
(1974) 10 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous P. No. 116 of 1973

R.N. Agarwal

APPELLANT

Vs

University of Saugar and another

RESPONDENT

Date of Decision : 16-10-1974

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) JLJ 130

Hon'ble Judges : G.P. Singh, J;B.R. Dubey, J

Bench : Division Bench

Advocate : A.S. Usmani, for the Appellant; S.K. Seth, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, J.—This is a petition under Article 226 of the Constitution for quashing the proceedings dated 9th December 1971 of the Committee of Selection, University of Saugar, as also the appointment of Vivek Dutt Jha, respondent No. 2, as Assistant Professor in the Department of Ancient Indian History, Culture and Archaeology.

2. A post of Assistant Professor in the Department of Ancient Indian History, Culture and Archaeology was vacant in the University of Saugar and Applications were invited for that post. The petitioner R.N. Agarwal, who was then a Research Assistant in the Department, and the respondent Vivek Dutt Jha amongst others applied for that post. The candidates were interviewed on 9th December 1971 by the Committee of Selection constituted u/s 47-A of the University of Saugar Act, 1946. Three members, viz. professor W.D. West, Vice-Chancellor (Chairman), Professor B.S. Upadhyay, Member (Expert), Head of the Department of Ancient Indian History, Vikram University, and Professor K.D. Bajpai, Head of the Department of Ancient Indian History, Culture and Archaeology, University of Saugar, were present in the meeting of the Committee on 9th December 1971. The Committee recommended the name of respondent Jha for appointment to the post of Assistant Professor and on that recommendation the respondent was

appointed as Assistant Professor.

3. The petitioner challenges the appointment of the respondent on two grounds. It is first contended that Professor K.D. Bajpai, Head of the Department of Ancient Indian History, Culture and Archaeology, University of Saugar, was not competent to sit in the Committee of Selection because of bias. The second contention is that the required quorum was not present in the meeting of the Committee on 9th December 1971.

4. As regards the contention of bias, the facts alleged are that the petitioner's wife and father-in-law in March 1971 filed a writ petition under Article 226 of the Constitution praying for a writ of quo warranto against Professor Bajpai and for quashing his appointment as Professor of the University. It is further alleged that on 2nd December 1971 the petitioner made an application to the Vice-Chancellor praying that Professor Bajpai be requested to refrain from sitting in the Committee of Selection. It is also alleged that although the Vice-Chancellor advised Professor Bajpai not to sit in the Committee of Selection, he did not accept that advice and sat in the Committee. Professor Bajpai has not been joined as respondent in this petition. The reply of the respondents, however, on this point is that Professor Bajpai had no bias against the petitioner and the writ petition challenging his appointment was got filed by the petitioner to create an appearance of bias so that he may not sit in the Committee.

5. Professor Bajpai was appointed as Professor sometime in 1963 and it was this appointment which was challenged by the wife and father-in-law of the petitioner in the writ petition that was filed on 10th March 1971. This petition was dismissed in motion by a Division Bench of this Court on 14th July 1971 on the ground of long delay. An application for leave to appeal to the Supreme Court was then filed on 13th September 1971 which was also dismissed on 7th July 1972. Thereafter, the matter was not pursued. No reason whatsoever has been disclosed by the petitioner as to why the appointment of Bajpai as Professor, which was made in 1963, was challenged in 1971 and not earlier. u/s 47-A (2) of the Act, Head of the University Department in the subject concerned, if he is a Professor, is a member of the Committee of Selection. From the facts it would appear that the petitioner for some reason, best known to him, did not like that Professor Bajpai should participate as a member of the Committee of Selection. It was for this reason that he manoeuvred to get the writ petition filed by his wife and father-in-law challenging the appointment of Professor Bajpai after eight years. As was expected, the said petition was dismissed in motion because of long inexplicable delay and the application for leave to appeal to the Supreme Court was also dismissed as there was no merit in it.

6. It is well settled that bias of a member of a Committee of Selection invalidates the selection made by the committee; [A.K. Kraipak and Others Vs. Union of India (UOI) and Others,]. In cases where an order or recommendation is challenged on the ground of bias, it is not necessary to establish the presence of actual bias. There are two lines of authorities on the question as to what should

be established by the petitioner for succeeding on the ground of bias. According to some authorities, the petitioner must establish, to the satisfaction of the Court, that there was a real likelihood of bias in the circumstances of the case; [See *From United Breweries Company Ltd. v. Bath JJ.* (1926) A C 586 and *R. V. Bransley Licensing Justices* (1960) 2 AII E R 703, pp. 714, 715 (C. A. per Devlis, L. J.)]. The modern trend of authorities is, however, to the effect that it would be sufficient to establish that a reasonable person acquainted with the facts would have reasonable grounds for suspecting bias; [See--*Metropolitan Properties Ltd. v. Lannon* (1968) 3 AII E R 304 (C. A.), *Hannam v. Bradford City Council* (1970) 2 AII E R 690 (C. A.)] and Halsbury's Laws of England, 4th Edition, Vol. I, p. 84]. The latter view is more in the line with the formulation that justice should not only be done but should manifestly and undoubtedly be seen to be done. The former view is known as the "real likelihood" test and the latter as the "reasonable suspicion" test. The Supreme Court in *Manaklal v. Dr. Prem Chand* A I R 1957 S C 524 observed that the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the Tribunal, The test laid down by the Supreme Court in this case is similar to the "reasonable suspicion" test. In *Kraipak*'s case however the Supreme Court laid down that what has to be seen is whether there is reasonable ground for believing that the member concerned was likely to have been biased. The observations in this case are nearer to the "real likelihood" test. In most of the cases same result would be reached by applying either of these tests.

7. There is, however, no authority in support of the view that when the petitioner himself manoeuvres to create a situation to give an appearance of bias with a view to exclude a particular person from sitting in a Committee or Tribunal, the recommendation or order of the committee or tribunal can be avoided on the ground of bias. The constitution of a committee or tribunal is fixed by law. Litigants cannot choose their own Court and similarly -- candidates at a selection cannot have a committee of their choice. If the law were to permit a candidate to exclude a member from a committee by intentionally creating a situation of unreal bias, that would in effect be conceding to candidates the right to choose their own committee. We are of opinion that that is not the law. No reasonable person and no Court can be satisfied of a reasonable likelihood of bias in a case when the petitioner manoeuvres to create an appearance of bias when none exists. Professor Bajpai is a member of the Committee of Selection under the authority of section 47-A (a) of the Act. His appointment as Professor was not challenged from 1963 to 1971. The writ petition questioning his appointment was filed by the petitioner's wife and father-in-law on the eve of Selection of candidates for the post of Assistant Professor with the sole object that the petitioner may use it a handle to exclude Professor Bajpai from the committee. This manoeuvring was to create an appearance of bias when none existed. In these circumstances, the recommendations of the Committee of Selection cannot be impugned on the ground of bias of Professor Bajpai.

8. As regards the second contention that the requisite quorum was not present in the meeting of the Committee of Selection on 9th December 1971, we have to take notice of two resolutions of the Executive Council. The first resolution is dated 12th March 1967 and reads as follows:

Resolved that in case of an appointment to a permanent post or a post likely to be made permanent at least one external expert must be present.

The second resolution, which is relevant on the point, was passed on 15th November 1970. The resolution is in Hindi. Translated into English it will read as follows:

Resolved that the present practice be continued in future, i.e. if at least one expert is present in the meeting of Committee of Selection, then proceeding be completed.

The University has appended a schedule to its return which shows that between 5th December 1966 and before 15th November 1970 there were ten instances when selections for the posts of Assistant Professor and Reader were made by the Committee of Selection. In all these cases, except one, only three members including one expert were present in the meeting held for the selection. In one case only two members including the expert were present. The prevalent practice thus was that if one expert member was present together with another member, the committee could proceed to do the selection and make its recommendation. It was on this basis that all the selections from 1966 onwards were made. The resolution of the Executive Council dated 15th November 1970 legalised this practice. The effect of the resolution was to fix a quorum of one expert member with another member for a meeting of the Committee of Selection.

9. The Committee of Selection is constituted u/s 47-A (2) of the Act and consists of the following members:--

(i) The Vice-Chancellor Chairman

(ii) Head of the University Department in the subject concerned, if he is a Professor or when the Head of the University Department in the subject concerned is not a Professor or when the selection is to be made for the post of Professor, the Dean of Faculty concerned. Member.

(iii) One expert in the subject to be nominated by the Academic Council... ... Member.

(iv) Three eminent educationists not concerned with the University, one of whom at least is an expert in the subject, nominated by the Chancellor... Member

(v) The Chairman of the State Public Service Commission, or a member of the State Public Service Commission nominated by him.... ... Member".

This section does not provide as to what shall be the quorum. There are seven members in the committee including the Chairman. In the absence of any

prescribed quorum, a majority of the members, i.e. four, will constitute a quorum. The Executive Council was, however, competent to prescribe a quorum for the meeting of the committee u/s 24 (1) (p). This section enacts that the Executive Council shall "regulate, determine and administer all matters concerning the University, and to this end, shall exercise all other powers of the University not otherwise provided for by this Act or the Statutes". Section 34, to which reference was made by the petitioner, empowers the Authorities and the Boards of the University to make Regulations laying down the procedure to be observed at their meetings and the number of members required to form a quorum. This section is limited to the Authorities and Boards of the University. The Authorities of the University are enumerated in section 19 and the Boards are constituted u/s 29. The Committee of Selection is neither an Authority nor a Board of the University. Section 34, therefore, is not applicable to the Committee of Selection and it cannot frame Regulations for prescribing its quorum. There is no express provision in the Act regarding the quorum of the committee. The Executive Council, therefore, is entitled to fix the quorum of the committee under its general powers contained in section 24 (1) (p). The two resolutions of the Executive Council to which reference has been made fixed the quorum of the Committee of Selection. These resolutions, in particular the second resolution of 15th November 1970, sanctioned the prevalent practice which is expressly referred to therein. As already stated, the effect of the resolution is that if an expert member is present, presence of another member is sufficient to constitute a quorum. In the instant case three members were present, one of them, Professor B.S. Upadhyay, was an expert member. There was thus no want of quorum in the meeting of the Committee of Selection in accordance with the resolution of the Executive Council. The second contention raised by this petitioner must, therefore, also fail.

10. The petition fails and is dismissed with costs. Counsel's fee Rs. 100, if certified. The outstanding amount of the security deposit, if any, shall be refunded to the petitioner.