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Implementation of Personal Bias by Administrative Authorities while Sanctioning Government Projects: Analysis of The Pradhan Mantri Gram Sadak Yojana

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ABSTRACT

The rule of bias is an integral part of our natural justice system. It is seminal to the developments that have taken place in the field of administrative law since it is indispensable in the production of a fair administrative process. Natural justice, according to Lord Parker C.J. in Re R.N, “is the obligation to behave honestly”. On the other hand, regulatory and quasi-judicial organisations are required to act properly in order to prevent unfair or discriminatory behaviour on their part. It is a universal fact that no matter how objective one tries to act there is always some kind of bias involved in decision taking. Therefore bias can be defined as a conscious or unconscious relation to a party or issue. It is common knowledge that government officials/ politicians have the authority to sanction government projects to private individuals and in many cases their decision is influenced by a certain kind of bias that may either result from some personal relationship with one of the parties bidding or as a result of corruption processes. Administrative law in a way governs how the elected officials and private individuals interact, therefore it is not just necessary for administrative authorities to remain impartial but also take into consideration the larger public interest and confidence. Under this paper the author’s aim is to discuss the case of Pradhan Mantri Gram Sadak Yojna and the kinds of bias present while government officials have a general interest or some kind of personal interest in the subject-matter. The paper also aims to understand what impact such bias had on the welfare of society at large.

Keywords: *Personal Bias, Natural Justice, Administrative authorities, Pradhan Mantri Gram Sadak Yojna.*

I. INTRODUCTION

Administrative law is a branch of law that concerns itself with the day-to-day functioning of administrative authorities and their relation with individuals as well as the authorities of the

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State. Administrative law today deals with mainly administrative, quasi-judicial, and rulemaking functions. Consequently, in order to strike a balance between the interests of the people and the government, natural justice principles need to be applied.²

An overview of natural justice would mean having a sense of what is right and wrong. To numerous authors, attorneys, judges, and legal systems, "Natural Justice" has meant different things. It comes in a variety of hues, tones, forms, and shapes. Since natural justice principles are not embodied principles, they cannot be restrained by a fixed formula. The concept of natural justice not just applies to judges but also to other adjudicating authorities, this was reiterated in the case of *Mohinder Singh Gill v Chief election Commissioner*³, where the court held that "*the concept of fairness should be in every action whether it is judicial, quasi-judicial, administrative and or quasi-administrative work*".

The term 'bias' is defined as "*an unreasoned and unfair distortion of judgement in favour of or against a person or thing*".⁴ In the context of administrative law, bias implies a deviation from the level of fairness that the law demands of individuals who hold judicial office or positions that are typically thought of as bearing quasi-judicial authority, such as those of an arbitrator. The obvious reason for this is that he must arrive at his decision with an independent mind, free from any predisposition or bias towards one side or another in the dispute, as he has to decide between two or more sides.⁵

'Rule against bias' or 'absence of bias' is a principle of natural justice which means that the decision-making authority must consist of unbiased individuals who operate fairly and without prejudice or bias.⁶ 'Nemo judex esse debet in propria causa' is the maxim which recognises the principle of 'rule against bias'. The maxim means that no one should be a judge in his own case, though the term judge here indicates judicial magistrate and majority of cases decided involve decisions made by courts of law but they are not limited to them. Thus, principle applies not only to judicial but also to quasi-judicial, and administrative proceedings.

A judgement or decision that is made because of personal prejudice in favour of or against a party is known as personal bias. It comes about because of a connection amongst the parties and the adjudicating authority, which leads to unfair behaviour on the side of the adjudicating

² All Answers Ltd, 'Law Relating To Pecuniary Bias' (Lawteacher.net, February 2023) <<https://www.lawteacher.net/free-law-essays/administrative-law/law-relating-to-pecuniary-bias-administrative-law-essay.php?vref=1>> accessed on 3 February 2023

³ *Mohinder Singh Gill v Chief election Commissioner*, [1977], INSC 227

⁴ 'Bias', Merriam-Webster, <Bias Definition & Meaning - Merriam-Webster> accessed on 3 February 2023

⁵ Jack Beatson and others, *Administrative law Texts and Materials* (OUP Oxford 2011), P. 321.

⁶ Anuj Agranyak, 'Rule Against Bias', Academia,

<(80) RULE AGAINST BIAS | Anuj Agranyak - Academia.edu> accessed on 8 February 2023

authority and decisions that are questionably made in favour of the party. Personal bias may arise out of connections to a subject through family or friends or one's own emotions; either financial or emotional interest. There are further reasons for personal prejudice, such as the official's commercial or professional ties with one of the parties, or the official's animosity towards one of them.⁷

This kind of personal bias exists a lot in cases where government officials/ authorities have the power to grant or sanction a private entity or individual a government project.

(A) Research Question

1. How have MLA's due to the presence of personal bias influenced the sanctioning of government projects under the Pradhan Mantri Gram Sadak Yojana without having any official role in sanctioning them?

II. USE OF PERSONAL BIAS BY GOVERNMENT OFFICIALS

Justice is established in accordance with one's own morality under Natural Justice. It is derived from the Latin terms "Jus-Naturale" and "Lex-Naturale," which signifies the principles of everlasting law, natural justice, and good conscience. The principle has been practised in India since ancient times. It is mentioned in Kautilya's Arthashastra⁸⁹. The rules of natural justice were placed so high in it that it was declared that "*no human laws are of any validity, if contrary to this*".¹⁰

In the present times the case of A.K Kraipak v. Union of India¹¹ reiterated the principle that, the presumption that natural justice will always apply however silent the statute remains about it.¹²

Rule against bias is the first principle of natural justice and is considered to be one of the most important branches of natural justice. The rule has changed throughout time, shifting from its original role as a concept to guarantee fairness in decision-making to fostering a transparent process where decisions could actually be seen to be made by those who would be affected by them. Throughout its development, it has also been linked to a wide range of theories, many of

⁷ Reza Houston and others, 'Political Connections, Government Procurement Contracts, and the Cost of Debt' (January 18, 2018), 1 <Political Connections, Government Procurement Contracts, and the Cost of Debt by Reza Houston, David A. Maslar, Kuntara Pukthuanthong :: SSRN>

⁸ Mayank Sharma, 'Principles of Natural Justice: In the light of administrative law', (Academia), <(80) Title: "PRINCIPLES OF NATURAL JUSTICE: IN THE LIGHT OF ADMINISTRATIVE LAW" (An Analytical and comprehensive study of Principle of natural justice especially in the field of administrative law | Mayank Sharma - Academia.edu)> accessed on 8 February 2023

⁹ Arthashastra- An ancient Indian treatise on statecraft, economic policy and military strategy.

¹⁰ C.K. Takwani, *Lectures on Administrative Law* (7th Edition, 2021), 185

¹¹ A.K Kraipak v. Union of India, (1969) 2 SCC 262: AIR 1970 SC 150

¹² C.K. Takwani (n9) 185

which have been used to justify the application of the principle in one way or another. The rule has a broad appeal and has received support from almost all significant governments across the world as a fairness concept. Within two years of gaining independence, India accepted the idea, which has since given rise to a unique set of laws.

The courts over the years have established two tests for identifying if there exists any kind of bias, these two tests include-

- likelihood of bias
- suspicion of bias¹³

(A) Against whom can the rule of bias apply?

It is undisputed and established law that all courts, judicial bodies, and quasi-judicial authorities must abide by the prohibition against bias. The crucial question, however, is whether administrative authorities also need to abide by this principle? Earlier the approach adopted was that principles of natural justice were inapplicable to administrative orders/ decisions. However, over time this approach changed and in the case of *State of Orissa v. Binapani Dei*¹⁴ the Supreme Court observed that, *“It is true that the order is administrative in character, but even an administrative order which involves civil consequences... must be made consistently with the rules of natural justice”*. Recently, in the case of *Sahara India (Firm) v. CIT*¹⁵ The Supreme Court held that, *“with the growth of administrative law, the old distinction between judicial act and administrative act has withered away. Today, even a pure administrative action entailing civil consequences must be consistent with the rules of natural justice”*.

There are a number of types of bias that may be present but in this paper we will specifically be focusing on personal bias that is present in the minds of government officers while they are sanctioning public/ government projects to private companies. An increasing body of literature details the personal gains associated with holding public office and the advantages of having political ties in nations that are both developed and developing.¹⁶ India is no exception to it, local politicians favour members of their own caste or kinship networks while allocating contracts.

¹³ Leo, Lionel, and Siyuan Chen. “REASONABLE SUSPICION OR REAL LIKELIHOOD: A QUESTION OF SEMANTICS?” (2008) *Singapore Journal of Legal Studies*, 446–54.

¹⁴ *State of Orissa v. Binapani Dei* AIR 1967 SC 1269

¹⁵ *Sahara India (Firm) v. CIT* (2008) 14 SCC 151

¹⁶ Jonathan Lehne, Jacob N. Shapiro, Oliver Vanden Eynde, ‘Building connections: Political corruption and road construction in India’, (2018), vol 131, *Journal of Development Economics*, 62-78

III. CASE ANALYSIS OF PRADHAN MANTRI GRAM SADAK YOJNA

The government's rural infrastructure programmes are a way to open up new chances for growth and development in that region, but along with this growth and development, it is left in the control of a selected group of people who determine its direction. There has been evidence of several occurrences that suggests that government officials favour members of their caste or kinship networks when award contracts, according to India's flagship rural development programme.

A recent example of the use of personal bias in rural infrastructure projects would be the 'Pradhan Mantri Gram Sadak Yojana' and how failure to curb such bias results in undermining the real economic opportunities the programme is designed to provide. This project was launched on 25th December 2000 with the aim to provide all-weather road access to rural habitations and other core areas.

The project's tendering process was explicitly designed to forestall corruption and political capture.¹⁷ The tendering procedure is one of the most popular ways that governmental authorities in India acquire products and services. This is mostly due to the fact that the public authorities, as agents of the state, are constrained in their ability to engage in such procurement and are required to uphold a high standard of transparency because it involves the use of taxpayers money.¹⁸

The Pradhan Mantri Gram Sadak Yojna, a centrally sponsored scheme was being implemented by a number of States. The scheme was monitored by the Ministry of Rural Development. A manual for creating district rural roads plan existed. The Handbook outlined the various steps in the planning process as well as the functions of several agencies, such as the Intermediate Panchayat, District Panchayat, and State Level Standing Committee. The Core Network served as the foundation for the purpose of creating project proposals for the PMGSY.¹⁹ Once the Ministry approved the project plans, the Execution Agency had to issue a tender request and start working on the projects. For all projects, the tried-and-true procurement process involving open bidding was to be used. No adjustments were to be made to the work on any of the projects that had been reviewed by the STA and approved by the Ministry. For all tenders, the States

¹⁷ Johnathan Lehne, Jacob Shapiro and Oliver Vanden Eynde (2016), 'Building connections: Political corruption and road construction in India', Working Paper, Paris School of Economics.

¹⁸ Priyanka Bharti & Anubhav Chakravorty, 'India: Scope of judicial review while awarding tenders', (Mondaq 2021) <Scope Of Judicial Review In Awarding Of Tenders - Government Contracts, Procurement & PPP - India (mondaq.com)> Accessed on 11 February 2023

¹⁹ Ministry of Rural Works Development, 'PMGSY- Scheme & Guidelines', (Rural Works Department), <<https://rwdbihar.gov.in/docs/PMGSY%20Schemes%20&%20Guidelines.htm>> accessed on 10 March 2023

had to adhere to the Standard Bidding Document outlined by the Ministry of Rural Development.²⁰

“This scheme was centrally funded only up to 2015-16. Since then, the funds have been divided between the Centre and the State.”²¹

According to earlier research, the PMGSY roads have increased the number of communities they connect to, which has resulted in more non-agricultural jobs. Though there has been improvement that resulted from the building of these roads and efforts have been taken to avoid any unfair means but still a certain form of personal bias managed to creep in the assignment of these projects and thus it hasn't been able to achieve its full potential.

(A) MLA's as administrative authorities

Member of legislative assembly is a representative elected directly by the people of the constituency. Power's of MLA include legislative power as their primary function is law making, financial power and executive power as they have control over activities of the state council of ministers and the ruling State government is answerable to legislative assembly,²² electoral powers and constitutional powers. “They are responsible for the even and efficient functioning of the State Assembly, and as citizens, it is essential for us to know and understand these, to assist in the smooth governance of the state.”²³ Though an MLA is not an administrative authority in its strict sense, it does have certain administrative responsibilities in his or her constituency. For instance, this paper discusses how an MLA can use his position to lobby development projects, provide assistance to constituents in accessing government services, and work with local administration to address issues such as law and order, public health, education, and infrastructure. However, the MLA's role in these matters is limited to advocating for the needs of his/her constituents and providing oversight of the administrative work, rather than directly implementing policy.

In the present case several MLAs had interfered with the contracting process inside their respective districts. Though the MLA's had no official role in the programme researchers²⁴ (at Princeton University) believe that the MLAs managed to "game the system" through their social networks, which also include regional bureaucracy that awards these contracts. “The highest-

²⁰ *Ibid* (n18)

²¹ Ministry of Rural Development, ‘Pradhan Mantri Gram Sadak Yojana’ (my scheme), <Pradhan Mantri Gram Sadak Yojana (myscheme.gov.in)> accessed on 1 March 2023

²² ‘Member of Legislative Assembly’, (Elections.in, 28 April 2020), <Member of Legislative Assembly (MLA), Role, Power, Eligibility Criteria, Salary (elections.in)> accessed on 3 March 2023

²³ *Ibid*

²⁴ Wallace, ‘Building connections: Political corruption and road construction in India’, (2018) Vol. 131, Journal of Development Economics, 62-78.

ranking district official overseeing the PMGSY also shared the winning politician's surname, favouritism in the awarding of contracts was more likely.”²⁵

In essence, the percentage of contractors whose names coincided with those of the victorious candidate in close elections increased from 4% before the election to 7% after, demonstrating the ability of the MLA to influence the distribution of roads in their constituency despite having no official function.²⁶ It has been previously reported that there is favouritism in the distribution of the PMGSY projects. 75 of the 113 massive road development projects in Uttarakhand that the Vijay Bahuguna government granted in 2013 reportedly went to well-connected individuals on a single-bid basis.²⁷

The general public won't hold local politicians accountable at the polls for missing roads, delays, and cost overruns because they feel that MLAs have no official responsibility in the construction of roadways. If the MLA's were given a more official role then voters would hold their representatives accountable for the PMGSY services they provided, the MLAs would be compelled to curb their biased behaviour.

(B) How does the presence of such bias affect the general public ?

The government benefits from strong competition among suppliers in obtaining the best value for the goods and services they supply. When competition is restricted, on the other hand, it has an impact on the best price the government could have acquired for that project. When public officials opt to ignore fair and equal regulations and procedures and favour one particular bidder, whether out of financial or personal motives, competition in public procurement is also hampered.²⁸

The study discovered that unfairly awarded contracts frequently led to more expensive road building. According to census data from 2011, hundreds of these roads appear to have never been constructed, cutting off access to the road for hundreds of thousands of people. This shows us how an increase in biased decision making raises the chance of increased construction costs, adversely affects road quality, and increases the likelihood of 'missing' roads.

²⁵ Shemin Joy, 'Politician- contractor nexus pocketing money for roads never built: study', (Deccan herald, 11 January 2018) <Politician-contractor nexus pocketing money for roads never built: study | Deccan Herald> Accessed on: 1 March 2023

²⁶ Charu Bahri, 'MLAs got Rs 3500 crore spent on bad rural roads, built by contractors of their caste', (The Print, 24 February, 2018) <<https://theprint.in/india/governance/mlas-spent-on-bad-rural-roads-built-contractors-of-their-caste/37848/>> Accessed on 3 March 2023

²⁷ PTI, 'BJP leader will be sued for libel: Uttarakhand Congress', (The Economic Times, 1 September 2013), <<https://economictimes.indiatimes.com/news/politics-and-nation/bjp-leader-will-be-sued-for-libel-uttarakhand-congress/articleshow/22207356.cms>> Accessed on 3 March 2023

²⁸ Regional Training Institute Kolkata, 'Collusions in public procurement', p. 9

Also, while the preferentially allocated roads were between 7 per cent and 12 per cent more expensive to construct than fairly awarded roads, the cost inflation was lower before elections.²⁹

Due to these setbacks and anomalies in implementation of road construction projects the parliamentary panel in 2017 asked for creation of a national database of corrupt contractors to be blacklisted from bidding.³⁰ “In case the information furnished by the bidder is found incorrect at the later stage, the State is required to take appropriate legal action along with blacklisting of the defaulting bidder/ contractor. Further, in case there is a variation in the scanned copy of documents unloaded in e-tendering and hard copy of documents submitted by bidder, the bidder is liable to be debarred from participating in PMGSY projects for a period of five years.”³¹

IV. CONCLUSION

It has been decided to adopt and adhere to the principles of natural justice in order to safeguard public rights against the possibility of arbitrary judgements being made by administrative authorities. One may observe without much difficulty that the rule of natural justice incorporates the idea of fairness, as both concepts continue to exist and provide support for fair dealing. Rule against bias is one of the two pillars of natural justice.

Since a violation of natural justice leads to arbitrariness, it also violates Article 14 of the Indian Constitution, which deals with equality before the law.

In the paper, there was a discussion of one specific situation in which administrative authorities assigned government projects based on personal bias. Favouritism, cronyism, and nepotism are all forms of favouritism that can be found in the public domain, and they all work to harm the common good. When someone is given a position because of connections rather than because they have the best credentials and expertise, it is possible that the quality of service that person provides to the general public would suffer as a result. This conduct undermines the transparency that ought to be a part of the processes by which the government hires people and contracts services. However, the mere impression of favouritism lowers the morale of those who work for the government, not to mention the public's faith in the honesty of its authorities. In several of these stages, a well-placed high-level official can influence the decision-making process to favour a specific project. He can even alter the design's requirements to give

²⁹ Charu Bahri (n25)

³⁰ Charu Bahri, ‘Caste networks are enabling rampant corruption in India’s rural roads programme’, (First Post, 24 February 2018) <Caste networks are enabling rampant corruption in India's rural roads programme-India News , Firstpost> Accessed on 5 March 2023

³¹ Archana Jyoti, ‘Parl panel calls for national database of corrupt PMGSY contractors’, (The Pioneer, 23 August 2017) <Parl panel calls for national database of corrupt PMGSY contractors (dailypioneer.com)> Accessed on 5 March 2023

preference to a single company, for instance by giving it insider information while the tender is being issued.

Experience with public sector projects are filled with tales of roads that are packed with potholes shortly after construction, power plants that frequently face outages, and sewer systems that are inoperable, especially in developing nations. The Pradhan Mantri Gram Sadak Yojana serves as an example of one such situation.

V. REFERENCES

(A) Books

1. C.K. Takwaini, *Lectures on Administrative Law* (7th Edition, 2021), 185

(B) Articles and Papers-

1. Anuj Agranyak, 'Rule Against Bias', Academia, <(80) RULE AGAINST BIAS | Anuj Agranyak - Academia.edu> accessed on 8 February 2023
2. Archana Jyoti, 'Parl panel calls for national database of corrupt PMGSY contractors', (The Pioneer, 23 August 2017) <Parl panel calls for national database of corrupt PMGSY contractors (dailypioneer.com)> Accessed on 5 March 2023
3. Charu Bahri, 'Caste networks are enabling rampant corruption in India's rural roads programme', (First Post, 24 February 2018) <Caste networks are enabling rampant corruption in India's rural roads programme-India News , Firstpost> Accessed on 5 March 2023
4. Charu Bahri, 'MLAs got Rs 3500 crore spent on bad rural roads, built by contractors of their caste', (The Print, 24 February, 2018) <<https://theprint.in/india/governance/mlas-spent-on-bad-rural-roads-built-contractors-of-their-caste/37848/>> Accessed on 3 March 2023
5. Jonathan Lehne, Jacob N. Shapiro, Oliver Vanden Eynde, 'Building connections: Political corruption and road construction in India', (2018), vol 131, Journal of Development Economics, 62-78
6. Leo, Lionel, and Siyuan Chen. "REASONABLE SUSPICION OR REAL LIKELIHOOD: A QUESTION OF SEMANTICS?" (2008) *Singapore Journal of Legal Studies*, 446–54.
7. Mayank Sharma, 'Principles of Natural Justice: In the light of administrative law', (Academia), <(80) Title: " PRINCIPLES OF NATURAL JUSTICE: IN THE LIGHT OF ADMINISTRATIVE LAW " (An Analytical and comprehensive study of Principle of natural justice especially in the field of administrative law | Mayank Sharma - Academia.edu)> accessed on 8 February 2023.
8. Ministry of Rural Development, 'Pradhan Mantri Gram Sadak Yojana' (my scheme), <Pradhan Mantri Gram Sadak Yojana (myscheme.gov.in)> accessed on 1 March 2023
9. Priyanka Bharti & Anubhav Chakravorty, 'India: Scope of judicial review while

awarding tenders’, (Mondaq 2021) <Scope Of Judicial Review In Awarding Of Tenders - Government Contracts, Procurement & PPP - India (mondaq.com)> Accessed on 11 February 2023

10. PTI, ‘BJP leader will be sued for libel: Uttarakhand Congress’, (The Economic Times, 1 September 2013), <<https://economictimes.indiatimes.com/news/politics-and-nation/bjp-leader-will-be-sued-for-libel-uttarakhand-congress/articleshow/22207356.cms>> Accessed on 3 March 2023
11. Shemin Joy, ‘Politician- contractor nexus pocketing money for roads never built: study’, (Deccan herald, 11 January 2018) <Politician-contractor nexus pocketing money for roads never built: study | Deccan Herald> Accessed on: 1 March 2023
12. Wallace, ‘Building connections: Political corruption and road construction in India’,(2018) Vol. 131, Journal of Development Economics, 62-78.

(C) Cases-

1. A.K Kraipak v. Union of India, (1969) 2 SCC 262: AIR 1970 SC 150
2. D K Khanna vs. Union of India AIR(1973) HP 30
3. Sahara India (Firm) v. CIT (2008) 14 SCC 151
4. State of Orissa v. Binapani Dei AIR (1967) SC 1269

(D) Reports-

1. Regional Training Institute Kolkata, ‘Collusions in public procurement’, p. 9
