Landmark Judgement

State of Jammu and Kashmir & Others v. Asif Hameed & Others, (1989) | Separation of Powers



In defining the limits of executive authority as specified in Article 162, this case represents an important turning point. In the case "**Case Study: Asif Hameed & Others v. State of Jammu and Kashmir & Others**," which is based on the theory of separation of powers, the scope of the State's executive authority as guaranteed by Article 162 and Article 246 of the Indian Constitution has been carefully considered.

Case Title: Asif Hameed & Others v. State of Jammu and Kashmir & Others

Court: Supreme Court of India

Citation: AIR 1989 SC 1899

Judges: Justice K.N. Singh, Justice K. Jagannatha Shetty and Justice Kuldip Singh

Date of Judgment May 3rd, 1989

Lawread

Many applicants filed writ petitions in the High Court in 1988 after failing to be accepted into medical and dental programs at government colleges in Jammu & Kashmir (henceforth referred to as "J&K") for the 1988–89 academic year.

They contended that the selection procedure carried out by a "competent authority" designated by the state government was invalid.

In a previous 1987 decision, Jyotshana Sharma v. State of J&K (decided on April 17, 1987), the High Court had ordered that an independent statutory body, rather than an authority established by the government, handle the selection process. The choice for the 1986–87 session was contested in this instance.

The unsuccessful candidates argued that the state government had violated the High Court's order by failing to follow the 1987 directive, which stated that the government was to form the "competent authority" in accordance with the state government's May 18, 1987, order.

The relevant authority created the selection procedure, which included a viva voce interview and an objective admission exam. The candidates were assessed using predetermined criteria.

The High Court declared the selection procedure unconstitutional for failing to adhere to its previous directive and decided in favor of the rejected candidates.

The High Court ordered the State to reconstruct the competent authority when it was challenged on May 19, 1987. The State complied.

The High Court's ruling has been appealed to the Supreme Court by the state administration, some unsuccessful candidates, and successful candidates. Additionally, the reconstructed

competent authority's selection procedure was contested.

Problems

Whether the High Court's order for the state government to establish a separate statutory organization for elections went beyond its constitutional powers.
Whether the High Court's orders to the executive branch violated the separation of powers concept.
Whether the responsible authority's selections should be declared void because they went beyond the High Court's orders.
if the responsible authority's selection procedure was reasonable and compliant with the constitution.

Lawread

Applied Laws

Article 162 of the 1950 Indian Constitution
Article 246 of the 1950 Indian Constitution

Arguments in Court

The appellants contended that the selection procedure went against the High Court's legally enforceable rulings from its earlier 1987 ruling. Although the state constituted the competent authority to conduct selections, the High Court had ordered the state government to assign the selection process to an independent statutory body. This was against the High Court's order.
Additionally, they argued that the competent authority was not autonomous but rather subject to executive control. In addition to pointing up flaws, they claimed that a different government body, not the appropriate authorities, conducted the actual inspection.
Additionally, there were differences in the responsible authority's selection criteria and procedure for the admission exam and viva voce test.
The state government contended that the High Court's views in the earlier 1987 ruling were only recommendations rather than legally obligatory directives. They claimed that by

establishing the appropriate authorities, they had sufficiently complied with the instructions, even if they were regarded as directives.

They argued that, in accordance with the Constitution, the competent authority was legitimately established through executive powers. They claimed that the responsible authority's selection procedure was both reasonable and constitutionally sound.

Furthermore, it was maintained that there were no particular differences between the competent authority's inspection and the actual selection procedure. It was argued that the legislature cannot be ordered by the High Court to pass legislation creating a statutory body.

Evaluation

Lawread

The three organs—the legislature, the executive branch, and the judiciary—must operate within their respective domains and refrain from carrying out each other's duties, according to the court's discussion of the theory of separation of powers. The Constitution has distinguished the distinct roles of each, even though this notion is not rigorously adhered to in India.

The court went on to say that the primary limitation on the judiciary is **"self-imposed discipline,"** although judicial scrutiny could serve as a check on any unconstitutional use of authority by the other branches.

The courts must determine whether the legislature or executive branch has acted within their constitutional authority when a governmental action is contested in court. If not, the court may invalidate the action while staying within the bounds of its judicial review authority. As long as constitutional bounds are respected, the court cannot advise or direct executive policy topics within the executive's purview.

The court observed that the state legislature had to create a statute pertaining to **the High Court's directive to create a "statutory independent body."** However, the Constitution's provisions prohibit courts from giving the legislature instructions on how to draft legislation because this is a matter that should only be discussed by the legislature.

As a result, the Court determined that by giving the state government instructions about the selection procedure in the 1987 case, the High Court had violated its constitutional authority. The state's medical college admissions criteria and procedures can only be created by the executive branch, according to the constitution. As a result, the High Court is unable to provide the legislature instructions on how to draft laws because doing so would go against the separation of powers theory.

The Court reiterated the necessity of having an independent statutory authority in **the case of Farooq Ahmed Bacha v. State of J&K, (CR-87/2012),** where the selection for the year 1987-88 was contested. The current court concurred with the High Court's finding that the 1987 case's directives were only recommendations.
By establishing the competent authority through executive orders, the state government had basically complied with the High Court's instructions, according to the highest court's ruling on the reconstitution of the competent authority. As a result, it dismissed the claims that the responsible authority's composition and operation were flawed.

The Court determined that the competent authority's selection procedure, which included a viva voce examination and an objective entrance exam, was reasonable and constitutionally sound. There were no particular differences in the actual entrance exam, viva voce, or selection outcomes. The Court stated that, even if a tiny amount of chance is introduced, it would prefer a selection process that does away with bias and human discretion.

In the case of Koushal Kr. Gupta v. State of J&K, (1984) 2 SCC 652, such an objective entrance exam and viva voce test were also taken into consideration. It was noted that the viva voce test must be conducted in a reasonable and just manner without arbitrariness or bias and that such a viva voce is considered valid. In a similar vein, the Supreme Court accepted the objective admission and viva voce selection procedure for the 1984–85 selection session in **Atul Khullar v. State of J&K, 1986 Supp SCC 225.** The Court favored this over discretionary selection, which is prone to bias and favoritism, and these precedents supported maintaining the current selection process, which is intended to reduce subjectivity through predetermined boundaries.

The Supreme Court decided that the competent authority's choices are nonetheless valid even if one member chooses not to participate. It said that the authority could lawfully operate with two members in the absence of statutory provisions. The court also ruled that the designated expert committee had simply supported the competent authority, which had examined and accepted the selection outcomes.

conclusion

the state government's and the winning candidates' appeals were granted by the current court, while the appeals of the losing candidates were rejected. Additionally, it overturned the High Court's ruling. Because the responsible authority was legitimately established under the executive powers and had followed a fair and reasonable procedure for selections, the

Lawread

selection process and the outcomes were upheld.

Lawread