

(2009) 01 AHC CK 0074

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7740 of 2007

Brij Bhushan Bakshi and Others

APPELLANT

Vs

State of U.P

RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

Citation : (2009) 01 AHC CK 0074

Hon'ble Judges : A.N.Varma, J and S.N.Shukla, J

Final Decision : Allowed

Judgement

1. By means of the present petition the petitioners have challenged the legality and validity of the order dated 13.6.2007 issued by the Director General, Police, U.P., whereby an enquiry committee, to be presided over by the opposite party Nos. 4 and 5 and two other Deputy Inspector General of Police as its members, had been constituted to enquire into the irregularities of recruitment of constables for Police/P.A.C./Wireless for 20052006. The constitution of the committee was said to be tainted by the inclusion of opposite parties No. 4 and 5 who themselves were said to be involved in the process of recruitment/selection of constables made in the 20052006. It has further been assailed on the ground that once alleged irregularities having not been found proved in earlier judicial proceedings wherein same question was involved and this Court upon perusal of entire record pertaining to selection process having opined that there were no such irregularities, there was no occasion to again delve upon the same question. According to petitioners the constitution of committee itself was tainted with oblique motives as also the enquiry was to be conducted pursuant thereto at the behest of 3 sitting M.L.As., of the ruling party, one of which was M.L.A. In earls while Government, but did not raise his voice against alleged irregularities.

2. According to the petitioners since opposite parties No. 4 and 5 were involved in the process of selection, they ought not to have been made members of the committee to enquire into the allegations contained in the complaints. The petitioners' case is that there was no reason for deviating from the settled

procedure of getting enquiry conducted by established agency, such as Vigilance Department, C.I.D., or C.B.C.I.D., or AntiCorruption Department. Thus the said committee was neither constituted under any statute or commission of enquiry or any other statute which required for constitution of a committee to conduct an enquiry. It is also the case of the petitioners that at the initiation of the enquiry there had been a predesigned strategy to propagate against the recruitment process against the concerned officers with a sole intention to malign them in public life. There has been a systematic and selective leakage of secret and confidential documents. According to the petitioners enquiry committee broke open the sealed records in the absence of the Chairman, although they were available. Tampering of record is also alleged in the petition.

3. The recruitment process for constables in Police/P.A.C./Wireless department was initiated in early part of the year 2005 and completed in October 2006. Some of the unsuccessful candidates, who participated in the selection process, approached this Court in writ petitions (Writ Petition No. 2809 (SIS) of 2005 Harender Singh v. State of U.P. and others) challenging the entire process of selection. This Court vide judgment and order dated 23.8.2005 after perusing the entire record placed before it by the department, dismissed the writ petitions. The said judgment and order was not challenged thereafter and the same became final. Another writ petition was filed by one Udai Singh Yadav (Chest No. 95) v. State of U.P. and others (Writ Petition No. 34375 of 2006 before the High Court at Allahabad) wherein it was averred that the petitioner had not been awarded marks correctly. The answer books were produced before the Court in sealed cover and it was found that the petitioner had rightly been awarded the marks that he had obtained. Vide order dated 17.7.2006 the said petition was dismissed on payment of Rs. 5, 000/ as cost to be paid to the Legal Aid Services Authority. Another petition was filed by an unsuccessful candidate (writ petition No. 34445 of 2006 Vinay Kumar Yadav v. State of U.P. and others) challenging the process of selection on the ground that the marks awarded were not correct. Vide order dated 17.7.2006 the writ petition was dismissed by separate order on payment of Rs. 5, 000/ as cost to Legal Aid Services Authority, yet another writ petition was filed by another set of unsuccessful candidates. They were aggrieved against the alleged malpractices adopted by the authorities in relation to the selection process for the constables in U.P Police. Allegation of arbitrariness, nepotism, favoritism, malpractice and underhand dealing was alleged against the opposite parties. On 27.5.2005 an order was passed by the learned Single Judge staying the entire selection process for the post of Constables in 15 Districts until further orders. It was further provided that if appointment letters had been issued to candidates, they shall not be sent for training and in the event they have been so sent, the same shall be stopped. All the answer sheets in all 15 Districts were directed to be sealed forthwith and if necessary would be produced before the Court, if required. The said order was assailed by the State in Special Appeal (Special Appeal No. 757 of 2005 State of U.P v. Vinesh Kumar and others). The Division Bench vide judgment and order

dated 23.6.2005 allowed the Appeal in part and the interim order dated 27.5.2005 was modified to the extent that the candidates be allowed to complete their training, but the order regarding sealing of the entire record in safecustody and its production before the Court if required was maintained.

4. Shri Prashant Chandra, learned Senior Advocate, assisted by Sri Anadi Krishna Sinha, vehemently argued that the order dated 13.6.2007 issued by the opposite party No. 2, as contained in Annexure 1, is manifestly illegal, arbitrary, tainted with oblique motive, and without jurisdiction. According to him the Director General had no authority to constitute a committee vide impugned order dated 13.6.2007 in the absence of any enabling provision in any Act or Rules or even under the Rules of Business. According to him the constitution of the said committee is abolition void and the consequences flowing thereon could not be deemed to be validated by efflux of time. As per his submission political vendetta writ large in the action of the Government by specifically naming the Minister of Public Works Department who had absolutely no concern whatsoever with the proceedings in the Home Department. According to the learned counsel, in view of the fact that entire process of selection in Police Department having been found to be perfect and in accordance with the Rules by this Court upon writ petitions filed by unsuccessful candidates could the same again be scrutinized by constituting a committee for the purpose when the correctness of the selection process received a judicial sanction by judicial pronouncement on the basis of material produced by the opposite parties. He further argued that one of the MLAs (complainants) upon whose complaint, the committee was constituted, was member of the Legislative Assembly of the same party in the earlier Ministry, but no grievance regarding alleged irregularities was made by him at that juncture, but after his Ministry having come into office, the complaint was initiated. According to him the law is well settled that even in passing an administrative order there has to be an enabling provision in a statute without which the order would be nullity.

5. It was also argued that opposite parties No. 4 and 5 being associated with the selection process they could not be members of the Committee under law as a person cannot be allowed to be a judge of his own cause. According to him the said opposite parties ought to have abstained themselves from conducting the enquiry. It was also asserted that whether enquiry committee constituted under the order dated 13.6.2007 could enquire into the malpractices, favouritism and nepotism when this Court in several writ petitions, upon perusal of record, recorded a categorical finding and opined that there was nothing wrong in the selection process. Learned counsel further argued that whether the enquiry committee could open the record despite specific orders passed by this Court to keep the same in sealed cover and not to open without seeking the consent of this Court. The petitioners have been indicated against whom the enquiry was to be conducted pursuant to the order dated 13.6.2007, however, opposite parties No. 4 and 5 who were also associated with the process of selection, their names have not been included, rather they have been nominated members of the

Committee.

6. Learned counsel further submitted that opposite party No. 4 was Inspector General of Police, East Zone at the time of recruitment of P. A.C. Constables and opposite party No. 5 had presided one of the Recruitment Boards of Constables, Civil Police. Opposite Party No. 5 was also responsible for checking and verifying that the recruitment did not suffer from any defect which duty was assigned vide circular dated 2.7.2006 issued by the PAC Head Quarters. He was also posted as Inspector General of Police, East Zone, during the recruitment of PAC Constables. During the recruitment of constables each Inspector General of zone was to discharge following functions/duties as per circular dated 2.7.2006 issued from the Office of Additional Director General of Police, PAC Head Quarters:

- (1) to scrutinize every document of each selected candidate;
- (2) to ensure that only the eligible candidates have been physically examined;
- (3) to ensure that there is no error between the marksheets of the marks awarded in the copies visavis the marks copies in the broad sheet;
- (4) to ensure whether the selection has been made as per the directions issued front time to time vide various Government Orders/Orders in respect of reservation;
- (5) whether the medical examination etc., has been done in accordance with the Rules properly; and
- (6) to ensure that no candidate, who is ineligible for the post of Constable, is declared eligible and viceversa.

7. Regarding opposite party No. 5 the learned counsel submitted that he himself was Chairman of one of the recruitment board and chaired the recruitment of Constables at Sitapur while he was posted as DIG Technical Services, U.P., Lucknow. Thus as per his submission both opposite parties No. 4 and 5 were actively associated with recruitment process as such their appointment as members and Chairman of the enquiry committee is manifestly unjust and violates the basics of the principles of natural justice.

8. Sri Jaideep Narain Mathur, learned Additional Advocate General assisted by Smt. Sangeeta Chandra, learned Standing Counsel, in opposition questioned the maintainability of the writ petition. According to him as per relief No. 2 the petitioners have sought for a direction to the opposite parties not to take any further actions in furtherance of the enquiry reports submitted by opposite party No. 6, consequent to the impugned order dated 13.6.2007. The petitioners through the said relief intend to challenge the departmental proceedings initiated pursuant to the report submitted by the committee. Since the relief No. 2 relates to purely service matter therefore, the petitioners have a remedy before the Central Administrative Tribunal to challenge the disciplinary proceedings. According to him by order dated 13.6.2007 only a committee had been

constituted in order to conduct a preliminary fact finding enquiry as the same was questioned on account of complaints made to the State Government by sitting MLAs relating to irregularities, corruption and nepotism in recruitment of constables in the UP. Police Service. According to him it was for the satisfaction of the Government to ensure clean administration and discrepancy in recruitment process that it constituted a committee to ascertain the facts and submit its report. He further argued that pursuant to the order dated 13.6.2007 the committee held a preliminary fact finding enquiry and submitted its report to the Government, which thereafter formed an opinion that a departmental enquiry should be held to enquire into the role of member of various selection committees who were part of the recruitment process. Thus on the basis of the departmental enquiry, proceedings have been initiated against officers including the petitioners who were placed under suspension, being prima facie found in major departmental lapses and serious irregularities. According to him many officers including the petitioners against whom FIR were lodged on the basis of the enquiry report, challenged before this Court at Allahabad. The said petitions are still pending and this Court as an interim measure stayed the arrest of the petitioners. He further points out that suspension order passed against the petitioners have been revoked and the department has a right to conduct a departmental enquiry against the erring officers. Since the said disciplinary proceedings have been initiated and in case the petitioners intend to challenge the same as it is apparent from the perusal of the relief No, 2, therefore, proper remedy for them is to approach the Central Administrative Tribunal. In this connection he also invited the attention of this Court towards a decision rendered by the Hon. Supreme Court in case of L. Chandra Kumar v. Union of India and others. 1997 (3) SCC 261.

9. Regarding the power of the State Government to constitute committee under the order dated 13.6.2007, Sri Mathur referred to Article 166 of the Constitution of India. On the strength of the said provision he argued that under the Rules of Business the State Government was empowered to constitute the committee to enquire into the charges of malpractices, nepotism and illegalities in the selection process. He further argued that committee having been duly constituted and there being no infirmity, to challenge the same on the ground of incompetence was totally misplaced. Thus according to learned counsel the constitution of the committee and initiation of enquiry proceedings was well within the jurisdiction of the State Government and as such the same cannot be amenable to writ jurisdiction. The order dated 13.6.2007 has been issued by Director General of Police on the request of the State Government to institute an enquiry into the allegations of irregularities committed by various recruitment boards. Regarding opposite parties No. 4 and 5 being members of the committee the learned Counsel submitted that opposite party No. 4 was Inspector General of PAC and had nothing to do with recruitment of the Constables at all, as he was neither a member of the selection committee, nor Chairman of the selection board, not was in any manner involved at any stage with the recruitment process. It was

only after the process of recruitment was complete that the D.S.P./Commandant sent the entire record to the superior officer concerned for purposes of screening. As regards P.A.C. there were three recruitment boards under opposite party No. 4, namely Balia, Sonebhadra and Kanpur Dehat. According to the learned counsel, the records of Sonebhadra and Kanpur Dehat were never sent and in respect of Balia, the Commandant sent the records, but before the screening could be initiated, the records were recalled.

10. As regard opposite party No. 5 it was submitted that since he was the Chairman of one of the Recruitment Board at Sitapur, therefore, care and caution was taken to ensure that he was not associated with the enquiry for recruitment of constables at Sitapur of which he was Chairman. As per his submission the distribution was done in the manner to ensure that opposite party No. 5 had no occasion to screen the documents regarding recruitment of Sitapur Board.

11. Sri Prashant Chandra in rejoinder submitted that the petitioners do not want to press relief No. 2 and confined his prayer only to relief No. 1. An application to the same effect was also made, which was allowed on 10.11.2008 and consequently the said relief was deleted from the frame of the petition. In view thereof it is not required by this Court to enter into the arguments made on behalf of State on the question of maintainability of the writ petition.

12. As would appear from the record of the writ petition, the opposite party No. 5, who has been nominated as Member of the Enquiry Committee was himself Chairman of one of the recruitment board and had chaired the recruitment of Constables at Sitapur District, while he was posted as DIG Technical Services, U.P., Lucknow. The selection of the Police Constables at Sitapur was also under the scanner by the Committee referred above and finds place in the list of recruitments (under scrutiny/enquiry) dated 24.4.2006 which indicates the name of Sri Javed Akhtar, Deputy Inspector General of Police (opposite party No. 5) as Chairman of the Board.

13. Opposite party No. 4, Shri Shailja Kant Misra was posted as Inspector General of Police, East Zone, P.A.C., during the recruitment of PAC Constables in question. During the recruitment of Constables of PAC each Inspector General of Zone was required to discharge following functions as duties as per circular dated 2.7.2007 issued from the Office of Additional Director General of Police, PAC Headquarters, Lucknow:

- (1) to scrutinize every document of each selected candidate;
- (2) to ensure that only the eligible candidates have been physically examined;
- (3) to ensure that there is no error between the marksheets of the marks awarded in the copies the marks copies in the broad sheet;
- (4) to ensure whether the selection has been made as per the directions issued from time to time vide various Government Orders/Orders in respect of reservation;

(5) whether the medical examination etc., has been done in accordance with the Rules properly; and

(6) to ensure that no candidate, who is ineligible for the post of Constable, is declared eligible and weeversa.

14. Thus it was bounden duty of opposite party No. 4 in the capacity of Inspector General of Police, East Zone, PAC to adhere to and perform the aforesaid character of duties in the recruitment of process of PAC Constables. According to the petitioners since opposite party No. 4 was Inspector General of Police, PAC, East Zone at the time of recruitment of PAC Constables and opposite party No. 5 had presided one of the Recruitment Boards of Constables in Civil Police, as such both were actively associated with the recruitment process under scrutiny by the enquiry committee. After the completion of the selection of Constables the records pertaining to recruitment process were sealed with the seal of the Chairman of the respective selection boards by name and were kept in boxes which were locked and sealed.

15. Thus it is apparent that opposite parties No. 4 and 5 were themselves In charges of selection process at various places and they did not report about any misappropriation or discrepancy in the record or manner of selection process. The pertinent question arises is as to how can they be allowed to head a committee to scrutinize alleged large scale irregularities in the selection process when they themselves were part of the same and were actively associated therewith.

16. The Constitution of the Committee vide order dated 13.6.2007 has been challenged primarily on the ground that opposite parties No. 4 and 5 were associated with the selection process of Police Constables as such they could not be Members of the Committee. The opposite party No. 4 at the relevant time was posted as Inspector General of Police, East Zone, PAC. During the recruitment of Constables each Inspector General of Zone was required to discharge certain functions and duties as per circular dated 2.7.2006 issued from the Office of Additional Director General of Police, PAC Head Quarters, Lucknow, as indicated hereinabove.

17. Thus it was solemn duty of the opposite party No. 4 to enter into the aforesaid requirements during the process of selection. Opposite party No. 5 was himself Chairman of the one of the Recruitment Board and also Chaired the recruitment of Constables of the Sitapur District while he posted as DIG, Technical Training, U.P.

18. Thus it is evident that both opposite parties No. 4 and 5 had presided over the Recruitment Boards of Constables in Civil Police and were thus actively associated with the recruitment process. Upon the constitution of the Committee, the petitioner No. 1 on 15.7.2007 raised an objection before the Principal Secretary, U.P., Lucknow by means of representation, copy of which has been filed along with the writ petition as Annexure 10, indicating therein that the

constitution of the Committee to look into the alleged irregularities was itself bad inasmuch as both the opposite parties No. 4 and 5 were directly associated with the selection process, therefore, they could not be Chairman/Member to go into the question with regard to alleged irregularities.

19. In *A.K. Kraipak v. Union of India*, AIR 1970 SC 150, the Apex Court observed that concept of rule of law would lose its validity if the instrumentality of the State is not charged with the duty of discharging its functions in fair and just manner.

20. In the said case one Naqishbund was one of the candidate seeking promotion/selection to the All India Forest Services, he being one of the Members of the Board, did not sit in the Selection Board at the time his name was being considered for selection, but admittedly he did sit in the Board and participated in its deliberations when the names of other candidates, i.e., his rivals were considered for selection. He also participated in the deliberations of the Board while preparing the list of selected candidates in the order of preference as required under the Rules. Selection of said Naqishbund was challenged on the ground that it was improper to have included him as Member of the Selection Board as he was one of the candidate for being considered in the selection process and it was against all canons of principles of natural justice to make man judge of his own cause.

The Hon'ble Supreme Court in paras 15 and 16 observed as follows:

"15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in State should be considered as most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make man judge in his own cause. 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 had 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 particularly that of Basu was 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. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was 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. We agree with the learned Attorney General that mere suspicion of bias is not sufficient. There must be 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 was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influenced their decision in making the selection. In group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in 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 selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his suppression and that his appeal was pending before the State Government. Therefore, there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence, the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund."

21. The Apex Court held that the aim of Rules of natural justice is to secure justice to prevent miscarriage of justice. Enquiries are to be held in good faith without bias and not arbitrarily or unreasonably.

In para20 the Court held as under:

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice: These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be judge in his own cause, and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasijudicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made

inapplicable to administrative enquiries from quasijudicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasijudicial in character. Arriving at just decision is the aim of both quasijudicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in quasijudicial enquiry."

22. Similar proposition was laid down in *J. Mahapatra and Company v. State of Orissa*, 1984 (4) SCC 103.

23. In *State of Orissa v. Dr. (Mrs.) Bina Pani Dei*, AIR 1967 SC 1269, the Apex Court necessitated to examine the nature of the order, it was observed as follows:

"It is true that the order is administrative in character but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

24. In *K.I. Shephard v. Union of India*, MR 1988 SC 686, it was observed that fair play is part of public policy and is guarantee for justice to citizens. The Apex Court in Para 12 and 15 of the report observed as follows:

"12. Mullan in "Fairness : The New Natural Justice" has stated :

"Natural justice coexists with, or reflected, a wider principle of fairness in decision making and that all judicial and administrative decisionmaking and that all judicial and administrative decisionmakers had duty to act fairly."

In the case of *State of Orissa v. Dr. (Miss) Bina pani Dei*, (1967) 2 SCR 625: (AIR 1967 SC 1269 at p. 1272), this Court observed :

"It is true that the order is administrative in character but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State."

In *AK. Kraipak v. Union of India*, (1970) 1 SCR 457: (AIR 1970 SC 150), Constitution Bench quoted with approval the observations of Lord Parker in *Re: K (H) (an infant)* (supra). Hegde, J. speaking for the Court stated (at pp. 156157 of AIR):

"Very soon thereafter third rule was envisaged and that is that quasijudicial enquiries must be held in good faith, without bias and not arbitrary or unreasonably. But in the course of years many more subsidiary rules came to be

added to the rules of natural justice. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries from quasijudicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasijudicial in character. Arriving at just decision is the aim of both quasijudicial enquiries as well as administrative enquiries. An unjust decision in an administrative order may have more far reaching effect than decision in quasijudicial enquiry".

These observations in A.K. Kraipak's case were followed by another Constitution Bench of this Court in Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore, (1970) 2 SCR 600: (AIR 1970 SC 2042). In Swadeshi Cotton Mills v. Union of India, (1981) 2 SCR 533 : (AIR 1981 SC 818), three Judge Bench of this Court examined this aspect of natural justice. Sarkaria, J. who speak for the Court, stated (at p. 828 of AIR):

"During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epochmaking decision of the House of Lords in Ridge v. Baldwin, (1964 AC 40) it was generally thought that the rules of natural justice apply only to judicial or quasijudicial proceedings; and for the purpose, whenever breach of the rule of natural justice was alleged. Courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasijudicial power. In India also, this was the position before the decision of this Court in Dr. Binapani Dei's case, (AIR 1967 SC 1269) (supra); wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasijudicial and administrative decisions, which was perceptibly mitigated in Binapani Dei's case (supra) was further rubbed out to vanishing point in A.K. Kraipak's case, AIR 1970 SC 150 (supra).....:

On the basis of these authorities it must be held that even when State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet.

15. Fair play is a part of the public policy and is guarantee for justice to citizens. In our system of Rule of Law very social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the wellbeing of citizens. The rules of natural justice have developed with the

growth of civilization and the content thereof is often considered as proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any jurisdiction to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalized so that hearing commensurate to the situation is afforded before section of the employees is thrown out of employment."

25. Thus opposite party No. 4 being Inspector General of Police, East Zone, PAC, vested with power to discharge certain functions and duties as per circular/ Government Order dated 2.7.2006 issued from the office of the Additional Director General of Police, Head Quarters and opposite party No. 5 himself having Chaired one of the Recruitment Board pertaining to recruitment of Constables of Sitapur, both being closely associated with the selection process and they having not pointed any illegality and irregularity in the process of selection even after declaration of result, were not entitled to be Chairman/ Member of the Committee constituted under order dated 13.6.2007. The very constitution of the committee with opposite parties No. 4 and 5 as its Chairman/ Member smacks at the basic requirement of fairness.

26. Element of bias is likely to writ large where persons enquiring are aware and have knowledge about the happenings in past when they themselves are actively associated. Opposite parties No. 4 and 5 were both in the recruitment process which was under scanner. Thus this Court is of the considered opinion that the constitution of the committee vide order dated 13.6.2007 wherein opposite parties No. 4 and 5 were nominated as Chairman/Member was manifestly unjust, arbitrary and illegal. It had been constituted in flagrant disregard of the settled principle that a person cannot be judge of his own cause.

27. After the finalisation of the entire selection process and results having been declared several candidates though having participated in the said process, challenged the same on variety of grounds including nepotism and favouritism, by filing writ petitions in this Court (writ petition No. 2809 (S/S) of 2005 Harinder Singh and others v. State of U.P. and others and other connected petitions). Vide judgment and order dated 23.8.2005 this Court dismissed all the said writ petitions. The record pertaining to selection process of all the 15 Districts were summoned and was gone through and examined. While dismissing the writ petitions the Hon"ble Judge observed as follows:

"In order to ascertain as to whether the same procedure has been followed in the entire selection in all the 15 districts or not? The record of all the 15 districts have been summoned and I have found that the result of the selection has been

prepared in accordance with the prescribed procedure. The Rules of Reservation have been followed in accordance with the settled law. The number of reserved category candidates has increased because most of the reserved category candidates have occupied merit seats after securing cut off marks required for qualifying in the merit list.

I do not find any arbitrariness, nepotism or favouritism or any malpractice in conducting the selection of the police constables in any of the district in which the vacancies were notified. It is only unsuccessful candidates who have filed various writ petitions without impleading the successful candidates who have already joined after the declaration of the result under misconception that there was some bungling in the selection process after seeing the number of more Yadav candidates in OBC category candidates and after noting certain typographical error in preparation of the select list as discussed above. Since the arbitrariness, favouritism and nepotism have not been proved, the writ petition for quashing the selection process or for giving appointment as prayed by the petitioners or for conducting C.B.I. Enquiry cannot be entertained.

In few of the above, all the writ petitions are dismissed."

The said judgment became final as the same was not challenged in any proceedings. Two unsuccessful candidates, namely Udai Singh Yadav and Vinay Kumar Yadav also approached this Court at Allahabad in separate writ petitions (writ petition No. 34375 of 2006 and 34445 of 2006). Both the writ petitions were dismissed on 17.7.2006 by separate orders with cost of Rs. 5, 000/ to be deposited with the Legal Aid Services Authority.

28. Prior to the aforesaid two petitions several other unsuccessful candidates filed writ petition No. 34299 of 2005, Dinesh Kumar and others. The learned Single Judge vide order dated 27.5.2005 directed all the answer sheets for all 15 Districts to be sealed forthwith and kept in safe custody and if necessary, to be produced before the Court and as an interim measure stayed the selection process and provided that if appointment letters have been issued the candidates shall not be sent for training and if sent, the same shall remain stayed.

29. The aforesaid interim order was assailed by the State in Special Appeal No. 757 of 2005 and other connected matters. Vide judgment and order dated 23.6.2005 the appeal was allowed in part. The Court maintained the order passed by the Hon"ble Single Judge regarding answer books to be kept in sealed cover and modified the later part and allowed the petitioners (respondents in appeal) to take up their training.

30. Thus from the perusal of the aforesaid, it is abundantly clear that the selection process for appointment of Police Constables was challenged by the several unsuccessful candidates, but the grounds with regard to irregularity, illegality, nepotism and favouritism did not find favour with the Court. This being so, there was absolutely no occasion for the opposite parties to again enter into question, which already stood finally settled by this Court, by constituting

committee to probe into alleged irregularities. When various questions raised by unsuccessful candidates having not found favour and some having received judicial sanction that there was no element of irregularity or illegality, nepotism and favouritism in the selection process, it was only with an oblique motive that again the same exercise was intended and initiated by constituting committee.

31. As would appear from the perusal of the record of the writ petition, Sri Irshad Hussain, one of the M.L.A., upon whose alleged complaint the enquiry is said to have been initiated was also sitting M.L.A., under previous Government, but he never raised any voice in Assembly or by any other means about the alleged irregularities. Upon change of the Government the complaints followed. It is further apparent that all the 3 M.L.As., on whose complaint the committee has been constituted to conduct enquiry in respect of the recruitment, are of the Ruling party in the State. It is only with predetermined, intentional and with oblique motive to tarnish the image and lower the morale of police force that the committee was constituted.

32. In view of what has been discussed hereinabove, the writ petition deserves to succeed and the order dated 13.6.2007 is liable to be set aside. In the circumstances the writ petition is allowed and the order dated 13.6.2007, as contained in Annexure 1 to the writ petition, is hereby quashed.

33. No order, however, as to costs.