

# Mohd. Mustafa vs Union Of India on 16 November, 2021

**Author: L. Nageswara Rao**

**Bench: B.R. Gavai, Sanjiv Khanna, L. Nageswara Rao**

Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No.6905 of 2021  
(Arising out of SLP (C) No. 14623 of 2020)

Mohd. Mustafa . . . . Appellant(s)  
Versus

Union of India & Ors. .... Respondent(s)

WITH

Civil Appeal Nos. 6906-6909 of 2021  
(Arising out of SLP (C) Nos. 14982-14985 of 2020)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. Aggrieved by the order dated 07.02.2019 passed by the Governor of Punjab by which Mr. Dinkar Gupta was appointed as Director General of Police (Head of Police Force) (hereinafter referred to "DGP (HoPF)"), the Appellants filed original applications before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh. By an order dated 17.01.2020, the Tribunal set aside the order dated 07.02.2019 on the ground 1 | Page that preparation of the panel for selection of DGP (HoPF) for the State of Punjab was in contravention of a judgement of this Court in Prakash Singh v. Union of India<sup>1</sup> apart from others. Further, a direction was given to the Union Public Service Commission (hereinafter referred to as "UPSC") and the State of Punjab to conduct selection for the post of DGP (HoPF), State of Punjab afresh. The judgement of the Central Administrative Tribunal was challenged in the High Court of Punjab and Haryana by the UPSC, the State of Punjab and Mr. Dinkar Gupta. Mr. Siddharth Chattopadhyaya, the Appellant in Civil Appeal arising out of SLP (Civil) No.14982-14985 of 2020, also filed a Writ Petition aggrieved by the rejection of the plea of bias. Writ Petitions filed by UPSC, the State of Punjab and Mr. Dinkar Gupta were allowed by the High Court and the judgement of the Tribunal was set aside. Writ Petition filed by Mr. Siddharth Chattopadhyaya (hereinafter referred to as "the Appellant") was dismissed. These appeals are filed

assailing the legality and validity of the judgement of the High Court dated 06.11.2020.

2. Mohd. Mustafa, the Appellant in Civil Appeal arising out of SLP (C) No.14623 of 2020, retired on attaining the age of superannuation during the pendency of these appeals. As the 1 (2006) 8 SCC 1 2 | Page contentions raised by Appellants in both the civil appeals are similar, we shall refer to the facts of Civil Appeal arising out of SLP (C) Nos. 14982-14985 of 2020. Mr. Siddharth Chattopadhyaya was inducted to Indian Police Service in 1986 and allocated to Punjab cadre. The post of DGP (HoPF), State of Punjab was required to be filled up due to the ensuing retirement of Mr. Suresh Arora. A letter was written by the Union of India on 19.01.2019 to Respondent No.1-UPSC to initiate the process for appointment to the post of DGP (HoPF) for the State of Punjab. A list of 12 officers who were working in the rank of DGP/additional DGP and who had completed thirty years of service was forwarded by the State of Punjab. The Appellant was included in the said list.

3. The Empanelment Committee constituted by the UPSC finalised a panel consisting of Mr. Dinkar Gupta-Respondent No. 4, Mr. M.K. Tiwari- Respondent No.6 and Mr. V.K. Bhawra Respondent No.7. The State Government selected and appointed Respondent No.4 as DGP (HoPF) from the said panel. Challenging the selection and appointment of Respondent No.4 as DGP (HoPF), the Appellant and Mohd. Mustafa filed Original Applications in the Central Administrative Tribunal. The 3 | Page Tribunal, by its order dated 17.01.2020, allowed the Original Applications and set aside the panel prepared by the Empanelment Committee on 04.02.2019. Consequently, the selection and appointment of Respondent No.4 as DGP (HoPF) was set aside. The Tribunal directed preparation of a panel of three senior-most officers afresh strictly in accordance with the judgment of this Court in Prakash Singh's case (supra).

4. The Tribunal was of the opinion that this Court in Prakash Singh's case settled the parameters to be followed for selection of the Director Generals of Police. UPSC deviated from the procedure prescribed by this Court, rendering the selection invalid. The Tribunal held that this Court specified three factors which have to be followed for selection of DGP. Seniority, being one of the factors, along with good record of service and range of experience to head a police force was not given due importance by the Empanelment Committee in finalising the panel. Draft Guidelines 2009 framed by UPSC (hereinafter referred to as "Draft Guidelines") have no authenticity or legality, according to the Tribunal. Identification of five core policing areas from the domain of twenty policing areas is without any basis. In addition, the Tribunal held that the 4 | Page identification of the core policing areas was to suit the selected candidate. Preparation of the panel consisting three persons was also found fault with due to no reasons being assigned.

5. Aggrieved by the judgment of the Tribunal, Writ Petitions were filed in the High Court of Punjab and Haryana. The High Court framed the following questions for determination:

- 1) What is the scope of judicial review/interference by the High Court under Article 226 of the Constitution of India, 1950 against the decision of the Administrative Tribunal (in short "Tribunal")?

2) (a) Whether the Draft Guidelines 2009 issued by the UPSC detailing the procedure and modalities for selection of panel for DGP (HoPF) are patently opposed and violative of the directions issued in Prakash Singh's case (supra) and the findings of the Tribunal contrary to the same are sustainable?

(b) Whether the Core Policing Areas being adopted by the Empanelment Committee for assessment on the aspect of 'range of experience' State wise on cases to case basis are in contravention of the Supreme Court directions in Prakash Singh's case (supra) and whether the 5 Core Policing Areas chosen in the present case are legal and valid? \ 5 | Page

(c) Whether in view of the findings of this Court to the issues at (a) and (b) above, the findings of the Tribunal are sustainable?

3) (a) What is the scope of judicial review in matter of the empanelment and selection by the Selection/Empanelment Committee?

(b) Whether the Tribunal exceeded the said power of judicial review in selection of DGP (HoPF) by the UPSC in February 2019?

4) Whether the impugned order dated 17.01.2020 of the Tribunal is liable to be set aside and the consequential relief?

6. The High Court held that this Court in Prakash Singh's case has laid down broad guidelines for selection to the post of DGP on the basis of assessment of officers by considering length of service, very good record and range of experience for heading the police force. The Draft Guidelines were framed by UPSC for implementation of directions issued by this Court in Prakash Singh's case. The conclusion of the Tribunal that the Draft Guidelines have no authenticity was set aside by the High Court on the ground that the Draft Guidelines have been approved by this Court. The jurisdiction of UPSC in formulating Draft Guidelines and giving discretion to the Empanelment Committee to follow its own procedure was upheld by the High Court. Selection of five core policing areas for assessment of the officers from the State of Punjab was approved by the High Court. Relying upon judgments of this Court, the High Court observed that there was no requirement for recording reasons while finalising the selection of DGPs. The High Court held that the Tribunal encroached into the domain of the experts in setting aside the selection made by UPSC. The High Court was in agreement with the Tribunal that the Appellant failed to make out a case of bias. Finally, the High Court set aside the judgment of the Tribunal and upheld the selection and appointment of Respondent No.4 as DGP (HoPF).

7. We have heard Mr. Krishnan Venugopal, learned Senior Counsel for the Appellant in Civil Appeal arising out of SLP (C) Nos. 14982-14985 of 2020, Mr. P.S. Patwalia, learned Senior Counsel for the Appellant in Civil Appeal arising out of SLP (C) No.14623 of 2020, Mr. Aman Lekhi, learned Additional Solicitor General for the Respondent No.1-UPSC, Mr. Mukul Rohatgi, learned Senior Counsel for the State of Punjab, Mr. Maninder Singh, learned Senior Counsel for Respondent No.4

and Mr. Shyam Divan, learned Senior Counsel for Respondent No.5.

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8. Mr. Krishnan Venugopal, learned Senior Counsel appearing for the Appellant in Civil Appeal arising out of SLP (C) Nos. 14982-14985 of 2020, argued that the empanelment and appointment of Respondent No. 4 as DGP (HoPF) is vitiated by bias. Respondent No.5 who was a member of the Empanelment Committee was prejudiced against the Appellant due to the report filed by the Appellant before the Punjab and Haryana High Court in Civil Writ Petition No. 20359 of 2013 titled as 'Court on its own motion v. State of Punjab and Another' in which Respondent No.5 was found to be involved in criminal activities. On earlier occasions Respondent No. 5 recused himself in matters relating to the Appellant and, therefore, Respondent No.5 ought not to have participated in the selection process. Accordingly, the decision of the Empanelment Committee of which Respondent No.5 was a member is not bona fide and is liable to be set aside. The Appellant contended that the Draft Guidelines have no legal sanctity. The criteria laid down by the Draft Guidelines is contrary to the judgement of this Court in Prakash Singh's case. The Draft Guidelines cannot be considered as statutory rules or regulations. It was further submitted on behalf of the 8 | Page Appellant that the five core policing areas that were identified by the Empanelment Committee out of twenty policing areas as criteria for assessment of officers' range of experience to head a police force were tailor-made to suit Respondent No. 4. Due weightage has not been accorded to seniority as laid down by this Court in Prakash Singh's case. Admittedly, the Appellant is senior to Respondent No.4 and could not have been overlooked unless there are justifiable reasons for his supersession. According to the Appellant, the list of 12 officers working as additional DGP/DGP could not have been forwarded by the State of Punjab for selection and appointment to one post of DGP. Mr. P. S. Patwalia, learned Senior Counsel appearing for the Appellant in Civil Appeal arising out of SLP (C) No.14623 of 2020, submitted that Mr. Mohd. Mustafa has maximum gallantry awards and has a meritorious record of service. He was not empanelled due to faulty selection procedure adopted by UPSC.

9. Mr. Aman Lekhi, learned Additional Solicitor General, countered the submissions made on behalf of the Appellants by arguing that the Draft Guidelines were approved by this Court. He submitted that the Draft Guidelines were framed by the UPSC to give effect to the judgement of this Court in Prakash Singh's case. The five core policing areas that were identified for empanelment out of twenty domain assignments usually allocated to police officers was done after taking into account the peculiar situation and requirement of the State of Punjab. The criteria laid down by this Court in Prakash Singh's case is part of the Draft Guidelines and the Tribunal committed an error in holding the Guidelines to be contrary to the said judgement. Respondent No.5, being the then DGP (HoPF), was included as a member of the Empanelment Committee and the Appellants did not raise any objection to his participation in the deliberations of the Empanelment Committee. It was contended that the assessment by the Empanelment Committee being strictly in accordance with the Draft Guidelines and the judgement of this Court in Prakash Singh's case, the selection and appointment of Respondent No.4 as DGP (HoPF) is valid. The Empanelment Committee is not required to record any reasons.

10. Mr. Mukul Rohatgi, learned Senior Counsel appearing for the State of Punjab, contended that the zone of consideration according to clause 2 of Draft Guidelines is restricted to the cadre of ADGP/DGP to officers who have completed 30 years of service. The Draft Guidelines contained three requirements, 10 | P a g e namely (i) length of service (ii) very good record and (iii) range of experience. Identification of five core policing areas from amongst twenty policing areas for assessment of merit of officers was done by the Empanelment Committee by taking into account the special needs of the State of Punjab. Courts should show deference to the decision of experts in the matter of selections. The State raised serious objection to the allegation of bias made by the Appellants against Respondent No.4 and 5. Mr. Rohatgi stated that the Appellant abused his position as the head of a special investigation team by filing a report which was not signed by the other members of the team to tarnish the reputation of Respondent No. 4 and 5. Mr. Rohatgi stated that the report filed by the Appellant without the signatures of the other members of the Committee is still lying in a sealed cover before the High Court. It was submitted on behalf of the State that the Appellant was fully aware of initiation of the process for appointment of DGP and the presence of Respondent No.5 in the Committee but did not raise any objection to his continuance in the Empanelment Committee. The Appellant cannot be permitted to raise a bogey of bias at this late hour. In any event, Respondent No.5 was 11 | P a g e required to continue in the Empanelment Committee as per the doctrine of necessity. The State Government refuted the contention of the Appellant that there was suppression of relevant record. It was argued that the relevant record was sent to the Public Service Commission. The State Government cannot be accused of favouring Respondent No.4 by not sending the said report to the Public Service Commission. Mr. Rohatgi submitted that the Draft Guidelines have been followed for empanelment and selection of a number of DGPs in several States. The Empanelment Committee comprises of senior officers of which Respondent No.5 is one member. The selection cannot be said to be biased when the allegation of prejudice is against one member of a multi-member Committee.

11. Mr. Maninder Singh, learned Senior Counsel, stated that Respondent No.4 has an exemplary record of service and is a highly decorated officer with more medals than the Appellant. Responding to submissions of the Appellant pertaining to the report filed in the High Court, Respondent No.4 contended that there is a sinister motive on the part of the Appellant in trying to mislead this Court that the said report was filed by the special investigation team. In fact, two reports were filed by the 12 | P a g e special investigation team on 01.02.2018 and 15.03.2018. The said reports were signed by all the members of the Committee in which no allegations were made against Respondent No.4. Later, another report was filed by the Appellant alleging that Respondent No.4 was involved in certain criminal activities. The said report was given in a sealed cover to the Court. The other members of the Committee have gone on record to state that they were not consulted before the said report was filed before the Court nor do they have any knowledge about the contents of the report. The Appellant was facing a criminal charge in a case registered under Section 306 IPC and had engineered the report only for the purpose of maligning Respondent No.4 to steal a march over him for selection and appointment as DGP. Mr. Maninder Singh argued that the Draft Guidelines which are strictly in conformity with the directions issued by this Court in Prakash Singh's case have not been challenged in spite of which the Tribunal held them to be in contravention of the directions in Prakash Singh's case. He further submitted that Mr. Mustafa has retired on attaining the age of superannuation and the Appellant has service of less 13 | P a g e than six months left and cannot be

considered for appointment as DGP even if he succeeds in this appeal.

12. Mr. Shyam Divan, learned Senior Counsel for Respondent No.5, submitted that the plea of bias as alleged by the Appellant was rejected by both the Tribunal and the High Court which does not warrant any interference by this Court. As the Director General of Police, Respondent No.5 was duty bound to be a member of the Empanelment Committee. The allegation of bias is baseless and created only for the purpose of succeeding in the challenge to the selection and appointment of Respondent No.4 as DGP (HoPF). Moreover, no objection was raised by the Appellants for the participation of Respondent No.5 in the Empanelment Committee.

13. Judicial review may be defined as a Court's power to review the actions of other branches or levels of government; especially the Court's power to invalidate legislative and executive actions as being unconstitutional<sup>2</sup>. Power of judicial review is within the domain of the judiciary to determine the legality of administrative action and the validity of legislations and it aims to protect citizens from abuse and misuse of power<sup>2</sup> Black's Law Dictionary 14 | Page by any branch of the State<sup>3</sup>. The power of judicial review is a basic feature of the Constitution of India<sup>4</sup>. Judicial review has certain inherent limitations. However, it is suited more for adjudication of disputes other than for performing administrative functions. It is for the executive to administer law and the function of the judiciary is to ensure that the Government carries out its duties in accordance with the provisions of the Constitution<sup>5</sup>.

14. The grounds on which administrative action is subject to judicial review are illegality, irrationality and procedural impropriety. The following observations made by Lord Diplock in Council of Civil Service Unions and others v. Minister for Civil Service<sup>6</sup> are apt:

“By ‘illegality’ as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those 3 *Minerva Mills Ltd. v. Union of India* (1980) 3 SCC 625 4 *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225 5 S.R. Bommai v. Union of India (1994) 3 SCC 1 6 [1985] AC 374

15 | Page persons, the judges, by whom the judicial power of the state is exercisable.

By ‘irrationality’ I mean what can by now be succinctly referred to as ‘Wednesbury unreasonableness’. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the Court’s exercise of this role, resort I think is today no longer needed to Viscount Radcliff’s ingenious explanation in *Edwards (Inspector of Taxes) v. Bairstow*, of irrationality as a ground for a court’s reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision makers. “Irrationality” by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as “procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules 16 | P a g e that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all”.

15. The discretionary power vested in an administrative authority is not absolute and unfettered. In *Wednesbury*, Lord Greene was of the opinion that discretion must be exercised reasonably. Explaining the concept of unreasonableness, Lord Greene stated that a person entrusted with discretion must direct himself properly in law and that he must call his own attention to the matter which he is bound to consider. He observed that the authority must exclude from his consideration matters which are irrelevant to the matter he is to consider. Lord Greene concluded that if an authority does not obey aforementioned rules, he may truly be said, and often is said, to be acting unreasonably.<sup>7</sup>

16. Conditions prompted by extraneous or irrelevant considerations are unreasonable and liable to be set aside by Courts in exercise of its power under judicial review 8. (See: 7 *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* [1947] 2 All ER 680 8 *Ram Avtar Sharma v. State of Haryana* (1985) 3 SCC 189 17 | P a g e *State of U.P. v. Raja Ram Jaiswal* 9, *Sheonandan Paswan v. State of Bihar & Others*<sup>10</sup>, *Sant Raj v. O.P. Singla* 11, *Padfield v. Minister of Agriculture*<sup>12</sup>). A decision can be arrived at by an authority after considering all relevant factors 13. If the discretionary power has been exercised in disregard of relevant consideration, the Court will normally hold the action bad in law<sup>14</sup>. Relevant, germane and valid considerations cannot be ignored or overlooked by an executive authority while taking a decision<sup>15</sup>. It is trite law that Courts in exercise of power under judicial review do not interfere with selections made by expert bodies by reassessing comparative merits of the candidates. Interference with selections is restricted to decisions vitiated by bias, mala fides and contrary to statutory provisions. (See: *Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan*<sup>16</sup>, *Badrinath v. State of T.N.*<sup>17</sup>, *National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman*<sup>18</sup>, *Major General I. P. S Dewan v. Union of 9* (1985) 3 SCC 131 10 (1983) 1 SCC 438 11 (1985) 2 SCC 349 12 [1968] 1 All ER 694 13 *Sachidanand Pandey v. State of WB*, (1987) 2 SCC 295 14 *H.W.R. Wade & C.F. Forsyth* in the 10th Edition of *Administrative Law* (2009) 15 *C.K. Thakker Administrative Law*, Second Edition page 80 16 (1990) 1 SCC 305 17 (2000) 8 SCC 395 18 1992 Supp (2) SCC 481 18 | P a g e *India*<sup>19</sup>, *Union Public Service Commission v. Hiranyalal Dev*<sup>20</sup>, *M. V. Thimmaiah v. UPSC* 21 and *UPSC v.*

*Sathiyapriya*<sup>22</sup>).

17. Keeping in mind the aforesaid principles of law, we proceed to examine whether the selection and appointment of Respondent No.4 as DGP (HoPF) on the basis of the Draft Guidelines is contrary to the judgment of this Court in *Prakash Singh’s* case, suffers from the vice of irrationality and is vitiated due to malice and bias.

18. The Government of India appointed a National Police Commission on 15.11.1977 for reviewing the role and performance of the police as well as law enforcement agencies and as an institution to protect the rights of the citizens enshrined under the Constitution. Recommendations made by the Commission were not implemented giving rise to a writ petition under Article 32 of the Constitution of India filed by a retired Director General of Police, Prakash Singh in which directions were sought for framing a new Police Act on the lines of Model Act drafted by the Commission. The writ petition was 19 (1995) 3 SCC 383 20 (1988) 2 SCC 242 21 (2008) 2 SCC 119 22 (2018) 15 SCC 796 19 | Page disposed of by this Court on 22.09.2006 by its judgment in Prakash Singh's case in which several directions pertaining to the State Security Commission, selection and minimum tenure of the Director General of Police, minimum tenure of the Inspector General of Police and other officers, separation of investigation, police establishment board, police complaining authority and National Security Commission were given. The said directions were issued under Article 32, read with Article 142, of the Constitution of India which were directed to be implemented till the legislature passes the appropriate legislations. In so far as the selection and minimum tenure of DGP is concerned, this Court directed that the UPSC shall empanel three senior-most officers of the Department for promotion to the rank of DGP on the basis of their length of service, very good record and range of experience for heading the police force. The State Government shall select the DGP from amongst the three senior-most officers empanelled by the UPSC. A minimum tenure of at least two years, irrespective of the date of superannuation, has been fixed by this Court.

19. By way of implementation of the directions issued by this Court in Prakash Singh's case, UPSC framed Draft Guidelines 20 | Page for empanelling officers for appointment as DGP (Chief of Police). The composition of the Empanelment Committee is as under: -

- a) Chairman, or in his absence, Member, UPSC – President.
- b) Home Secretary to the Government of India or his nominee not below the rank of Special Secretary to the Government of India.
- c) Chief Secretary of the State Government concerned.
- d) Director General of Police of the State Government concerned.
- e) An officer from amongst the head of CPOs/CPMFs not belonging to the cadre for which selection is being made, nominated by the Government of India, Ministry of Home Affairs.

20. Officers belonging to the Indian Police Service of the concerned cadre, not below the rank of ADG, and who have completed at least 30 years of service as on the date of occurrence of vacancy for which the panel is prepared, are eligible for being considered for selection and appointment as DGP. Selection, according to the Guidelines, shall be merit- based and inclusion in the panel shall be adjudged on the basis 21 | Page of 'very good' record and range of experience for heading the police force. The Draft Guidelines empowered the Committee to adopt its own methods and procedure for objective assessment of the suitability of officers to the zone of consideration. The Committee was



obligated to make assessment of the annual confidential reports of the officers with reference to the last ten years preceding the date of meeting of the Committee. Only those officers assessed by the Committee as at least 'very good' for each of the preceding 10 years shall be considered for inclusion in the panel. According to the Guidelines, the Committee shall also take into account the range of experience, relevant for heading the police force as reflected in the bio-data of the officers for determining their suitability for inclusion in the panel. The Guidelines stipulated that the State Government shall appoint DGP from amongst the three senior-most officers included in the panel.

21. On 03.07.2018, this Court disposed of an application filed for modification of the judgment in Prakash Singh's case by giving the following directions: -

6.1. All the States shall send their proposals in anticipation of the vacancies to the Union Public Service Commission, well in

22 | Page time at least three months prior to the date of retirement of the incumbent on the post of Director General of Police; 6.2 The Union Public Service Commission shall prepare the panel as per the directions of this Court in the judgment in Prakash Singh's case(supra) and intimate to the States; 6.3 The State shall immediately appoint one of the persons from the panel prepared by the Union Public Service Commission;

6.4 None of the States shall ever conceive of the idea of appointing any person on the post of Director General of Police on acting basis for there is no concept of acting Director General of Police as per the decision in Prakash Singh's case(supra);

6.5 An endeavour has to be made by all concerned to see that the person who was selected and appointed as the Director General of Police continues despite his date of superannuation. However, the extended term beyond the date of superannuation should be a reasonable period. We say so as it has been brought to our notice that some of the States have adopted a practice to appoint the Director General of Police on the last date of retirement as a consequence of which the person continues for two years after his date of 23 | Page superannuation. Such a practice will not be in conformity with the spirit of the direction.

6.6 Our direction No.(c) should be considered by the Union Public Service Commission to mean that the persons are to be empanelled, as far as practicable, from amongst the people within the zone of consideration who have got clear two years of service. Merit and seniority should be given due weightage. 6.7 Any legislation/rule framed by any of the States or the Central Government running counter to the direction shall remain in abeyance to the aforesaid extent.

22. It is relevant to note that the State of Punjab enacted Punjab Police Act, 2007, subsequent to the decision of this Court in Prakash Singh's case. According to Section 6 of the said Act, the DGP shall be selected by the State Government from amongst the Indian Police Service officers and on appointment, the DGP shall have a tenure of not less than two years. The validity of the said Act was challenged in Writ Petition No.286 of 2013. The State of Punjab filed I.A. No. 144172 of 2018 for modification of the order dated 03.07.2018, seeking liberty to appoint DGP in accordance with the

Punjab Police Act, 2007. While examining the contention of the State of Punjab, this Court summoned Mr. Rakesh Kumar Gupta, Secretary, UPSC to 24 | P a g e appear on 15.01.2019. Mr. Gupta submitted before this Court that committees have been constituted by the UPSC for selection of DGPs and panels have been drawn by the Committees in respect of 12 States. This Court refused to modify the order dated 03.07.2018 after being satisfied with the procedure adopted by UPSC to carry out the directions of this Court. As some State Governments were appointing DGP on the last date of service of the incumbent to enable the officer to get an extendable term of two years, this Court by an order dated 13.03.2019 clarified that empanelment of an officer for consideration for appointment to the post of DGP should be only in case of a minimum residual tenure of six months. In other words, only those officers who have at least six months of service prior to their retirement shall be considered for appointment to the post of DGP.

23. The contention of the Appellant is that the criteria fixed by this Court in Prakash Singh's case was not followed in letter and spirit by the Empanelment Committee of UPSC while conducting selection to the post of DGP (HoPF). The Draft Guidelines are contrary to the directions given by this Court in Prakash Singh's case and therefore, the selection of 25 | P a g e Respondent No.4 is liable to be set aside. Selection of five core policing areas for evaluation of merit of the officers in respect of range of experience is arbitrary and is tailor-made to suit Respondent No.4. Admittedly, appellant is senior to respondent No.4 and could not have been superseded by the Empanelment Committee of the UPSC.

24. According to UPSC, the Draft Guidelines were made to give effect to the directions issued by this Court in Prakash Singh's case. The Draft Guidelines were placed before this Court when the interlocutory application filed by the Government of India for modification of the judgment dated 22.09.2006 in Prakash Singh's case was being considered. This Court expressed its satisfaction regarding the procedure and practice followed by UPSC in the matter of selection to the post of DGP. The Draft Guidelines referred to the factors to be taken into consideration by the Empanelment Committee for selection of DGP as per the directions issued by this Court in Prakash Singh's case. Length of service, very good record and range of experience for heading the police force are factors to be considered by the Empanelment Committee. According to UPSC, the range of experience is a constituent part of the component of merit. In 26 | P a g e respect of selection to the post of DGP (HoPF) for the State of Punjab, five core policing areas have been identified to assess the range of experience of the officers concerned for the last 10 years, which are:-

A. Intelligence B. Law and order C. Administration D. Investigation E. Security The selection based on the Draft Guidelines was defended by UPSC on the ground that the Guidelines are in conformity with the directions issued by this Court in Prakash Singh's case.

25. This Court in Prakash Singh's case directed empanelment of officers for appointment to the post of DGP by UPSC by laying down broad criteria. The implementation of the directions issued by this Court has to be on objective basis for which reason the UPSC has framed Draft Guidelines, which are being followed uniformly since 2009 for selection of DGPs in several States. Keeping in mind, the

seniority of the officers under consideration, selection is conducted on the basis of very good record and range of experience for heading the police force. Assessment of very good record of service is on the basis of annual confidential reports for the last 10 years. Range of

27 | Page experience for heading the police force assessed by the empanelment committee is done by assessing the performance of officers in five core police areas out of 20 policing areas. Discretion was given to the empanelment committees to select the core policing areas by taking into account the prevailing situation in the States. Considering the peculiar situation of the State of Punjab, intelligence, law and order, administration, investigation and security were identified as the core policing areas to ascertain range of experience of an officer to head the police force.

26. The Draft Guidelines cannot be said to be contrary to the criteria laid down by this Court in Prakash Singh's case. The Guidelines carry forward the directions given by this Court by stipulating the objective criteria for guidance of the empanelment committees. The preparation of a panel on the basis of the Draft Guidelines after taking into account the core policing areas cannot be said to be arbitrary. We are not impressed with the submission of the Appellant that the core policing areas were identified only to suit Respondent No. 4. Assessment of relative merit of the officers under consideration is within the domain of the Empanelment Committee, which is 28 | Page given liberty to adopt its own procedure. Merit of the officers in the zone of consideration is evaluated on the basis of their record of service and range of experience. A panel of three officers has been prepared in the order of seniority. The Appellant was found to be inadequate for inclusion in the panel in the range of experience for core policing areas. The Tribunal committed an error in recording the finding that the Empanelment Committee deviated from the procedure prescribed by this Court in Prakash Singh's case. There is no basis for the conclusion of the Tribunal that the Draft Guidelines are contrary to the directions given by this Court in Prakash Singh's case. The broad criteria mentioned in the said case are seniority, very good record of service and range of experience to head a police force. The Draft Guidelines which have to be scrupulously followed by empanelment committees stipulate that a selection should be on the same criteria. In the instant case, Empanelment Committee decided to assess the range of experience of officers to head the police force in the State of Punjab after considering the peculiarities of the State. Identification of five core policing areas out of a domain of twenty policing areas cannot be said to be an arbitrary exercise 29 | Page of power. The Tribunal committed an error in accepting the submission of the Appellant that the core policing areas, identified by the Empanelment Committee was only to favour Respondent No.4 on the basis of unsubstantiated allegations. Empanelment was directed to be done by UPSC on the basis of length of service, very good record and range of experience for heading the police force in Prakash Singh's case (supra). Later, in the order dated 13.03.2019, this Court clarified its earlier order dated 03.07.2018 and directed UPSC to prepare the panel purely on the basis of merit. Be that as it may, the recommendation of the names of 12 officers for consideration is on the basis of completion of thirty years' service in the cadre of ADGP. Length of service as mentioned in Prakash Singh's case (supra) is taken into account for determination of zone of consideration. The other two factors namely, good record of service and range of experience of all the 12 officers recommended on the basis of length of service are assessed by the Empanelment Committee. Inter se merit of the candidates was evaluated according to the objective criteria followed by the Empanelment

Committee. The preparation of panel for appointment as DGP (HoPF) for the State of Punjab, by the 30 | Page Empanelment Committee is in compliance of the Draft Guidelines, which are in conformity with the directions issued by this Court in Prakash Singh's case as the panel was prepared after taking into account the relevant considerations as directed by this Court in Prakash Singh's case and stipulated in the Draft Guidelines. As no irrelevant consideration prompted the decision, the preparation of the panel by the Empanelment Committee cannot be said to be irrational. Having regard to the nature of the function and the power confided to the Selection Committee, it is not a legal requirement that reasons should be recorded for its conclusion [See: UPSC v. K. Rajaiah & Ors.<sup>23</sup>, Union Public Service Commission v. Arun Kumar and Baidyanath Yadav v. Aditya Narayan Roy & Ors<sup>25</sup>]. The Tribunal committed an error in holding the decision of the Committee as arbitrary in the absence of reasons. Therefore, the preparation of the panel by the Empanelment Committee cannot be said to be suffering from unreasonableness.

27. The Appellant contended that Respondent No. 5 ought to have recused himself from the Empanelment Committee as he is 23 (2005) 10 SCC 15 24 (2015) 12 SCC 600 25 2020 (16) SCC 799 31 | Page inimically disposed of towards him. The Appellant argued that he was appointed to head a special investigation team by the High Court of Punjab and Haryana to investigate the involvement of law enforcement authorities in drug trafficking and he unearthed material against senior police officers. He was falsely implicated in a criminal case involving the suicide of Inderpreet Singh Chadha. It is the case of the Appellant that he submitted a status report to the High Court on 18.05.2018 in a sealed cover in which he has mentioned about the involvement of Respondent No.4 and Respondent No.5 in drug trafficking. The Appellant referred to the recusal of Respondent No.5 earlier when he was asked to write his performance appraisal report. Finally, the Appellant submitted that the preparation of panel is vitiated due to bias of the Respondent No.5. On the other hand, it was submitted by the Respondents that the Appellant was involved in the suicide of Inderpreet Singh Chadha. The special investigation team headed by the Appellant submitted two reports on 01.02.2018 and 15.03.2018 before the High Court in which there is no mention of either Respondent No.4 or Respondent No. 5. The sealed cover submitted by the Appellant before the High Court was without consulting the other two 32 | Page members of the special investigation team. It was further submitted that Respondent No. 5, being the DGP of a State, could not have recused himself from being a member of the Empanelment Committee. It is also argued that the Appellant has not raised any objection regarding the participation of Respondent No.5 in the selection proceedings. Doctrine of necessity was pressed into service by the Respondents to submit that Respondent No.5 could not have recused himself from the Empanelment Committee.

28. It is relevant to note that the plea of bias did not find favour with the Tribunal or the High Court. Before us, the learned counsel for the Appellant, relying upon Badrinath (supra), has submitted that even if one person of the multi-member committee is biased, the decision of the committee shall be rendered invalid. Further, this decision holds that doctrine of necessity applies only in case a committee is constituted by a statute or a statutory rule. In other words, if the committee is constituted under an administrative order there can be no difficulty in an officer recusing himself and requesting another officer to be substituted in his place. Even if a plea of bias is not raised earlier, it can be raised during the proceedings in judicial 33 | Page review. Further, even if bias is not a direct cause of the decision, the test is one of mere likelihood of bias, which means a

substantial possibility of bias.<sup>26</sup>

29. In exercise of its power under Articles 32 and 142 of the Constitution of India, this Court directed UPSC to constitute an empanelment committee to recommend three senior-most officers with good record of service and range of experience, and meeting other parameters, from whom the DGP shall be selected and appointed by the State Government. The incumbent DGP of the State is a member of the empanelment committee according to the Draft Guidelines issued by the UPSC. These Guidelines issued in compliance with the directions given by this Court under Article 142 of the Constitution of India, we would accept, are well-known and in public domain. Therefore, the position that Respondent No.5, being the DGP, would be a member of the Empanelment Committee was within the knowledge of the Appellant. Ignorance of this factum when pretended must be rejected as a mere pretence. The two Appellants are not laymen, but senior police officers aspiring for the appointment to the top police position in the State. In *26 Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and Others*, (1993) 4 SCC 10 34 | P a g e endorsement of our reasoning, we have on record a news article published in the Hindustan Times, dated 30 th January 2019, titled “DGP’s appointment – All eyes on UPSC’s February 4 meet”. The article states that as per the information gathered from officials privy to the development, the UPSC meeting will be held in Delhi and would be attended by the Punjab Chief Secretary Mr. Karan Avtar Singh and the incumbent DGP Mr. Suresh Arora, i.e., Respondent No.5. In the given facts and considering the position and status of the Appellant, we would not accept the plea that participation of Respondent No.5 in the Empanelment Committee was unknown or a secret for the Appellants.

30. It is in this context, we have to examine whether the Appellants are estopped from challenging the recommendations made by the Empanelment Committee, given the fact that they had taken a calculated chance, and not protested till the selection panel was made public. In our opinion, the ratio in *Madan Lal and Others v. State of Jammu and Kashmir and Others*,<sup>27</sup> would apply in the present case as when a person takes a chance and participates, thereafter he cannot, because the result is unpalatable, turn around to contend that the process was unfair or the selection committee was not properly constituted. This decision, no doubt, pertains to a case where the petitioner had appeared at an open interview, however, the ratio would apply to the present case as the Appellant too had taken a calculated chance in spite of the stakes, that too without protest, and then has belatedly raised the plea of bias and prejudice only when he was not recommended. The judgment in *Madanlal (supra)* refers to an earlier decision of this Court in *Om Prakash Shukla v. Akhilesh Kumar Shukla and Others*,<sup>28</sup> wherein the petitioner who had appeared at an examination without protest was not granted any relief, as he had filed the petition when he could not succeed afterwards in the examination. This principle has been reiterated in *Manish Kumar Shahi v. State of Bihar and Others*,<sup>29</sup> and *Ramesh Chandra Shah and Others v. Anil Joshi and Others*.<sup>30</sup>

31. More appropriate for our case would be an earlier decision in *Dr. G. Sarana v. University of Lucknow and Others*,<sup>31</sup> wherein a similar question had come up for consideration before a three-judge bench of this Court as the petitioner, after having appeared before the selection committee and on his failure to 28 (1986) Supp. SCC 285 29 (2010) 12 SCC 576 30 (2013) 11 SCC 309 31 (1976) 3 SCC 585 36 | P a g e get appointed, had challenged the selection result pleading bias

against him by three out of five members of the selection committee. He also challenged constitution of the committee. Rejecting the challenge, this Court had held:

“15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar

37 | Page of waiver against him. The following observations made therein are worth quoting:

“It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.””

32. The aforesaid judgment in Dr. G. Sarana (supra) was referred in Madras Institute of Development Studies and Another v. K. Sivasubramaniyan and Others,<sup>32</sup> in which selection to the post of Assistant Professor was challenged on the ground that shortlisting of candidates was contrary to the Faculty Recruitment Rules. The challenge was declined on the ground of estoppel as the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, had submitted his application and participated in the selection process by appearing before the committee of experts.

32 (2016) 1 SCC 454

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33. Equally appropriate would be a reference to the decision of this Court in P.D. Dinakaran (1) v. Judges Inquiry Committee and Others,<sup>33</sup> in which the allegation was that one of the members of the committee constituted by the Chairman of the Council of States (Rajya Sabha) under Section 3(2) of the Judges (Inquiry) Act, 1968 was biased. This judgment extensively recites and assimilates from both domestic and foreign judgments on the question of bias and prejudice and quotes the following observations in Dr. G. Sarana's (supra) case:

“11... the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased,

for it is difficult to probe the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration.” 33 (2011) 8 SCC 380 39 | P a g e

34. Thereafter, reference is made to Ashok Kumar Yadav and Others v. State of Haryana and Others ,<sup>34</sup> which refers to the Constitutional Bench judgment in A.K. Kraipak and Others v. Union of India and Others.<sup>35</sup> Ashok Kumar Yadav (supra) was a case of selection by UPSC and following extract from this judgment is of some significance:

“18. We must straightaway point out that A.K. Kraipak case is a landmark in the development of administrative law and it has contributed in a large measure to the strengthening of the rule of law in this country. We would not like to whittle down in the slightest measure the vital principle laid down in this decision which has nourished the roots of the rule of law and injected justice and fair play into legality. There can be no doubt that if a Selection Committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the 34 (1985) 4 SCC 417 35 (1969) 2 SCC 262 40 | P a g e interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the Selection Committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection. But the situation here is a little different because the selection of candidates to the Haryana Civil Service (Executive) and Allied Services is being made not by any Selection Committee constituted for that purpose but it is being done by the Haryana Public Service Commission which is a Commission set up under Article 316 of the Constitution. It is a Commission which consists of a Chairman and a specified number of members and is a constitutional authority. We do not think that the principle which requires that a member of a Selection Committee whose close relative is appearing for selection should decline to become a member of the Selection Committee or withdraw from it leaving it to the appointing authority to nominate another person in 41 | P a g e his place, need be applied in case of a constitutional authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission were to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected.

When two or more members of a Public Service Commission are holding a viva voce examination, they are functioning not as individuals but as the Public Service Commission. Of course, we must make it clear that when a close relative of a member of a Public Service Commission is appearing for

interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him.” 42 | P a g e

35. ‘Real likelihood test’ applied in *Ranjit Thakur v. Union of India and Others*,<sup>36</sup> is elucidated in the following words:

“15...The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether Respondent 4 was likely to be disposed to decide the matter only in a particular way.

16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial ‘coram non iudice’.

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind

36 (1987) 4 SCC 611 43 | P a g e and ask himself, however, honestly, ‘Am I biased?’; but to look at the mind of the party before him.”

36. In *P.D. Dinakaran (1)* (supra), this Court held that the member in question had during a seminar spoken against the proposed elevation of the petitioner as a Judge of the Supreme Court and, therefore, the apprehension of likelihood of bias is reasonable and not fanciful, though in fact, the member may not be biased. Nevertheless, the writ petition was dismissed on the ground that the petitioner was not a lay person and being well-versed in law should have objected to the constitution of committee when notified in the Official Gazette, which factum was highly publicised in almost all newspapers. Notwithstanding the awareness and knowledge, the petitioner did not object, which indicates that he was satisfied that the member had nothing against him. Therefore, belated plea taken by the petitioner did not merit acceptance and mitigates against bona fides of the objection to the appointment of the person as a member of the committee. In its support, reference was made to several decisions of this Court, including *Shri Lachoo Mal v. Shri Radhey Shyam*,<sup>37</sup> which acknowledges the general 37 (1971) 1 SCC 619 44 | P a g e principle that everyone has a right to waive and agree to waive the advantage of a law or rule made solely for his benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. In *Manak Lal (Shri), Advocate v. Prem Chand Singhvi and Others*,<sup>38</sup> this Court had declined to nullify an action made on the recommendation of the Tribunal though the chairman of the Tribunal had appeared before the appellant in the case. The reason was that the appellant had never raised a point before the Tribunal, which with the other factors reflected waiver. In conclusion, the Court in *P.D. Dinakaran (1)* (supra) held:



“86. In conclusion, we hold that the belated raising of objection against the inclusion of Respondent 3 in the Committee under Section 3(2) appears to be a calculated move on the petitioner's part. He is an intelligent person and knows that in terms of Rule 9(2)

(c) of the Judges (Inquiry) Rules, 1969, the Presiding Officer of the Committee is required to forward the report to the Chairman within a period of three months from the date the charges framed under Section 3(3) 38 AIR 1957 SC 425

45 | Page of the Act were served upon him. Therefore, he wants to adopt every possible tactic to delay the submission of report which may in all probability compel the Committee to make a request to the Chairman to extend the time in terms of the proviso to Rule 9(2)(c). This Court or, for that reason, no court can render assistance to the petitioner in a petition filed with the sole object of delaying finalisation of the inquiry.” Nevertheless, the Court in P.D. Dinakaran (1) (supra) had requested the Chairman to nominate another distinguished jurist in place of the person in question, duly noticing that the proceedings initiated had progressed only to the stage of framing of charges and nomination of another jurist would not hamper the proceedings. The reconstituted committee would be entitled to proceed on the charges already framed.

37. In view of the above ratio, which is applicable, it is not necessary for this Court to delve further into the allegations and submissions based on assertion of bias and prejudice.

38. For the aforementioned reasons, we do not find any error committed by the High Court in setting aside the judgment of 46 | Page the Tribunal and upholding the selection and appointment of Respondent No.4 as DGP (HoPF), State of Punjab.

39. The appeals are dismissed.

.....J. [ L. NAGESWARA RAO ] .....J. [ SANJIV KHANNA ] .....J. [ B.R. GAVAI ] New Delhi, November 16, 2021.

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