

(2008) 07 MP CK 0014

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2522 of 2000

Shyama Dwivedi and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 91

Citation : (2008) ILR (MP) 2885 : (2009) 1 MPLJ 456

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : M.L. Choubey, S.S. Shrivastava and S.K. Choubey, for the Appellant; Shailesh Mishra, Aseem Dixit, Government Advocates for Respondent Nos. 1 to 3, P.S. Das for Respondent No. 4, Vivek Rusia and Sarita Chourasia for Interveners, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

Challenging the orders passed by the Collector, District Chhatarpur on 2-6-1999 vide Annexure P/21, holding appointment of the petitioners on the post of Shiksha Karmi - Grade III as illegal and setting aside the same, further challenging the order-dated 14-3-2000 passed by the Commissioner, Sagar Division dismissing the revision petition filed by the petitioners, and affirming the order (Annexure P/21) passed by the Collector, petitioners have filed this petition under Article 226/227 of the Constitution.

It is the case of the petitioners that they were duly appointed after selection on merits on the post of Shiksha Karmi - Grade III, by the Janpad Panchayat Gaurihar vide order-dated 17-9-1998, that their appointments were made after complying with the requirements of M. P. Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 (hereinafter referred to as the "Rules of 1997"). Being aggrieved by appointment of the petitioners it is stated that one

Kunwar Vijay Bahadur Singh Bundela challenged the same by filing an appeal before Collector, Chhatarpur and the Collector vide order-dated 31-8-1998 (Annexure P/17) quashed the entire selection and remanded the matter back for fresh selection. In pursuance to the directions passed by the Collector vide Annexure P/17 on 31-8-1998, fresh process of selection was conducted, select list was prepared, it was finally published on 16-9-1998 and 249 candidates were notified for appointment, after conducting the process of selection. Orders of appointment were issued on 17-9-1998 vide Annexure P/18. Name of the petitioners appear in the aforesaid selection list. On selection petitioners joined the selected post and after the petitioners had joined the selected post, respondent No. 4 Smt. Archana Mishra aggrieved by her non-selection preferred an appeal before the Collector Chhatarpur. Various allegations were made in the appeal filed by respondent Archana Mishra, as contained in Annexure P/20. However, without hearing the petitioners, without issuing notice to them and on the basis of the submissions made by the respondent and after hearing the Janpad Panchayat, finding selection of the 11 petitioners to be vitiated the Collector quashed the order of appointment vide Annexure P/21, dated 2-6-1999.

Being aggrieved by this order petitioners herein preferred revision before the Commissioner, Sagar Division and the Commissioner vide order-dated 14-3-2000 (Annexure P/22) has dismissed the revision petition and, therefore, petitioners are before this Court challenging the orders passed by the Collector and the Commissioner i.e. the appellate authority and the revisional authority.

During the course of hearing of this petition Shri M. L. Choubey, learned counsel for the petitioners, made the following submissions:

(1) His first submission was that the Collector committed grave error in quashing the appointment of the petitioners without hearing them, without issuing notice to them and without impleading the petitioners as parties in the proceedings held in the appeal. It was emphasized that cancelling of the appointment of the petitioners without hearing and without granting opportunity of defence is clearly unsustainable and the entire action taken behind the back of the petitioners is liable to be quashed on this ground alone.

(2) The second ground of challenge is that the Collector and the Commissioner have interfered with the selection of the petitioners only on the ground that petitioners' relatives were office bearers of the Janpad Panchayat and they had participated in the process of selection. It was emphasized by Shri Choubey that mere participation of the relatives will not vitiate the selection until and unless the role played by the relatives, the influence put by them in the process of selection and the manner in which the selection was influenced by their participation is not established. It was argued by Shri M. L. Choubey that in the present case merely because the relatives were members of the selection committee, interference has been made without making any consequential enquiry into the fact as to whether the presence of the relatives did influence the selection of the petitioners. It was his case that without conducting any enquiry

into the consequential effect on the procedure for selection due to presence of the relatives, interference by the Collector and Commissioner was not warranted.

Shri M. L. Choubey tried to emphasize that petitioners were selected on their own merit, during the interview of each of the petitioners, the relatives concerned had left the process of selection and in their absence the marks to be allotted by the said relatives was allotted by the Chief Executive Officer of the Janpad Panchayat and, therefore, as the selection is not influenced in any manner whatsoever, the orders passed by the appellate authority and the revisional authority interfering with the selection merely on the grounds of presence of relatives in the Selection Committee, is wholly unsustainable and liable to be quashed.

(3) The third ground urged which was incorporated by a proposed amendment is contained in LA. No. 6910/08 and which was permitted to be raised at the time of hearing is to the effect that the orders of - appointment were not passed by the Janpad Panchayat. It is stated that petitioners were appointed vide order-dated 17-9-1998 (Annexure P/18) by the Additional Assistant Development Commissioner. After concurrence of the Collector and against such an order no appeal under Rule 3(d) of the Rules of 1995 lies to the Collector, that being so, exercise of power by the Collector under Rule 3(d) is said to be illegal and challenge is made to the order on this ground by the proposed amendment as indicated in LA. No. 6910/08. By taking me through the affidavit available on record and various other documents Shri M. L. Choubey, learned counsel, argued that the action taken and the orders passed are liable to be quashed for the grounds raised hereinabove.

In respect thereof, he placed reliance on the following three judgments: (i) Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others, ; (ii) Lakshmi Precision Screws Ltd. Vs. Ram Bahagat, to canvass the ground that the action taken without granting opportunity of hearing is unsustainable. A Division Bench judgment of this Court in the case of Sagar Machhua Sahakari Samiti Vs. Chief Executive Officer, Janpad Panchayat and Another, in respect of the contention that against a resolution of the Panchayat, held no appeal or revision lies under the Panchayat Raj Adhiniyam. Accordingly, on the aforesaid grounds Shri Choubey prays for interference into the matter.

Shri Shailesh Mishra, learned Government Advocate for the State; Shri P. S. Das, learned counsel for the respondents; Shri Vivek Rusia and Smt. Sarita Chourasia, learned counsel for the interveners, refuted the aforesaid contention and it was submitted by them that participation of various relatives of the petitioners in the selection process and such relatives being office bearers of the Janpad Panchayat is an admitted fact. As this was a material irregularity, which vitiates the entire selection, it was argued by the learned counsel that Collector and Commissioner have not committed any error in interfering with the selection process.

Taking me through the statements and the evidence adduced by the Janpad

Panchayat, Shri Shailesh Mishra emphasized that in the proceedings held before the Collector and the Commissioner it was the specific case of the Janpad Panchayat that petitioners are related to Smt. Pushpa Dwivedi, President of the Shiksha Samiti, which conducted the selection, and Shri Sumer Singh, Member of the Shiksha Samiti and both of them are office-bearer of the Panchayat. Accordingly Shri Shailesh Mishra submits that as the entire selection was influenced by the presence of these persons who are related to the petitioners, the authorities concerned have not committed any error in interfering with the selection of the petitioners.

By bringing on record some of the marks allotted to the petitioners by Members of the Selection Committee, interveners have tried to demonstrate before this Court that even though petitioners had received less marks on the basis of basic qualification, but by giving them higher marks in the interview they have been brought within the merit consideration and in this manner the selection is influenced.

Shri Shailesh Mishra, learned Govt. Advocate, further argued that even though petitioners were not heard before the Collector, but when the revision was filed by them before the Commissioner, the entire selection records were adduced and the revision was dismissed after hearing the petitioners. Petitioners were given all the opportunity to give their say in the matter and the Commissioner having dismissed the revision after due consideration of the objections raised by the petitioner, Shri Shailesh Mishra emphasized that no prejudice is caused to the petitioners and, therefore, on the ground on non-grant of hearing in the facts and circumstances of the case, it is argued by him that no interference is called for.

It was further stated by Shri Shailesh Mishra that the order of appointment of the petitioners, which was subject-matter of appeal before the Collector, under Rule 3 of the Rules of 1995, was issued by the Janpad Panchayat. Referring to the order of appointment Annexure A/18, learned counsel pointed out that the said order is issued from the office of Janpad Panchayat, Gaurihar Head Quarter Barigarh, District Chhatarpur. It is the order of appointment made by the Janpad Panchayat and the signature of the Additional Assistant Development Commissioner is not in the capacity of any officer of the State Government, but in his capacity as officer-in-charge of the Janpad Panchayat. It is stated that the order is issued by the Janpad Panchayat and, therefore, it was subject to appeal under Rule 3 before the Collector.

Accordingly, learned counsel for the respondents and the interveners submit that there is no merit in the claim made by the petitioners and the petition is liable to be dismissed as their appointment stands vitiated due to involvement of their relatives in the process of selection. Placing reliance on a judgment of the Supreme Court in the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Shri Vivek Rusia, learned counsel representing some of the interveners, argued that in the present case in the light of the fact that

petitioners have been heard both by the Commissioner and also before this Court and as the prejudice caused is not established, interference on the ground of non-grant of opportunity is not called for. Accordingly, he prays for dismissal of this petition.

I have heard learned counsel at length.

During the course of hearing of this petition, as ordered earlier the Chief Executive Officer of the Janpad Panchayat was present with the original records of selection. Shri M. L. Choubey, learned counsel for the petitioners, was granted permission to inspect the records he inspected the records on 29-7-2008. The records have been perused by this Court and is returned back to Shri. Shailesh Mishra after perusal.

As already indicated hereinabove, mainly three disputes arise for determination in this petition :

(i) The first question would be as to whether the appeal was maintainable before the Collector under Rule 3;

(ii) The second question is as to what is the effect of cancellation of the appointment of the petitioners, ordered without hearing them and without impleading them as parties; and,

(iii) The third and final question would be as to whether the Collector and Commissioner were right in interfering with the selection of the petitioners for the reasons indicated by them in the impugned order i.e. the presence of the relatives as Members of the Selection Committee in which petitioners had participated.

The first question raised with regard to competency of the Collector to deal with the appeal under Rule 3 is wholly misconceived and can be out-rightly rejected for the following reasons. Challenge by respondent Smt. Archana Mishra in her appeal (Annexure P/20) under Rule 3 of the Rules of 1995 read with section 91 of the M.P. Panchayat Raj Adhiniyam was made to the order of appointment dated 17-9-1998 (Annexure P/18). A perusal of this order indicates that this order is issued by the Janpad Panchayat, Gaurihar with Head Quarter Barigarh, District Chhatarpur and the entire order indicates that a Selection Committee was constituted by the Janpad Panchayat in accordance to the statutory rule and the appointment is made by the Janpad Panchayat. Merely because the order bears the signature of an Additional Assistant Development Commissioner, it cannot be construed that this order is passed by some authority of the State Government or its officers and not by the Janpad Panchayat. On the contrary, the officer concerned after mentioning his designation has clearly indicated him to be a representative of Janpad Panchayat Gaurihar, District Chhatarpur. It is clear from the aforesaid order that this order has been passed as a consequence of the selection procedure conducted by the Janpad Panchayat. Merely because the State Government vide order-dated 24-1-1998 and the Collector vide order-

dated 21-5-1998 have sanctioned and approved the posts to be filled up, it cannot be held that the order of appointment itself is issued by the State Government or the Collector. On the contrary, a complete reading of the order-dated 17-9-1998 and the other documents available on record, which includes the documents constituting the Selection Committee, the resolution of the Janpad Panchayat prescribing the procedure to be followed by the Selection Committee and acceptance of the recommendations of the Selection Committee by the Janpad Panchayat, which are available on record as resolutions dated 1-8-1998 Annexure R/6(I) and proceedings Annexure R/6(2), all go to indicate that the appointment in question was made by the Janpad Panchayat and once it is held that the appointment is made by the Janpad Panchayat, then the order of appointment made by the Janpad Panchayat is amenable to the appellate jurisdiction of the Collector u/s 3 and the order of the Collector is further subject to revision before the Commissioner under Rule 5 of the Rules of 1995, that being so, finding the first ground urged by Shri Choubey to be wholly misconceived, the same is rejected.

As far as the second ground pertaining for cancellation of the appointments without hearing the petitioners and without granting them opportunity of hearing is concerned, the same is required to be tested on the touchstone of actual prejudice caused to the petitioners in the matter of non-grant of hearing. In the judgments relied upon by Shri M. L. Choubey, in the case of M/s Laxmi Precision Screws Limited (supra) and Inderpreet Singh Kahlon (supra), the principle laid down are that no person should be visited with an adverse order or action without granting him opportunity of hearing and without considering his defence. There is no dispute in accepting the aforesaid proposition, but at the same time another principle which is also equally established is that when action or orders are challenged on the ground of non-grant of hearing, mechanical interference is not to be resorted to until and unless prejudice caused due to non-grant of hearing and the effect on the final outcome is established before the Court, except that an exception carved out in such cases where a statutory provision for grant of hearing is contemplated. This principle is laid down by the Supreme Court in series of cases. Reference may be made to one such case i.e. State Bank of Patiala and others Vs. S.K. Sharma, . That being so. this Court proposes to deal with the question of non-grant of hearing mainly on the basis of prejudice caused and the effect of the same into the final outcome, as it is not proper to quash the order directly on the ground of non-grant of hearing by the Collector.

Even though when the appeal was filed by respondent Smt. Archana Mishra before the Collector, petitioners were never heard and the Collector passed the order without hearing the petitioners, the matter did not end there. Petitioners availed of the opportunity of filing a revision before the Commissioner. When the matter traveled to the Commissioner in this manner, full opportunity of hearing was granted to the petitioners and the entire selection record and other documents, which formed the basis for passing of the order by the Collector, were available before the Commissioner, petitioners had access to the same and

Commissioner decided the revision afresh on merits after considering each and every objection of the petitioners. Thereafter, during the course of hearing in this petition also, the entire selection proceedings and other documents were available on record and the petitioners were given full opportunity to demonstrate before this Court that their selection was proper or that the finding with regard to their relatives participating in the selection process is an incorrect or improper finding. Petitioners admitted that their relatives had participated in the selection, but only argued that their presence did not influence their selection. This is a matter which can be looked into on the basis of the material available on record and during the course of hearing of this petition, the petitioners were not in a position to demonstrate as to what was the prejudice caused for non-grant of hearing by the Collector. Even if no hearing was granted before the Collector, but when full opportunity of hearing was granted and was availed of by the petitioners before the Commissioner in the revision and when the Commissioner had passed the order after so hearing the petitioners, merely because petitioners were not impleaded as party in the proceedings held before the Collector it cannot be said that the entire action of the appellate authority and the revisional authority stands vitiated on this ground. This is a case where petitioners had ample opportunity of putting up their defence and objections before the Commissioner and the Commissioner having appreciated the dispute on merits after hearing the petitioners, this Court is not inclined to interfere in the matter merely on the technical ground of non-grant of opportunity. It has to be held that non-grant of opportunity during the proceedings held before the Collector does not vitiate the action taken against the petitioners as they were given full and reasonable opportunity by the Commissioner before passing the order and petitioners having availed of the same, cannot have any grievance on this count. Accordingly, the second ground of attack also fails being unsustainable.

As far as the third ground with regard to propriety of the interference made by the Collector and the Commissioner is concerned, factual aspects of the matter require consideration.

A perusal of the order-dated 2-6-1999 (Annexure P/21) passed by the Collector; the order-dated 14-3-2000 (Annexure P/22) passed by the Commissioner; and, the selection proceedings available on record indicate that in the present case selection is made to the post of Shiksha Karmi - Grade III and the procedure for such selection is contemplated under the MP. Panchayat Shiksha Karmis (Recruitment and Service Condition) Rules, 1997. The method of selection and recruitment is provided in Rule 5 and the constitution of the Selection Committee and the manner of selection is provided for in sub-rule (8) and (9) of the aforesaid Rule. According to the procedure contemplated under Rule 5(9)(i)-(a), (b) and (c) - 60% of the marks obtained in the qualifying examination is to be taken note of; thereafter 25% marks can be added for teaching experience and 15% marks are fixed for oral test. Accordingly, the total marks fixed for selection is 100. Under sub-rule (8) Of Rule 5, the constitution of the Selection Committee

and its Members are indicated which is in accordance to the provisions specified in Schedule II to the Rules.

Item No. 3 of Rule 2 deals with Shiksha Karmi - Grade III, the educational qualification is Higher Secondary Certificate Examination passed, and the Selection Committee is to consist of: (i) Chairperson, Standing Committee of Education of Janpad Panchayat; (ii) Chief Executive Officer, Janpad Panchayat; (iii) Block Education Officer (Member Secretary); (iv) Two specialists in the subject to be nominated by the Standing Committee for Education of whom one shall be woman; and, (v) All members of the Standing Committee of Education of whom atleast one belongs to the Scheduled Castes, Scheduled Tribes or OBC. In the present case, there is no dispute that the Selection Committee was constituted as per the aforesaid provision, but presence of two members in the Selection Committee is to be taken note of. The President of the Selection Committee is one Smt. Pushpa Dwivedi. She is Chairman of the Education Committee and she has participated in the process of selection of various candidates. Another member of the Selection Committee was one Shri Swami Singh, who is a Member of the Janpad Panchayat and has participated in the process of selection as a Member of the Education Committee. It is found by the Collector and the finding of the Collector is affirmed by the Commissioner to the extent that petitioner No. 1 Smt. Shyama Dwivedi is the sister-in-law of the President of the Selection Committee Smt. Pushpa Dwivedi. According to the finding recorded Smt, Pushpa Dwivedi's sister-in-law (Nanand) Smt. Shyama Dwivedi; her Devrani Smt. Vibha Dwivedi; two sisters Rashmi Dwivedi and Rita Dwivedi have been appointed. Apart from these persons, her nephew Devendra Awasthi and her two nieces Ku. Rekha Awasthi and Ku. Prabhesh Kumari have been appointed. That apart, it is found that Smt. Gita Rawat, petitioner No. 8, is also sister of Smt. Pushpa Dwivedi. From the aforesaid facts, it is clear that eight members of the family belonging to the President Smt. Pushpa Dwivedi have been selected for appointment on the post in question. Apart from the aforesaid eight persons petitioner Smt. Ramrani Singh is found to be daughter-in-law of Shri Swami Singh, who was Member of the Committee; Shri Sumer Singh, petitioner No. 6, is found to be son of Shri Swami Singh and one of his nephew Shri Rajesh Singh has also been found to be appointed. Finding in this regard is recorded by the Collector and the Commissioner on the basis of the statement made by the Chief Executive Officer. The order-sheets dated 4-6-2002 and 24-6-2002 indicates that petitioners were directed to file affidavits to show as to whether this is a correct fact or not. The order-sheet dated 24-6-2002 indicates that time was sought by learned counsel for the petitioners to file specific affidavit of the petitioners denying their relationship with Members of the Selection Committee or office bearers of the Janpad Panchayat. Even though in pursuance to the aforesaid order, affidavits have been filed, but in these affidavits the facts are not denied and during the course of hearing Shri M.L. Choubey fairly; admitted that petitioners are related to Smt. Pushpa Dwivedi and Shri Swami Singh, as recorded by the Collector and the Commissioner and he

accepts the same, that being so, the finding recorded by the Collector and the Commissioner to the effect that all the petitioners are very closely related either to the President of the Committee, or its Member is a correct finding. According to the Collector and the Commissioner, the Panchayat Raj Adhiniyam prohibits grant of any undue benefit by Members and office bearers of the Panchayat to any of its relatives or family members. Finding recorded is that in this case some benefit has been granted.

It is not in dispute that Smt. Pushpa Dwivedi and Shri Swami Singh were Members of the Selection Committee and they participated in the process of selection. However, the resolution and other documents only indicate that when relatives of Smt. Pushpa Dwivedi appeared for the interview, she left the interview board and the two marks available with her for allotment to the candidate were allotted by the Chief Executive Officer. Similarly, when relatives of Shri Swami Singh appeared for the interview, he is said to have left the proceedings and the two marks available with him were allotted by the Chief Executive Officer. On this ground, it was emphasized by Shri M. L. Choubey that the presence of relatives was of no consequence and it has not materially affected the process of selection. This aspect requires consideration.

As already indicated hereinabove under the statutory rules, out of 100 marks to be allotted 60% marks is based on the educational qualification. 25% marks is to be allotted by the Members of the Committee on the basis of experience and various other factors and thereafter 15% marks is to be allotted for oral interview. Records indicate that in the Selection Committee there were about 10 Members and out of these Members, two marks each were to be allotted by Smt. Pushpa Dwivedi, Shri Swami Singh, Smt. Rajrani Shukla - Member, Shri Bhurelal Khangar - Member, Shri Harshvardhan Singh, another Member. Thereafter, one mark each were to be allotted by Shri Ramdeo Patel, representative of MLA; Shri C.L. Maravi, Chief Executive Officer; Shri K.S. Chauhan - Block Education Officer; Ku. Meera Vishwakarma - Subject Expert and Shri A. P. Ahirwar, another Subject Expert. In this manner 15 marks were allotted. If the allotment made of marks under various category is taken note of and if it is compared with the marks allotted to some of the wait-listed candidates certain disparities can be apparently seen. Petitioner Smt. Shyama Dwivedi had obtained 50% in the Higher Secondary Certificate Examination. Accordingly, she has been allotted 30% marks for qualification. In the oral interview she is allotted 11.10 marks. After adding the marks for experience she has received 58.10 marks. Compared to this is the case of Shri Yogendra Nigam, Shri Yogendra Soni, Shri Shivsharan, Shri Dinesh Kumar and Shri Satyendra Kumar. All these persons have received more than 75% marks in the Higher Secondary Certificate Examination and, therefore, they have received very high marks approximately between 46.47% for educational qualification, but by giving them only 3 marks in the interview their overall total percentage is kept around 50 and they are eliminated from the process of selection. In this manner, some benefit is granted to each of the petitioners. That apart, petitioner Smt. Vibha Dwivedi has received 57% marks in

the Higher Secondary Certificate Examination; petitioners Devendra Awasthy and Krishnadutt Awasthi have received 55% and 69% marks; whereas petitioner Sumer Singh son of Shri Swami Singh has received 53% marks, accordingly their percentage for the qualifying examination is very less compared to other wait-listed candidates. These persons have been allotted 12.25, 8.95 and 15 marks in the interview and their overall mark is made over 55, so as to bring them within the zone of consideration. It is, therefore, apparent from a scrutiny of these results that most of the petitioners have received very less marks in the qualifying examination i.e.. Higher Secondary Certificate Examination, whereas many persons whose name appear in the waitlist have received 78% and 79% marks in the qualifying examination, but they are allotted very low marks in the interview and experience, in some cases even less than 3 marks is allotted in the oral interview, as a result their selection is adversely affected. This is the reason why the Collector and the Commissioner thought it appropriate to interfere in the matter.

Petitioner No. 6 Sumer Singh is son of Shri Swami Singh, a Member of the Selection Committee, and he has been allotted full 15 marks i.e.. 100% marks have been allotted by each of the Committee Members. It is found that in this manner benefit in some way or the other is extended to each of the petitioners and this is the reason why the Collector and the Commissioner interfered in the matter. It is further found that one Badri Prasad, son of Bhagwat Prasad has been appointed and he has been given 9 marks for the experience, but in his file no experience certificate is available. It is found that petitioner Gita Rawat is the real sister of Smt. Pushpa Dwivedi and she has been selected after giving her high marks in the oral interview, even though she has only received 55% marks in the qualifying examination i.e. Higher Secondary. It is clear from a perusal of the records that eight close relatives of Smt. Pushpa Dwivedi, president of the Selection Committee, and Shri Swami Singh, a Member, of the Selection Committee, have been appointed. The relatives selected are either sons, daughter, sisters, sister-in-law of the Members and after appreciating all these factors, the Collector and the Commissioner found that the selection of these close relatives are vitiated.

The question is as to whether the aforesaid finding concurrently arrived at by the appellate authority and the revisional authority requires interference by this Court.

This Court has only made a prima facie assessment of the selection procedure, as indicated hereinabove, to consider as to whether the approach adopted by the Collector and the Commissioner was reasonable or was wholly arbitrary, so as to warrant interference in these proceedings under Article 226 of the Constitution.

It is well settled in law that while exercising jurisdiction in a writ petition under Article 226 of the Constitution and while considering the question of interference into administrative or quasi-judicial orders passed, if reasonable and prudent approach is adopted and if it is found that the approach of the authorities,

administrative or quasi-judicial in nature, is not vitiated by any statutory provisions or mala fides, interference should not be made. If the case in hand is evaluated in the backdrop of above principles, it would be seen that the Collector and the Commissioner have approached the problem in a pragmatic manner, they have scrutinized the selection procedure and finding eight close relatives of the President and three of a Member of the Selection Committee to have been appointed, have cancelled their selection, suspecting nepotism and misuse of office by some of the Members. The aforesaid finding of the Commissioner and the Collector is further strengthened from the manner in which marks have been allotted in the oral interview, that being so, finding a reasonable and likelihood of bias having vitiated the selection of the petitioners, the Collector and the Commissioner have interfered with the matter. This action of the Collector and the Commissioner is a just and fair decision arrived at, after appreciating the totality of the facts and circumstances and conducting proper assessment of the entire selection process. That being so, it is not a fit case where extra-ordinary power under Article 226 of the Constitution should be exercised and interference made.

Somewhat similar circumstances pertaining to selection in the All India Service is considered by the Supreme Court in the case of A. M. Kraipak (supra) relied upon by Shri Vivek Rusia, and a five Judge Bench of the Supreme Court in the aforesaid case, has approached the question in the following manner :

15. ...But then under the circumstances it was improper to have included Naqishbund as a 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 a 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 a mere suspicion of bias is not sufficient. 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 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.

In the present case also, the facts are somewhat similar. Mere absence of Smt.

Pushpa Dwivedi and Shri Swami Singh at the time of interviewing the petitioners is not sufficient to hold that their presence has not influenced the process of selection. If the principle laid down by the Supreme Court in the case of A. M. Kraipak (supra), as indicated hereinabove, is applied to the present case and the entire procedure evaluated, it has to be held that the Collector and the Commissioner in cancelling the selection of the petitioners have not committed any error warranting interference in these proceedings under Article 226/227 of the Constitution.

Accordingly, finding no case made out for interference on the grounds raised in this petition, the petition stands dismissed without any order so as to costs.