

(1960) 12 KL CK 0016

In the High Court Of Kerala

Case No : A.S. No's. 604 of 1959 and 759 of 1959 and O.P. No. 825 of 1959

Cochin Devaswom Board

APPELLANT

Vs

Akhileswara Iyer

RESPONDENT

Date of Decision : 23-12-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1961 Ker 282 : (1961) 2 LLJ 562

Hon'ble Judges : M.A. Ansari, C.J;T.C. Raghavan, J

Bench : Division Bench

Advocate : V. Sankara Menon and K.A. Gopalakrishnan, in A.S. No. 604/59, V. Sankara Menon and N. Gangadhara Menon, in A.S. No. 759/59, for the Appellant; T.N. Subramonia Iyer and S. Subramonia Iyer, in A.S. No. 604/59 and in A.S. No. 759/59, for the Respondent

Final Decision : Dismissed

Judgement

Ansari, C.J.—These two appeals and O. P. No. 825 of 1959 arise from disputes between the Principal and the Management of Sri Kerala Varma College, Trichur. The Cochin Devaswom Board, which had been vested with authority u/s 62 of the Travancore-Cochin Hindu Religious Institutions Act, 1950, is the appellant in both the appeals and is the respondent in the writ petition.

The aforesaid section directs that the administration of incorporated and unincorporated DEvaswoms and Hindu Religious Institutions under the management of the Ruler of Cochin prior to July 1st, 1949, or under the Cochin Hindu Religious Institutions Act, 1 of 1081, should vest in the Board; and the appellant, therefore, manages Sri Kerala Varma College, Trichur, which was started in 1947 and is being run with funds from one such institution.

A. V. Akhileswara Iyyer, the respondent to the appeals before us, was on August 16th 1947, appointed as a Professor and the Head of the Department" of History and Economics, in June 1951 made by the then Devaswom Board the Vice Principal of the College; and from December 1st, 1951, appointed as the

Principal. He continued as the College Principal, and in October, 1958, interviewed the new members of the appellant Board.

There was discussion regarding the administration of the College, and the Principal's case is that the members criticised some actions taken earlier, Particularly those relating to the retrenchment of one Namboodhiri, who was a lecturer in the College, and to the refusal to promote one Mrs. Sathi M. Warriar, a lecturer in English. The Principal's case further is that the new members found fault with him for not pleading before the previous Board for the retention of the aforesaid Namboodhi-ripad in the service of the College; a week after the interview, the Principal was, on October 8th, 1958, served with a resolution by the Board giving the Board's version of what happened at the interview; and he on October 23rd 1958, sent a letter giving his account of what actually then transpired. The Principal in his first writ petition to this Court avers that he pointed in this communication various discrepancies between what happened and what, according to the Board, took place at the interview, and requested the mistakes being rectified. Thereafter the Board on October 29th, 1958, sent a communication charging the Principal with misconduct and informing him that his service would be terminated. The communication further called upon the Principal to submit explanations on or before November 12th, 1958.

That is one part of the quarrel. The next is that the Principal on October 30th, 1958, received a memorandum from the Secretary informing him about the Devaswom Commission's direction of the College Library being checked. During the checking a number of questions were sent to the Principal regarding purchase of books, and on December 4, 1958, the Principal received a letter suspending him from the Office with immediate effect and directing him to hand over the charge to the Professor of Commerce in the College. This act of the Board was challenged in this Court by O. P. 839/1958, and a learned Judge, on April 3rd, 1959, issued the writ quashing the aforesaid order. A. S-No. 604/59 before us is against the aforesaid order by the learned Judge.

2. The next stage in the dispute between the Principal and the appellant begins soon after the writ was passed by the learned Judge. Having obtained the writ, the Principal had applied to be reinstated in the service and had also asked for arrears of his salary with increments, to which he claimed to have become entitled from. October 1st, 1958. The appellant then issued a notice dated April 6, 1959 directing the Principal to substantiate some of the allegations made by him in the affidavit to his earlier writ petition.

The appellant had also required the Principal to furnish his explanations to the charge-sheet, which was dated earlier and consisted of ten charges about the Principal's conduct regarding the College Library. Both these were made the basis of the appellant's order dated April 8 1959, whereby the Principal was dismissed. It will be useful to give extract from the order, which was also challenged by another writ petition in this Court, The relevant extracts read thus :

"The result is that his statement and the imputations in his letter of the 23rd are false.

When he denied facts within the personal knowledge of the members of the Board and recorded in the official proceedings of the Board, he was lying in his throat. The Principal's post is a very responsible one, requiring a high degree of integrity and sense of responsibility. He lacks both. In his behaviour towards the Board, he has defied all standards of discipline and decency. The Board has, therefore, come to the conclusion that his services under the Board must be altogether terminated in accordance with provisions of Rule 18 of the Conditions of Service."

3. The writ petition to vacate the order, was filed on April 14, 1959, numbered as O. P. 540/1959, and one of the grounds taken was that the Board's decision was bad, because it was by judges in their own cause. Our learned brother, Vaidialingam, J., held that the Board had no jurisdiction to pass any orders based upon proceedings originally intended to be taken but closed long ago. He further held that in these circumstances, there was no jurisdiction to pass the order, which must be quashed in exercise of the powers under Article 226, A. S. No. 759/1959 is the appeal against the aforesaid decision, and thereby the aforesaid stage of the dispute between, the parties concludes.

4. The third stage begins, when the Principal sent a letter to the Board requesting to be reinstated as the Principal and all further proceedings against him to be terminated. In the letter the Principal further requested that should the Board want to continue the inquiry, the Board should refer the dispute to an independent tribunal as provided for in the Kerala University Act. The letter was followed by two communications, one being of July 8, 1959, informing the Principal that the charges given to him, that were dated December 19, 1958, would be investigated on July 15, 1959, and he should file a statement before July 14, 1959.

The next communication stated is that the charges framed against the Principal been delayed on account of the writ petitions, the charges would be taken immediately, and due to the matters being disciplinary, no question of appointing a special tribunal arose. These communications have resulted in O. P. No. 825/59, which was filed on July 13, 1959, and thereby the Principal prays that the Board be restrained from proceeding with the inquiry against him as proposed in the order of July 8, 1959,

These cases have been consolidated in order to facilitate satisfactory adjudication of disputes, which have proved to be malignant growth. It is further clear that the Board is in no mood to amicably settle the appeals; and, in these circumstances, we would decide on the merits the two appeals postponing the decision in the O. P. to a future date, in the hope that the parties would amicably settle the disputes; otherwise the petition would also be adjudicated on merits.

5. The appellant's advocate before us has urged that the learned Judge had

erred in issuing writs against the tribunal, that in suspending or dismissing the Principal the Board was functioning neither as a statutory authority nor in exercise of the statutory powers, and, therefore neither writ of certiorari nor of prohibition can be issued against such an authority. The learned advocate's next argument is that the conclusion of the learned Judges of the grounds, on which the writs have been issued are legally insufficient to justify their being issued.

In our opinion, the question inviting adjudication in the two appeals is whether the proceedings complained against were of an authority exercising quasi-judicial power and whether they were vitiated by failure to observe principles of natural justice. It is not disputed that the appellant asked the Principal to furnish statements under Rule 18 of the Conditions of Service of teachers in the College, of which the relevant extracts read as follows:

"18. (i) The Management shall have the power to terminate the services of any teacher when he becomes a permanent member of the Staff of the said College:

(a) Without notice for any or all of the following reasons:

Wilful neglect of duty; serious misconduct; gross insubordination; mental unfitness;

(b) With three months' notice or three months' salary in lieu thereof for the following reasons:

Incompetence; retrenchment; physical unfitness or any other good cause: Provided that:

(a) The Management shall not terminate the services of any teacher whether summarily or otherwise without informing him in writing of the grounds on which they intend to take action and giving him what, in their view, is a reasonable opportunity for stating his case in writing and before coming to a final decision, shall duly consider his statement, and if he so desires, give him a Personal hearing."

It is clear that Rule 38 (1) confers authority on the Board to determine questions affecting the rights of teacher; and, when exercising such power, the Board is under the duty to act judicially. That duty is further emphasised by the proviso requiring the action under both Rules 18 (1) (a) and (b) to be after written information of the grounds and after affording opportunity for representation against the action intended.

There is again the requirement of considering the representation before coming to final decision. It follows that in determining the liability of the Principal for being dismissed the appellant would be acting judicially, and any decision by biased minds would be neither a proper performance of the duty, nor a fair compliance with the proviso. The decision would be so treated, because the rule is well settled that no man shall be judge in his own cause, and interest disqualifies.

A mere general interest in the general object would not be disqualification; but the judges having an interest in the Particular case, reasonably likely to bias or influence the minds, would, we feel, attract the rule. In this connection we would first refer to *R. v. Sussex Justices* (1924) 1 KB 256 where, at the hearing of the summons taken out against the applicant for having driven his motor vehicle in a manner dangerous to the public, the acting Clerk to the justices was a member of the firm of solicitors, who were acting for a party in a claim for damages against the applicant for injuries received in the collision.

At the conclusion of the evidence, the justices retired to consider their decision, the acting Clerk retiring with them in case they should desire to be advised on any point of law. The Justices convicted, and the conviction was quashed, though it was stated in an affidavit that they had come to that conclusion without consulting the Clerk. It was so held because the Clerk's being present with the justices when they were considering their decision, was found to be improper.

That the same rule applies to domestic tribunals as well, is borne out by *Law v. Chartered Institute of Patent Agents* (1919) 2 Ch. 276. There the Council of the Institute, on receipt of a complaint from the Admiralty alleging the disclosure by the plaintiff, who was a member of the Institute, of a secret naval invention, had applied for a Committee of the Board of Trade for the plaintiff's name being erased from the Register; but the steps failed. The Council then proceeded against the plaintiff under the Rule, which provided that if a member of the Institute be held by the Council on the complaint to have been guilty of any act discreditable, he should be liable to expulsion.

The Council met to consider the plaintiffs conduct, some of its members had taken active part in the previous proceedings, the plaintiff's counsel objected, was overruled, and the Council then resolved that the plaintiff should be excluded. In an action for the declaration, the aforesaid resolution of the Council in those circumstances was held bad. Reference should now be made to the summary of the case-law on the subject by Sinha, J., in *A.R.S. Choudhury Vs. The Union of India (UOI) and Others*, at p. 666, where the learned Judge observes as follows :

"But the person dealing with the enquiry at any stage is in the position of a Judge, and the rules of natural justice demand that he should not himself be personally interested in the case..... He should be a person with an open mind, a mind which is not biassed against the delinquent He should not have prejudged the issue..... He cannot act both as a Judge and as a witness. There is no bar to a person, issuing the show cause notice to try it himself. The principle that a prosecutor cannot be a Judge, is not strictly applicable to departmental inquiries.... But he must not lower himself to the status of a common prosecutor, that is to say, of a person who feels it a part of his function to bring the guilt home to the accused at any cost. He must act with the detachment of a Judge, since he is professing to exercise that dignified function."

The aforesaid observation was followed in *Dr. Subba Rao v. State of Hyderabad* (S) AIR 1957 AP 414, where it was held that it is a fundamental principle of natural justice that the officer selected to make an inquiry against a civil servant, should be a person with an open mind, and not one who is either biased against the person against whom the action is sought to be taken, or one who has prejudged the issue. The respondent in *State of U. P. v. Mohamad Nooh* 1958 S. C. A. 73 : (AIR 1958 SC 86), was an officiating Head Constable, who had been charged with having forged a letter purporting to select him for training at the Police Training College.

He was suspended and departmentally tried under the U. P. Police Regulations. The District Superintendent of Police presided at the trial and also gave evidence against the Constable, who was found guilty and dismissed at the time when the Constitution had not come into force. Orders in appeal and revision, affirming the original Order were passed after the Constitution and he invoked the provisions of Article 226. The matter came to the Supreme Court, and Das, C. J., observed as follows:

"..... there can be no escape from the conclusion that Shri B.N. Bhalla should not have presided over the trial any longer.....Having pitted his evidence against that of Mohammad Khalil, Shri B.N. Bhalla vacated the judge's seat and entered the arena as a witness. The two roles could not obviously be played by one and the same person..... It is futile to expect that he could, in the circumstances hold the scale even.....the rules of natural justice were completely discarded and all canons of fairplay were grievously violated by Shri B. N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision, cannot possibly be regarded as valid or binding."

Further, one of us in *Narayana Rao K.V. and Another Vs. State of Andhra Pradesh and Another*, has held that the bias of the inquiring authority is fatal to its decision and the position is not different where only one of those constituting the tribunal is shown to have prejudged the issue. The Principal's learned Advocate has also drawn our attention to the following observations in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*,

"The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, Provided those rules conform to the Principles of judicial procedure."

The learned Judge then observes at page 327 as follows;

"The aforesaid decisions accept the fundamental principle of natural justice that in the case of quasi-judicial proceedings, the authority empowered to decide the

dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not, even formally, take part in the proceedings though in fact he does not influence the mind of the person, who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The hearing given by the Secretary, Transport Department, certainly offends the said principle of natural justice and the proceeding and the hearing given, in violation of that Principle, are bad."

The same learned Judge in Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, at p. 1378 says as follows:

"The principles governing the "doctrine of bias" vis-a-vis judicial tribunals are well settled and they are: (i) no man shall be a judge in his own cause; (ii) justice should not only be done, but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take Part in the decision or sit on the tribunal"; and that "any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a judge, and any interest, though not pecuniary, will have the same effect, if it be sufficiently substantial to create a reasonable suspicion of bias." The said principles are equally applicable to authorities, though they are not courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, i. e., authorities who are empowered to discharge quasi-judicial functions".

6. It follows that proceedings by tribunals under duty to act judicially are governed by principles of natural justice, and one such principle excludes persons with biassed minds from being judges in the cases where their minds be not open or impartial. It is further clear that the principle is of general application and proceedings of contractual domestic tribunals cannot claim being exempted. In support we would refer to what Maugham, J., has said in *Maclean v. The Workers' Union* (1929) 1 Ch. 602. The learned Judge at page 626 says:

"That some members of the tribunal may go out of their way to put themselves in a special position as prosecutors and thus to disable themselves from sitting in a quasi-judicial capacity at the inquiry, cannot be denied".

Therefore, contractual domestic tribunals are also under obligation to inquire with minds that are not biassed, and the point to be determined in the two appeals is whether the minds of the deciding authority were not biassed. In this connection, it should be recalled that trouble between the parties began over what had taken place when the Principal had paid the courtesy visit in October, 1958, and the retrenchments of Nambudiripad and of Warriar were then discussed.

The appellant's version of what then took place, in the communication to the Principal, shows the appellant's saying the Principal to be unfit to hold the post; but the Principal's reply version of the conversation denies any such remark, being then made against him. Thereafter the appellant had taken up the position of the denials being incorrect, involving serious imputations against the appellant and constituting misconduct; and have on April 8, 1959, dismissed the Principal on the aforesaid false denials and imputations.

In these circumstances the dismissal is by a quasi-judicial tribunal, who claims its statements being falsely denied and who feels aggrieved by the denials. Had the matter been inquired into by another authority, the appellant's position would be of the prosecutor, of a party interested in the case, and that position is not altered by the appellants themselves inquiring. In other words, the decision of dismissing the Principal is vitiated by being of judges in their own cause. Therefore, the decision of our learned brother, Vaidialingam, J., that the dismissal order is a nullity, is correct. Any exercise of incidental power would also fall because of the incompetency to inquire. The suspension order, therefore, would also be not by a competent authority and, therefore, void.

7. This brings us to the question of whether writs of certiorari had been properly issued in the case or whether in exercise of our power of superintendence a declaration should be issued against the decisions of a domestic tribunal, where they be vitiated by failure to observe Principles of natural justice. In (1919) 2 Ch. 276 such a declaration was given, and we do not see why such an order cannot be issued under Article 227.

In *Thomas and Others Vs. Industrial Tribunal and Others*, one of us had held that

"though a writ of certiorari or prohibition against private quasi-judicial tribunals would not be issued, yet this Court is competent to grant a declaration where the decision of such a tribunal be vitiated by disregard of Principles of natural justice."

It follows that the first part of the argument by the appellant's learned advocate that certiorari cannot be issued against contractual domestic tribunals, would not substantially help his client; for, we have come to the conclusion that the decisions in these cases by a quasi-judicial authority, that is bound to observe principles of natural justice, are void, and according to *Thomas case 1961 Ker LT 223 : Thomas and Others Vs. Industrial Tribunal and Others*, a declaration can be issued.

The learned advocate has argued that the decisions being of a contractual domestic tribunal, the failure to observe the rules would justify action for damages; but we feel that the duty to observe principles of natural justice forms part of the law governing judicial procedure, and violation of such a law should be redressed by exercise of powers under Article 227. Nor do we see why a party should in all cases be driven to seek his declaratory relief By way of suit.

We are satisfied that the exercise of power in these cases by a domestic tribunal

are in violation of principles of natural justice, they are void, and we declare them to be so. The orders appealed against are, therefore, modified by declaring the suspension, or dismissal of the Principal by the appellant to be void, and the appeals are disallowed except for the modification; the parties bearing their own costs of the appeals in these circumstances.