

(1994) 10 KAR CK 0001
In the Karnataka High Court
Case No : C.R.P. No. 2744 of 1987

B. Harischandra

APPELLANT

Vs

Academy of General Education

RESPONDENT

Date of Decision : 20-10-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 20A
Evidence Act, 1872 — Section 114, 114 (F)

Citation : (1995) ILR (Kar) 10 : (1995) 4 KarLJ 118

Hon'ble Judges : M.M. Mirdhe, J

Bench : Single Bench

Advocate : U.L. Narayana Rao, for the Appellant; B.L. Acharya, for R-1 and R-2, Government Advocate for R-3 and R-4, for the Respondent

Final Decision : Allowed

Judgement

Mirdhe, J.—This Civil Revision Petition is preferred by the petitioner against the orders of the Educational Appellate Tribunal, Uttara Kannada, Karwar dated 17.9.1980, dismissing the appeal filed by the petitioner with costs.

2. I have heard the learned Counsel for the petitioner fully and perused the records of the case.

3. This C.R.P, was filed as Writ Petition in the first instance. Thereafter, by the order dated 16.6.1987 the Writ Petition came to be converted to C.R.P. The respondents No. 1 & 2 are represented by their Counsel, Respondents 3 & 4, are represented by the Government Advocate.

4. It is not in dispute in this case that the Management of the respondent No. 1 is taken over by the respondent No. 3 and it is respondent No, 3 who is contesting this Petition. Counsel for respondents 1 & 2 remained absent The Government Advocate representing respondents 3 and 4 also remained absent. This Court adjourned the case more than once to enable the Government Advocate to submit his arguments. But inspite of that the Government Advocate

has not cared to appear in this case and submit his arguments. Therefore, the Court has no other alternative but to hold that respondents 3 & 4 have no arguments to advance in this case.

5. The facts leading to this Civil Revision Petition are as follows:

Petitioner was appointed as Demonstrator in Botany on 19.7.1968 by the Principal of the respondent No. 1 Ex.P1 in his appointment order. Subsequently, he was promoted as Lecturer on 1.7.1970. It appears that some of the Members of the Staff were having differences with the Management on account of non-payment of salaries for about four months and there were also differences among the Members of the Managing Committee regarding Management of the Institution. The General Body Meeting took place in March, 1974 and one Dr. Pikle was elected as the President and so also the other Members were elected, It is the contention of the petitioner that on 30.9.1974 the Management obtained from him some receipts for Rs. 2,544.22 on the representation that it relates to salary arrears and it was also represented to the petitioner that instead of paying the amount in cash, a deposit receipt was issued to the petitioner on the ground that the amount will be repaid to him soon after obtaining the grant from the Government. It is further the case of the petitioner that inspite of the requests made by the petitioner, amount has not been paid. Therefore, the petitioner and other Staff Members made representation to the Director of Collegiate Education requesting him to interfere in the matter. It is the contention of the petitioner that Management was offended by this act of the petitioner and other members of the staff and it passed a Resolution on 1.11.1974 calling for the explanation of the petitioner and others and withholding their salaries till a satisfactory reply was given. Petitioner gave his reply as per Exh. P8 and the proposed action against the petitioner was dropped. On 1.1.1975 three months pay was given to the petitioner and others for the months of July, August and September, 1974. The petitioner recorded his protest as per Exhibit P 40(a) saying that pay for the months March to June, was unpaid. The arrears of these months was also paid in 1976. Though the petitioner asked to pay the amount held in deposit and arrears, but he did not get any reply.

6. It is also the case of the petitioner that during June, 1974 an election to Legislative Council from teachers constituency was conducted and the President and other Members of the Management wanted the petitioner to canvas for Janasangha candidate, whom they were supporting but the petitioner declined. Because of these acts of the petitioner, Management passed a Resolution on 19.1.1975 suspending the petitioner. The Principal issued a show-cause notice and charge-sheet to the petitioner and others in his letter dated 21.1.1975, The petitioner replied to the show-cause notice. The Management resolved to appoint an Inquiry Officer and Sri A.S. Kamath, who was the Treasurer of the Managing Committee of the Institution was appointed as an Inquiry Officer. The petitioner objected the appointment of Sri A.S. Kamath, as an Inquiry Officer as per Ex.P.19 on the ground that A.S, Kamath had a bias against him and he was a party in the

dispute. He also asked for certain documents etc. But it is the contention of the petitioner that no communication was received by him in reply to the same, The Inquiry Officer held an inquiry and held the petitioner guilty of some of the charges levelled against him and recommended for his dismissal from the service. The Managing Committee issued another notice dated 18.7.1975 calling upon the petitioner to show-cause as to why a final decision should not be taken on the basis of the report of Sri A.S. Kamath, submitted to it. The petitioner replied to it contending that he was not served with any notice of inquiry and that no inquiry in fact was held and no witnesses were examined in his presence and further contended that the alleged inquiry was in violation of the principles of Natural Justice. The Governing Body of the Institution passed a Resolution on 18.8.1975 accepting the findings and recommendations of Inquiry Officer Sri A.S. Kamath and dismissed the petitioner from the service.

7. The Petitioner challenged the said order before the Educational Appellate Tribunal, U.K. at E.A.T. Appeal 8/75 u/s 8 of the Karnataka Private Educational Institutions (Discipline and Control) Act. Respondent No. 4, who heard that appeal dismissed the appeal. He also dismissed the Miscellaneous Application No. 33/75 filed by the petitioner for taking action against Sri V.N. Kalaghatagi and Pingle, alleging that they have committed Contempt of Court and they should be dealt with accordingly. Learned Counsel for the petitioner submits now that this Revision Petition is only against the order of dismissal of E.A.T. appeal and it is not against the order of dismissal of the Miscellaneous Application.

8. The order of dismissal of the petitioner was attacked by the petitioner, in the appeal on three grounds:

(1) That in passing that order, the Management was motivated by illwill which it has got against the appellant on account of certain activities of the appellant in demanding arrears of pay and also approaching the Director of Public Instruction to intervene in the matter and also not supporting the candidate of Janasangha, who was supported by the Management.

(2) In the alleged inquiry, there was no opportunity given to the appellant to defend himself and that no notice of inquiry was issued and served on him and as the alleged inquiry was conducted without giving any notice of it to the appellant and without affording any opportunity to him, the finding of the said inquiry was in violation of the principles of Natural Justice.

(3) Sri A.S. Kamath, could not have been a proper Inquiry Officer in the inquiry as he had some bias against the petitioner and the petitioner had objected to his appointment as an Inquiry Officer at the earliest stage on 6.5.1975.

9. The respondent No. 4 over-ruled all these contentions of the petitioner and dismissed the appeal.

10. It is the contention of the petitioner that the dismissal order passed by the Management is the result of illwill nurtured against the petitioner on account of

his certain activities like demanding arrears of pay, asking D.D.P.I. to intervene and not supporting the candidate of the Management in the election to the Legislative Council from teachers constituency. The Management by its Resolution dated 19.1.1975 suspended the petitioner and some others also for the reasons that they were guilty of dereliction of duty, insubordination and instigating students against the Principal and Management, threatening the life of the Governing Body Members and making filthy and obscene and unparliamentary remarks before the students and Principal in respect of the Members of the Governing Body. Ex.P.31 is an appeal by the Governing Body of the Academy on 25.1.1975 which goes to show that the Institution was going through financial crisis and the crisis could be tied over only from the timely help by the Syndicate Bank. It is also further mentioned that the Management was trying to pay the salary of the Staff Members, but some of the Staff Members indulged in activities like gheraoing the President at his residence and other disruptive and destructive activities. Therefore, the Management had to take stand to maintain discipline in the Institution. Ex.P.31 also appealed to the students to go ahead with their preparation for the College gathering and prepare themselves for the ensuing examinations. Looking to the evidence on record and also the averments in Ex.P. 31, it is difficult to accept the contention of the petitioner that the action of dismissal taken by the Management was the result of the illwill, that the Management was bearing towards the petitioner. On the other hand, the evidence on record, discloses that the Management was passing through a financial crisis and it was not able to pay the salaries of its Staff Members and taking advantage of that the petitioner and other staff were agitating for which the Management was required to take some proper remedy in this matter. The inquiry initiated by the Management in this background cannot be said to be an outcome of malicious intention on the part of the Management to harass the petitioner for nothing. Therefore, the respondent No. 4 is right in rejecting this contention of the petitioner.

11. The second ground on which the order of dismissal is challenged by the petitioner is that there was no inquiry at all and no notice of the inquiry was served on the petitioner. The respondent No. 4 has over-ruled this contention of the petitioner. Ex.R 45 is the notice which is purported to have issued to the petitioner informing him to appear before the Enquiry Commission on 8.6.1975 at 5 p.m. It is the contention of the Management that this was despatched under Certificate of Posting under Ex.R.44. They further contended that the said notice was served on the petitioner. But the petitioner in his evidence has sworn to the fact that no such notice was served. There is no other evidence led by the Management to show that any notice other than Ex.R 45 was served. Before that it will have to be seen whether mere proof of having posted Ex.R45 under the Certificate of Posting Exhibit Ex.R 44 is enough to hold that R 46 was served on the petitioner. It is significant to note at this juncture that the Management was maintaining a Hand-delivery book which in ordinary parlance is called as "Muddam Book". "Muddam Book" of the College has also been marked at Ex.R

26 & 27. Nowhere it is mentioned in this hand-delivery books that Ex.R.45 notice was served by hand-delivery. When the Management was having hand-delivery books which go to indicate that the Management was following the procedure of issuing important intimations and notices through hand delivery, it looks strange as to why the Management should depart from this procedure and should decide to post the very important notice like Ex. R 45 under Certificate of Posting. The Principal in his evidence has admitted that there was no difficulty for the Management to send Ex. R.45 by hand delivery or by R.P.A.D. The Management was not unaware of the attitude of the petitioner, who had been challenging the acts of the Management. When they had to deal with such a person, like the petitioner who was a trouble shooter in the Institution, the Management ought to have sent to notice Ex.R 45 either through hand-delivery book or by R.P.A.D. But instead of that, it had followed an altogether different procedure of sending it under Ex.R 5, the Certificate of Posting. No doubt, presumption may arise u/s 114 of the Evidence Act that a notice that is sent under Certificate of Posting was duly served on the addressee. But it is a rebuttable presumption and when the addressee comes and deposes before the Court that no such notice has been served on him, the presumption stands rebutted and it is for the person contending that the notice sent under the Certificate of Posting was served on him to establish it by any evidence other than the Postal Certificate. In *LIGORY MINEZES (DEAD) AND ORS. v. J.C. LOBO* AIR 1970 Mys 76, this Court has held that where notice has been sent by a post under Certificate of Posting, the presumption arises u/s 114(f) of the Indian Evidence Act that the letter has been duly served to the addressee. In another Ruling reported in 1963 (2) MLJ. 482. *Ambajee Rao Subba Rao v. Shakulu Ram Hastimal Mootha and Ors.*, the question was whether there was sufficient service of notice on the defendant under Order 5 Rule 20A of C.P.C., There also the effect of Rule 20A was considered. Rule 20A makes it clear that prima facie proof of service under the provisions is the acknowledgement sent by the defendant or the endorsement that the defendant refused to take delivery. His Lordship has further held, even so proof of service in that way is only prima facie proof which is rebuttable. His Lordship has further observed as follows:

"Now in this case, the defendant entered the box and gave evidence that he had not refused the service of summons and that the endorsement or refusal on the postal envelope was not true. If the weight to be attached to the endorsement disappeared and got displaced by the evidence given by the defendant to the contrary, and if plaintiff produced no evidence about the truth of that endorsement, as he should have done, by examining the postman who made the endorsement on the postal envelope, whatever presumption might have arisen under the provisions of Rule 20A as to the truth of the endorsement disappeared, leaving the matter at large. That that is the correct view to take is what is clear from the Full Bench pronouncement of the former High Court of Mysore in *Somanna v. Heeraji*(1)."

Ratio Decidendi of this Ruling applies with all force to this case. No doubt, the

presumption arises u/s 114 of Evidence Act about the receipt of the notice Ex. P 45 which was alleged to have been sent under Ex.P 44, the Certificate of Posting. But that presumption stands rebutted in view of the evidence of the petitioner that he has not received it. Whether this presumption stands rebutted or not is a question of fact, which will have to be decided on the basis of the evidence in each and every case. In this case, the Management departed from the usual course of sending intimation through Muddam Book and it did not send the notice either through Muddam Book or by Registered Acknowledgement Due Post. But it claims to have sent under Certificate of Posting. In view of this suspicious circumstance also, the sworn statement of the petitioner that he has not received notice will be sufficient to rebut the presumption that arises u/s 114 of the Evidence Act. Therefore, it will have to be held that the Management has failed to show that it had sent a proper notice to the petitioner directing him to be present for the enquiry on that day. In view of the fact that there is no material available to show that any other notice was served on the petitioner of the inquiry, it will have to be held that inquiry was held without proper notice to the petitioner violating the principles of Natural Justice.

12. The next ground on which the petitioner has contended that the order of his dismissal is that Sri A.S. Kamath, who had a bias against him could not have been appointed as an Inquiry Officer. It is not disputed in this case that Sri A.S. Kamath, who was an Advocate was also a Treasurer of the Institution. He was a person who was associated with and on the Management of the Institution. Respondent No. 4 has not accepted this contention of the petitioner on the ground that the petitioner has stated in his evidence that he had no personal differences with Sri Kamath. As to what is bias has been held by the Supreme Court in S. Parthasarathi Vs. State of Andhra Pradesh, as follows:

"15. The question then is: whether a real likelihood of bias existed is to be determined on the probabilities to be inferred from the circumstances by Court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large.

16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must take a determination on the basis of the whole evidence before it. Whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seem to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is

sufficient to quash the decision (see per . Lord Denning,)..."

The Supreme Court has also held that the Court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of his own business. In *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, the Supreme Court has held as follows:

"16. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court....".

In *The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others*, the Supreme Court has held as follows;

"It is an elementary rule of natural justice that a person who tries a cause should be able to deal with the matter before him objectively, fairly, and impartially. As has been observed in the *Jewitt's Dictionary of English Law*, "anything which tends or may be regarded as tending to cause such a person to decide a case otherwise than on evidence must be held to be biased". If a person has a pecuniary interest in the case brought before him, that is an obvious case of bias which disqualifies him to try the cause. If a person is hostile to a party whose cause he is called upon to try, that again would introduce the infirmity of bias and would disqualify him from trying the cause: In dealing with cases of bias, it is necessary to remember that "no one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind". The broad principle which is universally accepted is that a person trying a cause even in quasi-judicial proceedings, must not only act fairly, but must be able to act above suspicion of unfairness. As was observed in *Franklin v. Minister of Town and Country Planning* 1948 AC 87 "the use of the word "bias" should be confined, to its sphere. Its proper significance is to denote a departure from the standard of evenhanded justice which the law requires from those who occupy Judicial Office or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or the other in dispute".

Now the Court will have to see whether Respondent No. 4 was right in coming to the conclusion that Inquiry Officer had no bias against the petitioner in the light of the Decisions on bias laid down by the Supreme Court in the cases cited above.

13. It is not disputed in this case that Kamath was the Treasurer of the Institution. It is also not disputed in this case that Mr. Kamath participated in the proceedings which culminated in passing the resolution of suspending the appellant. Therefore, Kamath cannot be said to be a person with independent mind in this case. In fact, he is a person, who was closely associated with the Management of the institution and he had also associated with some proceedings initiated by the Management against the petitioner. Therefore, the apprehension of the petitioner that he had bias against him cannot be said to be without any basis. The person who was closely associated with the Management as a Treasurer and a person who had associated himself with certain proceedings culminating in the suspension of the petitioner, cannot be expected to act independently as an Inquiry Officer. In spite of the fact that petitioner's admission that he had no personal differences with Sri Kamath, his apprehension that Sri Kamath was biased against him, cannot be said to be ill-founded. The appointment of Sri Kamath as an Inquiry Officer in this case was an appointment of a person to be a Judge in his own cause as he was a Treasurer of the Institution. Therefore, the inquiry is vitiated on this ground also as a person who cannot be said to be free from bias against the petitioner was appointed as an Inquiry Officer in the enquiry against the petitioner. In view of these two infirmities in the enquiry, the enquiry is liable to be quashed,

14. The respondent No. 3 has contended that he has not taken over the liabilities of the respondent No. 1 & 2. Petitioner has filed an I.A. u/s 151 C.P.C., to bring to the notice of the Court certain subsequent events. It is supported by the affidavit of the petitioner. Petitioner has also sworn in the affidavit in support of this I.A. that the "Director of Collegiate Education was also authorised to execute the agreement on behalf of the third respondent taking charge of all the assets, liabilities and other moveable properties of the institution in question. Pending appointment of persons to the various posts, such of the staff members who continued in the. Government College and served on the same pay and allowances have also been given protection. The true copy of the said order of the third respondent is produced herewith". The copy of the order taking over respondent No. 1 refers to an Agreement that has been entered into between respondent No. 1 and 3. Respondent No. 3 has not produced the said Agreement for the perusal of this Court, in support of Its contention that respondent No. 3 has not taken over the liability of respondent No. 1. The respondent No. 3 has not also filed any counter to the affidavit of the petitioner denying the averments made therein. Therefore, the Court will have to hold that the respondent No. 3 has taken over not only the assets but also the liabilities of the respondent No. 1.

15. Hence, I proceed to pass the following order:

ORDER

The Petition is allowed with costs. The impugned order dated 17.9.1980 passed by the Educational Appellate Tribunal, Uttara Kannada, Karwar, confirming the order dated 18.8.1975 passed by the 2nd respondent is set aside, The 2nd respondent is directed to reinstate the petitioner with all consequential benefits in view of his reinstatement.