14.30 marks and two members have given 15.30 marks. So far as the appellant before us is concerned, three members have given 15.56 marks and two members have given 16.56 marks. It is required to be noted that, when section 35 of the Act casts a duty upon the authorised officer of the Board to approve decision, he has to approve it not in a mechanical manner but by application of mind judiciously. In several cases it has been held that the decision would be vitiated if the person interested was a member of the Committee taking that decision.

15. In our opinion, while granting approval, the District Education Officer has to give reasons as to why he was granting approval. Principle of natural justice requires that there should be a speaking order. It has been pointed out by several decisions that reasons introduce clarity and excludes arbitrariness. Apex Court in case of T.R. Thandur Vs. Union of India (UOI) and Others, has pointed out that every action of the State must satisfy the rule of non-arbitrariness. Recording of reasons is, therefore, implicit even in absence of statutory provision in that regard. In case of The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, Apex Court pointed out that the rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. In the instant case, as no reasons are indicated, in our view, this is an additional aspect why we should not entertain this appeal.

16. The learned Single Judge has considered the decision of the Apex Court in the case of KIRTI DESHMANKER v. UNION OF INDIA reported in AIR 1991 (1) SCC 104. The Apex Court in the case of GURDIP SINGH v. STATE OF PUNJAB reported in 1997 SCC 1742 had an occasion to consider the case of appointment of Headmistress. The Secretary of the Managing Committee of the school participating in selection was considered bad as the daughter was interviewed and later on confirmation was given about such selection. Exactly similar is the situation in the instant case. In the selection process, the father-in-law participated and later on it was stated by him that approval had been given. Mr.Raval submitted that, in the Act, section 35(6) itself contemplates a situation where a member of the Selection Committee may be related to an applicant. There is no prohibition for a member of Selection Committee to be a member of such committee for the interview. This contention has no merits because it is expected of a member of a Committee to see that if any near relative is taking part in the interview, then, at least he should not participate in the process of selection of the candidate who is related. Even participation and deliberations is likely to affect adversely. There may be conflict between his interest and duty.

When large number of candidates are to appear and few are to be selected, it may be stated that he may withdraw himself from the committee at the stage when near relative is to be interviewed. But, if only one is to be selected, the question to be examined is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, one has to see whether there is reasonable ground for believing that he was likely to have been biased. Nonetheless, if an eventuality arises that the selection cannot be completed without such person taking part in the selection process, in that case, it is for the approving authority to record reasons for the approval. Mr.Raval submitted that section 35 of the Act does not contemplate recording reasons. We find no substance in this submission because when approval is required to be granted, the person granting such approval has to indicate as to why he was granting approval. In our opinion, for the reasons stated hereinabove, reasons are required to be stated.

17. In view of what we have stated hereinabove, we are of the view that the petition has been rightly allowed by the learned Single Judge. This appeal is, therefore, dismissed. Notice is discharged with no order as to costs.

18. The learned advocate submitted that the interim relief granted earlier may be permitted to continue for six weeks more. We have examined the matter in detail and such a request cannot be granted.

19. This is a fit case wherein the Chief Secretary of the State of Gujarat should initiate inquiry against the District Education Officer concerned for the reasons, namely, for not remaining present before the learned Single Judge, for not filing reply and not giving instructions to the learned Government Pleader/ Solicitor before this Court. The inquiry report should be submitted to us within a period of four weeks from the receipt of the order.