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A.K Kraipak & Ors. vs Union of India & Ors.: An Analysis

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ABSTRACT

The Article deals with a famous case in Administrative Law Jurisprudence, that is of A.K. Kraipak v. Union of India AIR 1970 SC A. The case in remarkable on many grounds since it approved the widening up of definition of what was considered Administrative Action then in India. The judgement was delivered in the era, when a wide number of decisions were pushed under the garb of Administrative Actions, and were shielded from Court's power of Review, but in cases as that of Kraipak, the Supreme Court was successful in extending the doctrine of Natural Law even to Administrative Decisions. The case at large deals with selections for officers for Indian Forest Services, and since the selections were held for administerial post, the selectors themselves were part of the same bloc. Their decisions came under challenge, when it was argued that the selections were influenced by biased preferential intentions, and the article then further goes on to talk about what further went on in the case and the subsequent law which the Supreme Court laid down by the way of this judgement.

I. INTRODUCTION

(A) Issues

In 1966, using the All India Services Act,1951 a new type of services were brought about in the framework, which were known as Indian Forest Services, at the initial level members from different State Forest Services were to be inducted in this National Level Service with members coming from cadre of each state. The selection of the members from these amongst these already serving state employees landed up in trouble in the state of Jammu and Kashmir. The rules framed under the act Indian Forest Services(Initial Recruitment) Regulations, 1966 asked for a special selection board at the preliminary level consisting of variety of members from state and national level along with the Chief Conservator of Forests of State concerned.

In the State of Jammu and Kashmir, the problem was two fold:

1. The then Chief Conservator in the state, Naqishbund's appointment was itself under the banner of questions because his appointment had already been challenged on grounds

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of superseding a more senior Conservator (i.e. G.H.Basu)whose elevation was technically due before that of Naqishbund.

2. As opposed to the other states, the chief conservator himself was seeking selection for the National Forest Services and also alongside being a member of the board which was going to conduct this selection.

The recommendations of this Selected Body, were statutorily required to be again reviewed by the UPSC at central level, but the fact that all members were selected as it is from the List sent by Select Body, portrayed the high value that was given to the suggestions placed by the body.

Hence there were numerous points on which the contentions of the petitioners were filed. The petitioners challenged the selection of Naqishbund(who was apparently named as the first selected candidate in the list) because he was himself a part of the board which was looking at his own candidature as this accounts for violation of principles of Natural Justice , The petitioners challenged the omission of the three other Forest Conservators from the list apart from the Chief Conservator, who had also challenged Naqish's supersession and The government notification was also challenged on the grounds that as required in Regulation 5 of the abovesaid rules and according to the directions given by the Chief Secretary of the state, the suitability was not tested by any examination or interview and were just judged on the basis of adverse entries in character roll. [2]

The court was then subsequently faced by two questions,

1. Whether the actions of Selection Board were to be counted as Quasi-Judicial Functions or Administrative Functions,

2. Can the contours of principles of natural justice be imposed upon Administrative Actions also? And lastly

3. If the actions of the Board are found to be administrative how will the Writ of Certiorari be employed to question the functioning or to recall the records from such bodies.

II. RULES

The rule relevant to the case primarily becomes the one which led to the formation of this new service under the Govt. of India, i.e. Indian Forest Services which has been constituted under All India Services Act,1951. The rules appended to the above given act were introduced with the name Indian Forest Service (Initial Recruitment) Regulations,1966, with the purpose of

[2] Jain, M.P. and Kraipak, A.K. (1971) 'Bias and Administrative Power', Journal of the Indian Law Institute, 13(3), pp. 362–370.

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commencing the new category of services by inducting already trained professionals in this sphere from different parts of India. The relevant sections, from which the procedure of inducting these new employees can be deduced is from Sections 2 to 5, as these regulations talk about everything, from composition of the special board, conditions of eligibility along with preparation of list, compulsion posed upon the board for mentioning of reasons for Non-inclusion, and also accounting the observations made by Home Ministry.

Discussing the case that has been made out by the Petitioners also pertains to Article 14 and 16 of the Constitution, which in this case have been alleged to be violated, since many petitioners discovered instances of wide discrimination in the selection process. Along with this, Article 32 has been invoked, to plead for remedies suffered in course of violation of Article 14 and 16. As is widely known, Article 32 confers upon the court writ jurisdiction, therefore in this case also, the petitioners approached the court with a plea of certiorari. This plea is pivotal because it requires the higher court to summon the records of the case to itself and transfer the matter to own self if it observes that the ends of justice are not being fairly met. This plea is not a usual and simple remedy, and accordingly it is required to be filed only in cases where the order of the Lower Court exceeds Jurisdiction or is vitiating the principles of Natural Justice.

III. ANALYSIS

The Court went into a thorough analysis of the questions that were posed by the medium of writ petitions, However it was difficult task for court, because the conclusion was not to be drawn from any existing rule book or laid out statute, Instead the court was given the enormous task to analyse the unwritten and uncodified law in regards to Principles of Natural Law and Certiorari and then adjudicate whether the current framework was adequate for doing justice or not. So when the Court went into this analysis, it observed that, to adhere to principles of Natural Law or to abide by the Rule of Law is nothing but to act justly and fairly and not arbitrarily and capriciously, hence we should not confine these limits to just Judicial and Quasi-Judicial Bodies. The Court further concluded that 'administrative' proceedings could also nonetheless be subject to the natural justice principles. The Court disagreed with the previous precedent which held that "administrative" processes will not be tested on the precepts of natural justice and stated that it was redundant to look at such rulings because there had been plenty of fresh study on the topic. Speaking for the entire Court Justice Hegde quoted Lord Parker C.J. in ***Reg. v. Criminal Injuries Compensation Board*** in the following lines:

"What was considered as an administrative power some years back is now being considered as

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a quasi-judicial power. The horizon of natural justice is constantly expanding"[3]

The Court also placed reliance on ***Reg. v. Manchester Legal Aid Committee - Ex parte R. A. Brand & Co. Ltd***.[4], where the Court found that the writ of Certiorari which once used to apply only to Inferior Courts and later Statutory Tribunals, would now also apply to Administrative Bodies whose decision is arrived after an inquiry or process of Judicial or Quasi-Judicial Character. Following the lines of this judgement, The Court found the Selection Board in this case squarely within the ambit of a class of bodies having adjudging powers which would then be used to make a judgement about the suitability of the applicants in the Indian Forest Services. It was then finally noted that, there was no dispute in establishing that the board was not Administrative, and hence the board despite being of administrative nature, will nevertheless have to abide by the Writ of Certiorari.

On the ensuing question of 'bias', the court opined that it would decline the argument made by the respondents, stating that Naquishbund was himselves not present while his name was taken up for consideration, The question under consideration as outlined by the Court was not whether his actions were biased or not, it was instead, whether there was liklehood of him being biased or not, to this the court answered in affirmative. It was downright visible that, Being on the selection board at all times(including preparation of list of selected candidates, choosing amongst his present colleagues, considering upon the names of his rivals) would have landed him in a conflict where his interests would have contrasted with his duties.

Another substantiating argument which was then followed on by the Respondents, was by minimizing the significance of the recommendation that were given by the Selection Board, this the Court found was a weak argument when the apparent reality suggested that the UPSC placed ample reliance in finalising the candidates whose names will be notified for appointment to the IFS, therefore when such considerable power vested in the hands of the Selection Board, the Court could not exclude the actions of the Board from the from test of Just and Fair actions. Henceforth, the Court concluded that

1. Naquishbund's presence in the board did count as violation of the rule 'No man can be a Judge in his own case'.
2. Adjudging the suitability of the applicants by the Board without giving them a chance to submit afront the Board by the medium of some interview, examination or SoP, etc

[3][1967] 2 Q.B. 864
[4] [1952] 2 Q.B. 413

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was judged by the Court as a violation of Audi Alteram Partem. [5]

In addition the Court also passed a remark saying that it retained with themselves i.e. the Supreme Court the power to extend add to the existing rules of Natural Justice, if it considered it necessary for limiting arbitrary action and ensuring fair and just decision.

Answering to the last point, whereas the Court denied the plaint presented by the Appellants for looking into the violations of Regulation 2 to 5 of the Indian Forest Service (Initial Recruitment) Regulations,1966, because the Court said that it was anyway inclined to nullify the appointments thus made to Senior as well as Junior scale services, which will eventually leave the court with no reason to look into the said rules also.

IV. CONCLUSION

The Court decided on the Writ Petition, with Justice Hegde penning down the judgement for the unanimous bench ruling out that the impugned selections made vide Central Notification were held invalid and hence void as the notification was found to be obstructing the causes of Natural Justice. The precedent that the Court opined to settle from this Case, was that the distinction sought between Quasi-Judicial and Administrative Decisions gets obliterated and the right of hearing is granted to all the parties aggrieved, Such practice would take time to solidify as a practice but such approach will rid the present-day Indian ad- ministrative law of much of its artificial conceptualism, e.g., trying to find a 'judiciary duty in the statute when nothing of the kind is specifically mentioned therein.[6] The rule should come to prevail that whenever the administration seeks to affect the per- son, property or a right of an individual, hearing should be the rule and non-hearing an exception. The impact of the case thus was seen when Orissa High Court followed by Kerela High Court following the line of the Kraipak case did not try and distinguish between the decision making authority but instead granted the right to be heard on the simple knowledge that violation principles of natural justice was in question. A similar reference was made by Karnataka High Court in ***A.S. Society v. Union of India***[7], wherein the Government could decide if certain sugar mills in the state could be exempted from payment of the 'over and above' cost to be paid by the mill to the farmers. The owners of the mill on whom these costs were imposed opposed to the mills which enjoyed the benefit of exclusion given by the government appealed to the court, that they should have a right to be

[5] Jain, M.P. and Kraipak, A.K. (1971) 'Bias and Administrative Power', Journal of the Indian Law Institute, 13(3), pp. 362–370.
[6] Nair, V. (1982) 'Judicial Approach in Holding an Authority as Quasi-Judicial', Cochin University Law Review [Preprint].
[7] A.I.R. 1970 Mys. 243

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heard by the government for these mills to be also be able apply for such similar exclusion. The Court found the decision of the Government in this case to have been taken in a Quasi-Judicial capacity, but the court still insisted on quoting the judgement in Kraipak case to establish that, no matter what the nature of the body, the Principles of Natural Justice will have to be abided by in due decision making.

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