Supreme Court of India
Union Of India vs Sudhir Kumar Jaiswal on 4 May, 1994
Equivalent citations: 1994 AIR 2750, 1994 SCC (4) 212
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
SUDHIR KUMAR JAISWAL

DATE OF JUDGMENT04/05/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1994 AIR 2750 1994 SCC (4) 212
JT 1994 (3) 547 1994 SCALE (2)808

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- 1st of August of the year concerned has been fixed as the date with reference to which the eligibility of persons desirous of sitting in competitive examination for recruitment to the Indian Administrative Service/Indian Foreign Service etc., qua their age for which both minimum and maximum is normally fixed, is being determined. This cut-off date had been fixed when the Union Public Service Commission had been conducting only one written examination which used to be normally after 1st August. The Commission, however, felt the necessity of holding a preliminary examination which normally takes place before 1st day of August. Even so, the eligibility of the applicant, regarding satisfaction of the age requirement continued to be ascertained with reference to his age as on 1st August of the year concerned.

2. The aforesaid cut-off date came to be challenged before various Central Administrative Tribunals, one of which is Central Administrative Tribunal at Allahabad. The Tribunal in its earlier decisions

rendered, inter alia, in OA Nos. 778 of 1991 and 881 of 1991 on 19-9-1991 did not find anything arbitrary in taking 1st August as the cut-off date despite holding of the preliminary examination before that date. Indeed, in two OAS which had been filed by the respondent himself before the aforesaid Tribunal which were registered as OA Nos. 168 of 1990 and 1161 of 1992 and came to be decided on 7-5-1993, the Tribunal had not accepted the contention of the respondent that fixation of 1st August was arbitrary. A different view has, however, been taken in the present impugned judgment by the same Tribunal by holding that 1st of August as the cut-off date is arbitrary. The appellants, namely, the Union of India and the Union Public Service Commission have assailed the legality of this decision.

3. That there can be no arbitrariness in fixation of even. a cut-off date is not disputed before us by the learned Additional Solicitor General who has appeared for the appellant. This stand has been correctly taken, because after Article 14 has spread its wings in the field of administrative law following what was principally held in Maneka Gandhi case' no stand can be taken by any administrative authority that it can act arbitrarily. Indeed, even before the decision in Maneka Gandhi' law was that no administrative authority has absolute discretion to decide a matter within its competence the way it chooses. This has been the accepted position and this Court had cited with approval what had been stated in this regard in United States v. Martin Wunderlich2 the relevant part of which reads as below:

> "Law has reached its finest moments when it has freed men from unlimited discretion of some ruler, some civil or military official, some bureaucrat. ... Absolute discretion is a ruthless master. It is more destructive of freedom than any of man's other inventions."

4. Insofar as fixation of cut-off date is concerned, the same can be regarded as arbitrary by a court if the same be one about which it can be said that it has been "picked out from a hat", as was found to be by this Court in D.R. Nim v. Union of India3 because of which fixation of 19-5-1991 as the date for the purpose concerned was held to be invalid.

5. As to when choice of a cut-off date can be interfered was opined by Holmes, J. in Louisville Gas & Electric Co. v. Clell Coleman4 by stating that if the fixation be "very wide of any reasonable mark", the same can be regarded arbitrary. What was observed by Holmes, J. was cited with approval by a Bench of this Court in Union of India v. Parameswaran 1 Maneka Gandhi v.Union of India, (1978)1 SCC248:AIR 1978 SC 597 2 342 US 98:96 LEd113 (1951) 3 AIR 1967 SC 1301: (1967) 2 SCR 325 4 277 US 32: 72 L Ed 770 (1927) Match WorkS5 (in paragraph 10) by also stating that choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. It was further pointed out where a point or line has to be, there is no mathematical or logical way of fixing it precisely, and so, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark.

6. The aforesaid decision was cited with approval in D. G. Gouse and Co. v. State of Kerala6; so also in State of Bihar v. Ramjee Prasad to which decision we shall have occasion to refer later also.

7. In this context, it would also be useful to state that when a court is called upon to decide such a matter, mere errors are not subject to correction in exercise of power of judicial review; it is only its palpable arbitrary exercise which can be declared to be void, as stated in Metropolis Theater Co. v. City of Chicago8 in which Justice McKenna observed as follows:

> "It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void....."

The aforesaid was noted by this Court in Sushma Sharma v. State Of Rajasthan9 in which case also reasonability of fixation of a date for a particular purpose had come up for examination.

8. Having known the legal parameters within which we have to function, let it be seen whether fixation of 1st August as cut-off date for determining the eligibility of applicants qua their age can be held to be arbitrary despite preliminary examination being conducted before that date. As to why the cut-off date has not been changed despite the decision to hold preliminary examination, has been explained in paragraph 3 of the special leave petition. The sum and substance of the explanation is that preliminary examination is only a screening test and marks obtained in this examination do not count for determining the order of merit, for which purpose the marks obtained in the main examination, which is still being held after 1st August, alone are material. In view of this, it cannot be held that continuation of treating 1st August as the cut-off date, despite the Union Public Service Commission having introduced the method of preliminary examination which is held 5 (1975) 1 SCC 305: AIR 1974 SC 2349 6 (1980) 2 SCC 410: AIR 1980 SC 271 7 (1990) 3 SCC 368 8 57 L Ed 730 (1912): 228 US 61 9 1985 Supp SCC 45: 1985 SCC (L&S) 565: AIR 1985 SC 1367 before 1st August, can be said to be "very wide off any reasonable mark" or so capricious or whimsical as to permit judicial interference.

9. Let it now be seen as to why the Bench in the impugned judgment despite the earlier decisions referred earlier, has accepted the case of the respondent. A perusal of the judgment shows that the Bench relied on an office memorandum issued by the Government of India on 4-9-1979 to come to its decision. It is enough to observe that what is stated in this memorandum, which is apparently executive in nature, cannot override the statutory provisions finding place either in Regulation 4(ii) of IAS (Appointment by Competitive Examination) Regulations, 1955 or Rule 6(a) of Civil Services Examination Rules, 1992. According to us, this is so elementary a point that an adjudicatory body like the CAT could not have, in any case was not expected to have, made the mistake of relying on the same as it runs counter to the aforesaid statutory provisions. This is not all. The aforesaid office memorandum came to be explained or modified by another office memorandum of 14-7-1988, which has made it clear that insofar as civil service examinations are concerned, it is the later date which is crucial in between two dates, namely, 1st January and 1st August. So, no reliance could have been, in any case, placed on what had been stated in this regard in the office memorandum of

4-9- 1979.

10. Shri Jain, learned counsel for the respondent, being conscious of the weakness of the legal stand taken by the Tribunal, urged that equity should come to the respondents' assistance because of the view taken by this Court in Mohan Kumar Singhania case10 to which the Tribunal has also referred in its judgment. We have applied our mind to this aspect. We are not persuaded to agree with Shri Jain, because what happened in Singhania case10 was different. We have taken this view also because the impugned judgment has left room to think it was inspired by some oblique motive. Though in putting this on record, we have not felt happy but we have felt called upon to do so because the Allahabad Bench itself of the CAT had rejected the self same contention of the respondent himself in the two OAs referred earlier. In view of this, the present Bench was not justified in refusing to make a reference to a larger Bench to decide the point to which effect a prayer had been made by the appellants. The Bench ought to have referred the matter to a larger Bench also because of two decisions of that Bench itself taking different view, more so, as it was deciding a point relating to conduct of examination by an important body like Union Public Service Commission, and that also for examinations conducted for selecting IAS and IFS Officers. The reference to larger Bench was eminently called because the earlier decisions of the Tribunal were based on the judgments of this Court in Ramjee Prasad case7 in which the reasonableness of cut-off date examined related to filling up posts, as in the case at hand.

10 Mohan Kumar Singhania v. Union Of India, 1992 Supp (1) SCC 594

11. For the aforesaid reasons, equity does not demand any favour to be shown to the respondent. The result is that appeal is allowed with costs by setting aside the impugned order of the Tribunal. Cost assessed as Rs 10,000. The respondent would not be treated or deemed to have passed the examination in question and whatever benefit of the same was given to him pursuant to Tribunal's directions shall stand cancelled.