

(2000) 03 DEL CK 0034
In the Delhi High Court
Case No : CW.No.3624 of 1996

Arwachin Bharti Bhawan

APPELLANT

Vs

The Directorate of Education

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Citation : (2000) 5 AD 169 : (2000) 86 DLT 99 : (2000) 54 DRJ 124

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Ravi Gupta, for the Appellant; Mr. Arvind K. Nigam and Mr. D.N. Vohra, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner/management of the school has filed the writ petition challenging the order of the Delhi School Tribunal dated 13.8.1996.

2. A few facts necessary for the appreciation of the question raised by the petitioner could be noticed as under:

The second respondent was appointed as an Assistant Teacher in the petitioner school and she was confirmed on 9.3.1972. Disciplinary action was taken against her and she was kept under on suspension by order dated 27.4.1981. As per the provisions of the Delhi School Education Act, 1973 and the Rules thereunder, a Committee for holding a domestic inquiry was constituted and, consequently, the second respondent was removed from service vide order dated 19.9.1987. That was challenged by the second respondent before the Delhi School Tribunal. The Delhi School Tribunal set aside the order of removal holding that the Disciplinary Committee constituted was biased against the second respondent and in that two members of the Committee were also examined as witnesses in the inquiry, and, Therefore, the decision by the Disciplinary Committee was biased and void in law. The Tribunal directed reinstatement of the second respondent with all consequential benefits. The management has filed the writ petition, as stated above.

3. It is stated in the writ petition that the Disciplinary Committee was constituted in accordance with Rule 118 of the Delhi School Education Rules, 1973. The Disciplinary Committee consisted of the following members:

(i) Shri D.K.Jain, Chairman.

(ii) Shri Inderjeet Sharma, Manager of the School.

(iii) Ms.Krishan Bala Bhatia, Head Mistress

(iv) Ms.Santosh Sharma, Teacher who is member of the Managing Committee of the School.

(v) Shri B.S.Sharma, Nominee of the Director of Education.

4. It is admitted that Shri Inderjeet Sharma, Manager of the School, and Ms.Krishan Bala Bhatia, Head Mistress, were examined as witnesses in the proceedings. What is stated in the writ petition is that the School is bound to have such a Committee in the light of the statutory provisions and the Management had no other option but to constitute such a committee.

5. It is stated in the writ petition: "It was well within the knowledge of the Director of Education that the statement of two members of the Disciplinary Committee had been recorded by the Enquiry Officer." 6. In paragraph (xi) of the grounds of the writ petition: "BECAUSE the impugned order does not consider that the Disciplinary Authority under the Law consists of 5 members. Assumingly but without admitting that 2 of them were parties to an incident in question, yet the other three are admittedly unbiased. The decision to impose punishment was "Unanimous". Out of the said three person, one of them Shri B.S.Sharma was a Government Nominee who had nothing to do with the school, and the other two were Chairman of Managing Committee and the Teachers representative of the said Committee. There was, Therefore, sufficient compliance with the principles of natural justice which are neither rigid nor inflexible." 7. In paragraph (xii) of the grounds of the writ petition: "BECAUSE the learned tribunal failed to appreciate that the punishment imposed upon the respondent No.2 was duly approved and sanctioned by respondent No.1. It is stated that the Directorate of Education is an Expert under the Act who accords and grants his approval after considering all the facts on record. It was well within his knowledge that out of five members of the Managing Committee, the statement of two persons was recorded against the respondent No.2 and after considering the same the Directorate of Education had approved the punishment imposed upon the respondent No.2. The learned tribunal ought not to have interfered in the decision of the Directorate of Education. It was a cautious decision approved and granted by the respondent No.1 after considering all the facts on record." 8. On these averments, it is stated in the writ petition that the reinstatement order by the Tribunal was erroneous as the second respondent had started running her own school and the direction by the for tribunal payment of backwages is also not justified.

9. The second respondent has filed a reply traversing the averments made in the writ petition.

10. The Education Officer, Zone I, District East, the first respondent has filed a short counter affidavit stating: "It is admitted fact that Shri Inderjit Sharma, Manager and Smt.Krishna Bhatia, Head-Mistress of the petitioner school were witnesses before the Inquiry Officer and had also participated in the proceedings of the disciplinary committee being its members." 11. The learned counsel for the petitioner, Mr.Ravi Gupta, submitted that the second respondent who had been found guilty by the Disciplinary Committee, sought to get out of the situation on a technical ground that the constitution of the Disciplinary Committee was not legal and the persons who had been witnesses could never be in the Disciplinary Committee and that has vitiated the entire proceedings. The learned counsel submitted that the situation has to be approached from the point of a public purpose and interest and a Teacher who did not perform her duties and was guilty of discipline cannot be permitted to take advantage of her own wrong.

12. The learned counsel for the petitioner, Mr.Ravi Gupta, for the purpose of projecting doctrine of necessity, relied upon a judgment of this Court in M.L. Joshi Vs. Director of Estates, Government of India, New Delhi and Another, . The learned counsel also referred to the judgment of the Calcutta High Court in B.K. Mehra Vs. Life Insurance Corporation of India and another, . The learned counsel submitted that the second respondent had only been removed from service which would not disqualify her from seeking future employment in any other recognised private school, and, Therefore, it cannot be said that she was in any way prejudiced. The learned counsel referred to the judgment of the Supreme Court in Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, . The learned counsel also referred to the judgment of the Gujarat High Court in B.K. Shukla Vs. Natverlal Ratanji Kevat and Others, . The learned counsel submitted that it cannot be ignored that the decision by the Disciplinary Committee was unanimous, ignoring the decision of the two members, three members had taken the same view, and, Therefore, the decision of the Disciplinary Committee cannot be set aside, as ignoring the decision of the two members, majority of the members of the Disciplinary Committee had taken the view that the second respondent was guilty of the charges alleged against her.

13. The learned counsel for the second respondent Mr.D.N.Vohra, submitted that the school could have constituted a Committee without witnesses being made members of the Committee. The Manager should have bestowed sufficient thought before the constitution of the Committee and should have reported the matter to the educational authorities, in the light of the principles laid down by the Supreme Court in Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, . The learned counsel further submitted that the decision of the Disciplinary Committee is void and the

Delhi School Tribunal had taken the correct view in the matter. The learned counsel submitted that the petitioner cannot seek to challenge the order of the Tribunal under Article 226 of the Constitution of India.

14. In the light of the admitted facts, the decision of the Disciplinary Committee cannot be said to be in accordance with law.

15. The Delhi School Tribunal, relying upon the principles laid down in *Manak Lal Vs. Dr. Prem Chand*, held: "In view of the above views taken by the High Court and the Supreme Court, the impugned order of removal of service has to be set aside being illegal. As a result, the appeal is accepted. The impugned order is quashed. The appellant shall be entitled to reinstatement with all consequential benefits." 16. The decision relied on by the learned counsel for the petitioner, *Mr. Ravi Gupta, in M.L. Joshi Vs. Director of Estates, Government of India, New Delhi and Another*, is not at all relevant for the purpose of this case. The petitioner before this Court, in that case, in a writ petition was working as an Upper Division Clerk in the office of the Trade Marks Registry. He was allotted a Government accommodation in R.K. Puram, New Delhi, and the allotment became effective from 5th of February, 1963 when he was put in possession thereto. On the 19th of September, 1964, the petitioner came to know that the employees in the Office of the Trade Marks Registry were not eligible for accommodation in the 'general pool' and the allotment of residential quarter was cancelled, and he was directed to hand over possession of the premises to the officer concerned. When he resisted, a notice was issued to him under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Challenging the notice, he filed the writ petition. The notice was issued by the Estate Officer and he was to adjudicate on the notice after giving an opportunity to the petitioner. The ground taken was, the Estate Officer, who had issued the notice, was not competent to adjudicate on the dispute, as he would be biased, and Therefore, the issuance of the notice was violative of principles of natural justice and was liable to be set aside. The argument was that the Estate Officer who had issued the notice cannot be a judge of his own cause. Dealing with argument, this Court observed:- "To say that no one shall be a Judge in his own cause means that the Judge must not have anything like a personal interest in the cause he is to adjudicate upon and not that an officer discharging his official functions must not start proceedings in a matter which he is, under the law competent to adjudicate upon. The petitioner's argument is obviously misconceived in the instant case and the decision of the Supreme Court does not seem to lend support to the petitioner's submission on the existing facts before me." 17. In *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, the Supreme Court had laid down the principles that a court has to consider, whether in a given case the principles of natural justice had been followed. The ratio laid down by the Supreme Court in this case would squarely apply to the facts of the instant case.

18. In the decision by the Gujarat High Court in *B.K. Shukla Vs. Natverlal Ratanji*

Kevat and Others, , the Court had to decide the question of removal of Chief Officer of Municipality. A company was made by the President of the Committee against the Chief Officer. In a resolution, passed by the Municipality, of removal of the Chief Officer, the President had participated. That was challenged before the Court. The argument was that the participation of the President had vitiated the proceedings on the ground of bias when he had himself made the complaint. In paragraph 5 of the judgment, the Division Bench of the Gujarat High Court observed: "Fourthly, Mr.Raval contended that the President being the complainant and witness should not have participated in the voting. The resolution, as we have discussed in paragraph supra, has to be passed in accordance with Section 48 of the Gujarat Municipalities Act. The statutory duty which is to be performed by the Municipality, as envisaged by the statute, becomes enforceable only if it is passed by the majority of two-third of the total number of the then Councillors. Admittedly the members present and voted for the resolution satisfies the requirement of Section 48 of the Act. Such a statutory duty to be performed by the elected members in a democratic process cannot be turned down by stating that the member who is alleged to have had grudge against a particular officer should be restrained from participating in such meeting. The statute which is intended to perpetuate the democratic principles clearly spells out the necessity of the members participating and voting in the meeting. The President being one of the members, has rightly participated in the meeting and such participation cannot vitiate the resolution passed. Hence we do not think that the participation of the President in the meeting has in any way vitiated the resolution passed." 19. Adopting this reasoning, the learned counsel for the petitioner, Mr.Ravi Gupta, submitted that when the majority of the members of the Disciplinary Committee had held the second respondent being guilty of the charges, the second respondent cannot challenge the decision of the Committee as having been vitiated by the fact that two members of the Disciplinary Committee were witnesses in the proceedings.

20. The principle laid down by the Gujarat High Court cannot be applied to the instant case because the Municipality consisted of a large number of persons and the voting process adopted by the Municipality cannot be applied to a decision of the Committee. The Head Mistress of the School, who was a witness before the Inquiry Officer, was a member of the Disciplinary Committee. The Manager of the School, who was also a witness before the Inquiry Officer, was a member of the Disciplinary Committee. These are the persons who had, inter alia, management of the school. In the decision making process by the Disciplinary Committee, as a whole, the two members would have played a vital role and it cannot be pretended that they did not at all have any say in the process of deciding the issue against the second respondent.

21. The Supreme Court, in Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, , clearly ruled, "the court will have to judge the matter as a reasonable man would judge any matter in the conduct of his own business. The question, whether there was a real

likelihood of a bias, depends not upon what actually was done but upon what appears to be done". The Supreme Court held that the test of bias is, "whether a reasonable intelligent man, fully apprised of all the circumstances, would feel serious apprehension of bias". The Supreme Court further held that the test is not whether in fact a bias has affected the judgment, the test always is, and must be, whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but also appear to be done. The Supreme Court ruled that the Disciplinary Committee had acted illegally in conducting the proceedings. Therefore, on the facts and circumstances, the order of removal passed by the petitioner in the instant case was rightly set aside by the Tribunal. But what follows is not what the Tribunal has done. It is here court has to have a hang of the principles enunciated by the Supreme Court required to be adumbrated.

22. Once a writ of certiorari is issued quashing an order of a quasi judicial tribunal or an administrative authority on a point other than on the merits, the Court has to direct the authority concerned to reconsider the matter after the technical issue is resolved.

23. Manak Lal Vs. Dr. Prem Chand, , an Advocate practicing at Sojat in Rajasthan was proceeded against under the Legal Practitioners Act, 1879. A complaint was filed before the High Court that he was guilty of professional misconduct. The complaint was sent for inquiry to the Tribunal nominated by the Chief Justice of the High Court of Rajasthan u/s 10(2) of the Bar Councils Act, 1926. The Tribunal, after holding an inquiry, came to the unanimous conclusion that the Advocate was guilty of the professional misconduct. The Tribunal submitted its report to the High Court and the High Court, accepting the findings rendered by the Tribunal, removed the Advocate from practice. It was against this the matter was taken up by special leave to the Supreme Court of India.

24. The Tribunal constituted by the Chief Justice consisted of three members. The relevant point to be noticed for the present discussion is that against one of the members of the Tribunal, the Advocate had a grievance that he was biased against him. In that, that member had appeared against the Advocate in the proceedings subject matter of the inquiry before the Tribunal. Dealing with this point, the Supreme Court observed:-

"Shri Daphtary contends that since Shri Chhangani had appeared in the criminal proceedings in question for the opponent he was disqualified from acting as a member of the tribunal and this disqualification introduces a fatal infirmity in the constitution of the tribunal itself. There is some force in this argument. It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi judicial proceedings must be able to act judicially; and it is of the essence of judicial decision and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be

whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As Viscount Cave, L.C. has observed in *From e United Breweries Co. v. Bath Justices*, 1926 AC 586:

"This rule has been asserted, not only in the case of Courts of Justice and other judicial tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as judges of the rights of others."

In dealing with cases of bias attributed to members Constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle", says Halsbury, "nemo debet esse iudex in causa propria sua precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein." (Halsbury's Laws of England, vol. xxi, p. 535, para 952). In our opinion, there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

The Supreme Court had to consider the question of waiver as the point of bias was not taken before the Tribunal. The Supreme Court held that the appellant before the Supreme Court (Advocate) had waived his objection. Ultimately, the Supreme Court upheld the order passed by the High Court removing the appellant from the rolls.

25. In "*Managing Committee, SRSD Higher Secondary School, Lajpat Nagar & Another Vs. D.R.Kapal & Others*", 1984 (2) SLJ 538, a Division Bench of this Court had to consider the question of bias. The writ petitioner in that case was a Principal of a School. He was suspended from services and an inquiry was conducted. The Disciplinary Committee consisted of the Chairman and the Managing Committee of the School. A reference was made to Rule 118 of the Delhi School Education Rules, 1973. The Inquiry Officer submitted his report. The Managing Committee was aggrieved with the report of the Inquiry Officer, and the Director of Education accorded approval. The order of removal was challenged before the Tribunal. One of the points raised was, whether the disciplinary authority was properly constituted. On this, the Tribunal came to the conclusion that there was scope of reasonable doubt of bias in the mind of the petitioner as two of the three members of the disciplinary authority were the complainants. The Tribunal quashed the disciplinary inquiry and remanded the

case to the management with the direction to conduct de novo inquiry from the stage from which the charge sheet was issued. The argument before this Court on behalf of the Management of the School was that the Disciplinary Committee was constituted strictly in accordance with the provisions of Rule 118 of the Delhi School Education Rules, 1973, which would speak of a Committee of five persons. What was submitted was that the doctrine of necessity would apply. This Court applying the principle laid down by the Supreme Court in *Manak Lal Vs. Dr. Prem Chand*, , set aside the order of dismissal. This Court held: "The doctrine of necessity does not apply in the case before me. The constitution of the disciplinary authority is provided in Rule 18(sick 118). It does not lay down any coram. Admittedly, four members of the disciplinary committee had imposed the punishment as a result of the departmental enquiry. A teacher who is a member of the managing committee of the school, nominated by the chairman of such managing committee is one of the members of the disciplinary committee. Shri Mehar Chand Gupta was the member in this case. It is admittedly that another teacher was qualified to constitute member of the disciplinary committee. There was no question of invoking the doctrine of necessity in this case. The Chairman of the managing committee and the Manager of the School had disqualified themselves to be a judge after they appeared as witnesses during the enquiry. They could have opted to remain out of the proceedings of the disciplinary committee after the receipt of the report of the Enquiry Officer. In view of this conclusion, I am not inclined to go into other questions urged by the counsel for the parties at the Bar." This Court did not consider the scope of Rule 118 of the Delhi School Education Rules, 1973.

26. In "*Vijay Singh & Wadia Institute of Himalayan*", 1989 4 SLR 667, the writ petitioner before this Court was working as Administrative Officer in the respondent institute. A disciplinary action was taken against him and order of demotion was passed. One of the points urged by the petitioner was that the Director, who was a prosecution witness in the inquiry proceedings, participated in the deliberations of the Disciplinary Committee, which imposed punishment of demotion on the petitioner. Following the principles laid down in *Manak Lal Vs. Dr. Prem Chand*, , this Court allowed the writ petition. Here, the statutory obligation of constitution of a disciplinary committee was not involved.

27 In *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, , the appellant before the Supreme Court was Principal of Dr.Hari Ram (Co-Education) Higher Secondary School, Datarpur in Tehsil of Dasuya in the District of Hoshiarpur in the State of Punjab. A disciplinary action was taken against him and an inquiry committee was constituted. One of the members of the Committee was one Maru Ram. It was admitted that Maru Ram appeared as a witness for proving charge No.12 on behalf of the School against the appellant. The appellant raised objection for the inclusion of the said Maru Ram in the Inquiry Committee. Ultimately, an order was passed dismissing the appellant from service. That was challenged before the High Court. The learned Single Judge, who heard the matter, allowed the writ

petition. That was reversed by the Division Bench. The Principal took up the matter to the Supreme Court. The Supreme Court noticed the crucial fact: "It is quite apparent that the enquiry committee could have been constituted with other members of the Managing Committee and the rules of the enquiry are not such that Shri Maru Ram being teacher's representative was required to be included in the said enquiry committee so that the doctrine of necessity may be attracted." The Supreme Court upheld the contention of the Principal that Shri Maru Ram was biased against him and set aside the order of the Division Bench. Ultimately, the Supreme Court gave liberty to the Managing Committee to proceed afresh against the appellant with the departmental proceedings from the stage of issuance of chargesheet.

28. Now under the Delhi School Education Rules, 1973, the Management of any school has to constitute a disciplinary committee. Rule 118 of the Delhi School Education Rules, 1973 reads as under:-

"Disciplinary authorities in respect of employees

The disciplinary committee in respect of every recognised private school, whether aided or not, shall consist of_

- (i) the chairman of the managing committee of the school;
- (ii) the manager of the school;
- (iii) a nominee of the Director, in the case of an aided school, or a nominee of the appropriate authority, in the case of an unaided school;
- (iv) the head of the school, except where the disciplinary proceeding is against him and where the disciplinary proceeding is against the Head of the school, the Head of any other school, nominated by the Director.
- (v) a teacher who is a member of the managing committee of the school nominated by the Chairman of such managing committee."

29. The Disciplinary Committee, in the instant case, was constituted in accordance with the above provision.

30. Rule 120 of the Delhi School Education Rules, 1973, prescribes the procedure for imposing major penalty. Under Rule 120(2) of the Delhi School Education Rules, 1973, no order imposing major penalty could be passed by the disciplinary authority, except after the receipt of the approval of the Director of Education. Therefore, under the Scheme of the Act and the Rules, the Director of Education is given the power to consider the propriety of the order proposed by the Disciplinary Committee of a school. The Disciplinary Committee is also constituted with the approval of the Director of Education. The second respondent had objected to the constitution of the Disciplinary Committee. The Director of Education should have taken into account the facts of the case and have directed the petitioner/management to reconstitute the Disciplinary Committee, or could have appointed an officer of the Department to hold an

inquiry against the second respondent. The Tribunal had rested its decision only on the constitution of the Disciplinary Committee. It had not gone into the merits of case. The petitioner cannot also rely on the doctrine of necessity. The scope of it is entirely different. The provisions of the rules have to be worked out in the light of the Constitutional principles and the Fundamental Rights of the citizens. Nobody, who is a guilty of any misdemeanour, could be allowed to go scot free without the same being inquired into by a competent authority. The second respondent ought not have been proceeded against by a disciplinary committee consisting of persons who had given evidence in the inquiry against the petitioner. The charges against the petitioner have to be inquired into by a competent person. That cannot be avoided on the premises that the disciplinary committee was not properly constituted, and, Therefore, the entire proceedings would be set at naught.

31. Under the circumstances, the Director of Education should appoint an officer of the Department to proceed with the disciplinary proceedings from the stage of issuance of chargesheet and inquire into the merits, and submit the report to the Director of Education, who would pass appropriate orders after giving opportunity to the second respondent of hearing. The Directorate of Education is bound to give instructions to the management of the school that while constituting the disciplinary committee under Rule 118 of the Delhi School Education Rules, 1973, it has to approach the Director of Education whether the constitution of disciplinary committee would conform to the Fundamental Principles of natural justice, including the likelihood of there being any bias being alleged against the members of the committee and in such an event, an officer of the department has to hold the inquiry so that the teacher concerned is fully confident that justice is done to her.

32. Accordingly, the order of the Tribunal stands modified. The Director of Education shall appoint an officer, in the rank of Education Officer, of the Department to hold an inquiry and the inquiry officer shall start inquiry from the stage of issuance of charge and the inquiry shall be de novo. The appointment of the inquiry officer shall be made within two weeks from today and the process of inquiry shall be completed and final order shall be passed on or before the 30th of September, 2000.

33. The second respondent shall be deemed to be under suspension and the petitioner/management shall pay her 50% of her salary from the date of order of dismissal till the final orders are passed by the Director of Education. In the event of the second respondent being found not guilty, the management/petitioner shall pay her full salary from the date of order, when she was suspended, on 27.4.1981.

34. The writ petition stands disposed of in the above terms.

35. There shall be no order as to costs.