

(1980) 03 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 6889 of 1979

Blaze and Central (P.) Ltd

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-03-1980

Acts Referred:

Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 — Section 4, 5

Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 — Rule 5

Citation : AIR 1980 Kar 186 : (1980) ILR (Kar) 1084

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : G. Ramaswami, for B.N. Dayananda, for the Appellant; C.B. Nandeeshwar, Addl. Central Govt. Standing Counsel, S. Mani and B.S. Pranesh Rao, for the Respondent

Judgement

1. This writ petition is directed against the order of the III Additional District Judge, Bangalore in Misc. Appeal No. 94 of 1978 affirming the order of the Estate Officer under S. 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Central Act No. 40 of 1971) (called shortly as "the Act").

The facts are these:

2. The petitioner is a private limited company. Its Branch Office is located in portion of the building belonging to the Indian Bank, Bangalore City Branch. The 3rd respondent is the Estate Officer appointed by the Central Government under S. 3 of the Act. The Bank wanted the premises under the occupation of the petitioner for its own use. On Its March 1978, the Manager of the Bank issued a notice determining the tenancy. The petitioner was also called upon to vacate and deliver vacant possession of the premises. A reminder letter dated 11th July 1978 followed it. In both the said letters it was emphasized that the premises were required for locating the Staff Training Centre of the Bank and also for the use of the Regional Manager's office. On 20th Sept. 1978, the Estate Officer took

up the case. He issued a notice calling upon the petitioner to vacate the premises. The grounds for evicting set out in the notice are those referred to in the letters written by the Bank on 1st March, 1978 and 11th July, 1978.

3. The Manager of the petitioner by reply dated 7th Oct. 1978 denied the requirements of the Bank and further contended that it would cause greater hardship to him if he is evicted from the premises. He also challenged the validity of the notice. The Estate Officer posted the case for enquiry to 23rd Oct. 1978. But two days earlier, that is, on 21st Oct. 1978, the Manager filed a memo requesting the Estate Officer to adjourn the case by a month since due to unavoidable reasons it would not be possible for him to attend the matter on the said date of hearing. When the case was called on the 23rd, none was present on behalf of the petitioner. Bank was, however, represented by Sri S. Sarangaraj Kumar, the Manager of the local Branch. The Estate Officer recorded his statement and posted the case to 28th Oct. 1978 intimating the same to the petitioner by a letter.

4. On 28th Oct. 1978, on behalf of the petitioner, a memo was filed asking for further adjournment stating that its Manager Mr. Elias Fernandes was away in Mangalore in view of his father's serious ill health and subsequent death. In the said memo, a specific request was made to the Estate Officer to grant a copy of the statement recorded by him on 23rd Oct. 1978. The Estate Officer reluctantly adjourned the case to 16th Nov. 1978. On the adjourned date a statement was filed on behalf of the petitioner contending inter alia that the Bank did not require the premises for the purpose for which it has asked for. The Estate Officer did not further record any evidence and he closed the case on the same date. The record shows that he made two orders on that day. One order was handwritten and another was typed. The typed order was communicated to the petitioner. The handwritten order begins with a preamble:

"Case called at 11 A. M. Respondent was represented by Mr. Elias Fernandes, Manager and filed the written statement saying that he has nothing more to add than what is stated in the letter."

Then there follows a brief reasoning for eviction with a conclusion that the premises under the occupation of the petitioner was required for the bona fide use of the Bank. This was not the order communicated to the petitioner. The order communicated to the petitioner on the other hand contains some more facts and also amplified reasons for making the order of eviction.

5. Against the order of eviction, the petitioner appealed to the District Judge, Bangalore. It was contended in the appeal that the procedure followed by the Estate Officer was contrary to the principles of natural justice. It was complained, that the petitioner was not afforded with opportunity to cross-examine the witness examined on behalf of the Bank and not even a copy of his statement was furnished. It was further urged that the requirements of the Bank was not bona fide and the petitioner was not liable to be evicted. The learned Judge

rejected all those contentions. He observed that there is no provision in the Act conferring a, right on the petitioner to get copies of statements recorded by the Estate Officer. He also observed that if the petitioner had really wanted to cross-examine the witness of the opposite side, its representative could have looked into the connected file and cross-examined the witness. On the last contention regarding the requirements of the Bank it was held that they were extraneous to the eviction proceedings and petitioner being an unauthorised occupant would be liable to be evicted irrespective of other, consideration.

6. This petition was originally filed challenging the constitutional validity of the Act and the eviction order. . It was -filed even before the disposal of the appeal by the District Judge. After the appeal was dismissed, the petitioner amended the petition questioning the legality of the appellate order also.

7. I will first examine the legality of the order complained of and if it is found to be unsustainable, then it would be unnecessary to examine the validity of the Act.

8. On the submissions made by counsel on both sides, and having regard to the material on record, the following two questions arise for consideration:

(1) Whether, there was a likelihood of bias on the part of the Estate Officer vitiating the order of eviction? and

(2) Whether the petitioner was denied of a reasonable opportunity by the Estate, Officer?

These two questions are the two essential characteristics of what is often called as natural justice although the rule against bias is one thing and *the right to be heard is another. Nevertheless they are the twin pillars supporting the principle of natural justice. The Romans put them in the two maxims: NEMO JUDEX IN RE SUA: and Audi alter am, pattern, The former translated literally means, prohibiting a man from being a Judge in his own cause, and the latter means no one should be condemned unheard. They have recently been put in the two words, Impartiality and Fairness. But they are separate concepts and are governed by separate considerations.

9. The modern concept of the rule against bias is rooted on the well-known principle that "justice should not only be done, but should manifestly and undoubtedly be seen to be done". A man may be disqualified from sitting in a judicial capacity on one of two grounds. First, a "direct pecuniary interest" in the subject matter, second, "bias" in favour of one side or against the other. The bias may be actual bias or a real likelihood of bias and mere surmise or conjecture" is not enough. Professor Smith has written (Judicial Review of Administrative Action, Second Edition (1968), at p. 244):

"A "real likelihood" of bias means at least a substantial possibility of bias. The court, it has been said, will judge of the matter "as a reasonable man would judge of any matter in the conduct of his own business."

The test of real likelihood of bias which has been applied in a number of leading cases in magisterial and liquor licensing law, is based on the reasonable apprehensions of a reasonable man fully apprised of the facts. It is no doubt desirable that all judges, like Caesar's wife, should be above suspicion, but it would be hopeless for the courts to insist that only people who cannot be suspected of improper motives were qualified at common law to discharge judicial functions, or to quash decisions on the strength of the suspicions of fools or other capricious and unreasonable people.

Certainly, on the question of bias we cannot proceed on the basis of suspicions of fools or on the whims of unreasonable people we must proceed on the reasonable suspicion or on the "real likelihood of bias". The tide of judicial opinion in the past was more on "real likelihood of bias" rather than on reasonable suspicion. But, Lord Denning M. R. in *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon* (1969) 1 QB 577 interwove these principles with the other test, saying:

"The court does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which. would be given to other people."

And he continued:

"Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense of the other. The court will not inquire whether he did in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and Confidence is destroyed when right minded people go away thinking; "the Judge was biased"."

What Lord Denning was concerned with in his reference to a real likelihood of bias was perhaps to emphasise the irrelevance of whether the Court or Tribunal was in fact biased. Commenting on these principles, Professor Paul Jackson in his book "Modern Legal Studies Natural Justice" 1979 Edition writes at page 52:

"The antithesis between the two tests remains, it is suggested, somewhat unconvincing. It is hard to envisage a court holding that a reasonable man might properly suspect the existence of bias but refusing to interfere because it was not. Itself convinced of a real likelihood of bias, in the end all turns on the view the court takes on the facts. The Judge who says there is no real likelihood of bias would just as likely say that any suspicion of bias was unreasonable; a Judge who is prepared to find a reasonable suspicion of bias is hardly likely to deny that there was a real likelihood of bias. Perhaps it is unfortunate that the courts ever tried to improve on Lord Carson's simple test: was there "such a likelihood of bias as entitled the court to interfere?" (*Frome United Breweries Co. v. Bath JJ.* (1926) AC 586. 618).

10. Our Supreme Court has taken a more practical view of the rule against bias. In *Manak Lal Vs. Dr. Prem Chand*, . Gajendragadkar, J. (as. he then was) said:

"It is of the essence of judicial decisions 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."

In *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, it was observed that the authority empowered to decide the dispute must be one without bias by which is meant an operative prejudice, whether conscious or unconscious towards one side or the other in the dispute.

Same principle was reiterated in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . The law was again summarised in *Dr. G.Sarma v. University of Lucknow* thus:

"From the above discussion it clearly follows that what has to be seen in a case where there is an allegation of bias in respect of a member of an administrative Board or body is whether there is a reasonable ground for believe in that he was likely to have been biased. In other words whether there is substantial possibility of bias animating the mind of the member against the aggrieved party." From these decisions, it appears that a "likelihood" of bias is given the meaning of "possibility" of bias rather than "probability". For it is always assumed that a reasonable man would suspect bias only on the real possibility and not on probability.

11. If I am permitted to add it makes little difference whether "likelihood" is equated with "possibility" or "probability" It all depends upon how the Court looks with the judicial hindsight at the adjudicating authority and in particular at his behavior in conducting the proceedings his attitude towards the aggrieved party his attachment to the cause and his frame of mind whether preconceived or not after getting the sum total of all these the Court must ask whether it would be enough to erode the detachment and impartiality of the adjudicating authority If there was any likelihood of such erosion the decision complained of must be struck down" so that the streams of justice may be kept clear and pure which "is the basic requirement in. the administration of justice. It was Lord Hardwicke (St. James' Evening Post Case (1772) 2 Atkins 469 at p. 472) who said in 1772:

"There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters."

12. With these prefatory observations, may now briefly recapitulate the relevant

facts and circumstances of the present case. The Estate Officer herein was none other than the Regional Officer of the Indian Bank. The Branch of that Bank wanted the premises occupied by the petitioner for the purpose among others, to accommodate the Regional Officer and his staff. Even before the Estate Officer initiated the proceedings, the Bank called upon the petitioner to vacate the premises by letter dated 1st March 1978 followed by reminder letter dated 11th July 1978. In both the letters, it was stated:

"We require the portion let out to you bona fide for locating our staff training centre to, be opened, shortly and also for the Regional Manager's Office and other requirements of our own."

The notice issued by the Estate Officer reiterated the above grounds by referring to the said letters. During the pendency of the proceedings the Manager of the Branch Office has written letter to the Estate Officer to expedite the disposal of the matter. (See letter dated 13th Nov. 1978). The Estate Officer while reluctantly adjourning the case at the request of the petitioner, made it clear (see letter dated 23-10-1978 and the letter dated 28-10-1978) that the Bank requires very badly the premises under the occupation of the petitioner for its own use and also to locate the office of the Regional Manager. The final order made by the Estate Officer also gives the same reasoning stating that the Office of the Regional Manager has to be shifted to a more spacious building and the premises under the occupation of the petitioner were required for that purpose, In other words, he as the adjudicating authority decided that he wanted the premises for his own use. These facts and circumstances clearly prove that he was vitally interested in the cause.

It was, however, urged for the contesting respondents that the Estate Officer had no personal interest in the matter and he was required to discharge his statutory function and when he was required to act as a statutory authority, he could not be said to have acted both as the prosecutor and the Judge. In support of the contention, reliance was placed on the decision of - the Delhi High Court in *M.L. Joshi Vs. Director of Estates, Government of India, New Delhi and Another*, . I have perused the decision and I do not think that it could be of any assistance. The decision therein proceeded on different facts which are far removed from those of the present case. In the present case, from the very start of the proceedings, the impression gained was that the dice were loaded against the petitioner. No amount of evidence or argument for the respondents could remove that impression or establish affirmatively, that the end result of the Estate Officer was a product of detachment and impartiality. The likelihood of bias animating the mind of the Estate Officer was inevitable and its exercise was very much conscious and not unconscious.

13. This takes me to the second contention relating to the denial of natural justice. Learned counsel for the petitioner urged that the Estate Officer did not record the statements of the witness produced for the Bank in the presence of the petitioner and he did not even furnish a copy of the statement of that witness

in spite of a specific request made for the purpose. The learned District Judge has summarily rejected the latter part of the contention on the ground that there is no provision under the Act to furnish copies of the statements, recorded in the proceedings. This reasoning would be leading into the trap of legalism of the 17th century. The Act need not provide for all the minor details how an enquiry should be conducted by the Estate officer. The Estate Officer must hold an enquiry as required under S. 4 of the Act, read with the Public Promises (Eviction of Unauthorized Occupants) Rules 1971. R. 5 of the Rules provides that the Estate Officer shall record the summary of the evidence before him and the summary of such evidence and any relevant documents fit before him shall form part of the of the proceedings. Exercise of the power under the Act is undoubtedly quasi-judicial. The petitioner has a right to be heard before the Estate Officer and if the right to be heard is to be a real right, which is worth anything, it must carry with it a right to know the evidence of the opposite side. The Petitioner must therefore be told what evidence has been given or what statements the opposite side has made. In other words, to put it shortly, the petitioner must be given a fair opportunity to correct or contradict the statements recorded or the evidence collected in his presence or absence. This one principle uniformly appears in all the cases commencing from the celebrated judgment of Lord Lore burn L, C. in Board of Education v. Rice, (1911) AC 179 at p. 182 wherein the following passage appears:

"Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts.. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

Since then, Judges and writers have expanded the procedure laid down by statutes and laid down the obligation to observe the principles of natural justice where it is not plainly contrary to the intention of the legislature. The courts recently have also resorted to such alternatives to natural justice as "" fairplay in action" or "fairness of procedure" or "the fundamental principles of a fair trial", while discouraging a tendency to subject hearing to "legal strait jackets". Sometimes, "fairness" has been understood to impose a higher standard than that required by natural justice. In a historic decision of our Supreme Court in

Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Bhagwati, J. who spoke for the majority view observed:

"The principles of reasonableness must be right and just and fair and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all."

A tribunal or a person to whom judicial or quasi-judicial functions are entrusted is thus presumed to have an obligation to act with fairness, that is not only the obligation to observe the principles of natural justice but, on the contrary, to observe a higher standard of behavior than that required by natural justice.

14. Regard being had to these principles if we turn to the procedure followed by the Estate Officer, it becomes clear that he did not act fairly. I may not find fault with him for recording the statement of the witness. For the Bank in the absence of the present petitioner, but I cannot certainly agree with the contention that he was not bound to furnish a copy of the statement to the petitioner even after a specific request was made. The petitioner was very particular to know the evidence given by that witness. A written request was made asking for a copy of that evidence. But, the Estate Officer without furnishing a copy, relied upon that evidence, that evidence in fact formed the sole basis for making the order of eviction against the petitioner. To rely upon such evidence without affording an opportunity to the petitioner to know "the contents strikes at the very root of our judicial process. I must, therefore, conclude that the petitioner had no real and effective opportunity to deal with or meet the case put forward by the opposite side.

Besides, the procedure followed by the Estate Officer does not inspire any confidence. One does not know why he made two orders on the same day, one manuscript and another typewritten. The conclusion in the two orders may be the same, but the contents are different. It is difficult to accept the contention urged for the respondent that the typed order was only a communication of the manuscript order or the manuscript order was just the proceedings maintained by the Estate Officer. If one peruses the records, it becomes clear that these contentions cannot be accepted. On the other hand, it gives rise to so many speculations, one of which, as urged for the petitioner, is that the typed order must have been kept ready even before the proceedings were terminated. That is why I said earlier that the procedure followed in the case does not, at any rate inspire confidence.

In the view that I have taken, it is not necessary to decide. The question raised whether the Act is ultra vires the Constitution or not.

15. In the result, the rule is made absolute and the impugned orders are quashed, with Costs. Advocate's fee Rs. 100.

16. Rule made absolute.