

(1995) 06 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 16172 of 1995

Dr. H.J. Gurunath

APPELLANT

Vs

Cauvery Grameena Bank, Mysore and another

RESPONDENT

Date of Decision : 29-06-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1995) 06 KAR CK 0024

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : K.R. Bhavani Shankar, for the Appellant; K.L.N. Rao, for the Respondent

Judgement

1. This writ petition was fixed today for orders on IAI for vacation of stay, filed by the respondents. With the consent of the learned counsel for the parties, the petition itself was heard for final disposal.

2. The petitioner is working as an Officer in the respondent- Cauvery Grameena Bank. Certain disciplinary proceedings have been initiated against him in terms of a charge-sheet dated December 28, 1994. The conduct of the enquiry has been entrusted to Respondent No 2 by the Chairman of the Bank, in terms of his letter dated April 6, 1995. The second respondent has accordingly issued a notice dated April 15, 1995, calling upon the petitioner to attend the enquiry proceedings to be held on April, 25, 1996 and on subsequent dates and also to file documents and witnesses on which he may seek to rely.

3. Aggrieved the petitioner has filed the present writ petition for a writ of certiorari quashing the impugned notice issued by the second respondent as also the order passed by the Chairman of the Bank dated April 6, 1995, appointing the second respondent as an Enquiry Officer.

4. The petitioner's case is that the second respondent is not qualified to sit in Judgment or to hold the enquiry in question as he is biased against him. In

support of his plea, the petitioner 1 has placed on record a copy of Writ Petition No. 127214 of 1992 titled H. J. Gurunath v. The Chairman and The Disciplinary Authority, Cauvery Grameena Bank, Mysore and Another, filed by the petitioner. to point out that Respondent No. 2, the Enquiry Officer, is a party to the said petition and has been arrayed as Respondent No. 11 in the same. This writ petition has been filed against an order dated August 1, 1992 passed by the Bank by which Respondents Nos. 3 to 17 to the said petition including Respondent No. 2 herein were promoted as Area Managers allegedly ignoring the claims of the petitioner. The challenge to the promotion of the respondents is based on the allegations contained in para 16 of the said writ. petition, in which it is asserted that Respondents Nos. 3 to 8, 11, 14 and 15 are only Science and Art's Graduates and do not satisfy the minimum requirements as to the qualification prescribed in Annexure-M to the said petition and that their promotions are contrary to the guidelines set out by the National Bank for Agriculture and Rural Development. The petitioner has further asserted that the promotion of Respondents Nos. 3 to 17 to the said petition was illegal, unjust and improper and therefore, liable to be quashed. It is also alleged that the said promotions Were arbitrary and devoid of reasonableness, fanciful and whimsical besides being capricious and violative of Article 14 of the Constitution of India.

5. The petitioner's grievance in the above backdrop is that Respondent No. 2 being a party to the earlier writ petition filed by the petitioner, whose promotion as Area Manager has been challenged, is bound to be biased against him, in which event the petitioner can hardly expect a fair deal at the enquiry entrusted to him.

6. In the reply filed by the Bank in the form of an application for vacation of stay, it has justified its action of appointment of Respondent No. 2 as Enquiry Officer on the ground that all the 15 Senior Managers who could have possibly conducted the enquiry, have been arrayed as party respondents in Writ Petition No. 27214 of 1992, filed by the petitioner. There was, therefore, no choice for the Bank except to appoint one of them as Enquiry Officer. It has been further stated that it is not possible for the Bank to assign the enquiry to one of the three other higher Officers who are working on. deputation with it from State Bank of Mysore. One of these Officers is a General Manager, whereas the other two are working as Chief Managers. It is argued that in the interest of the Bank's work it is not feasible to assign the enquiry against the petitioner to one of these three Officers, although they are competent to conduct the same.

7. I have heard the learned Counsel for the parties and perused the records.

8. The essential facts relevant to the disposal of the writ petition are not in dispute. It is not in dispute that the petitioner herein has filed Writ Petition No. 27214 of 1992 and has challenged the appointment of Respondents Nos. 3 to 17 in the said petition including that of Respondent No. 2 the Enquiry Officer as Area Manager. It is also not in dispute that the said challenge is based on specific allegations made by the petitioner in paras 16, 19 and 21 of the said petition

inter alia on the ground that the second respondent was not qualified to be promoted as Area Manager and that his promotion was illegal, whimsical, contrary to the guidelines issued on the subject and capricious. That the said petition is pending disposal in this Court even at present is also admitted. In that background, therefore, it is fairly obvious that the appointment of Respondent No. 2 as an Enquiry Officer would hardly carry any conviction or inspire confidence with the petitioner. The petitioner's feeling that he would not get a fair deal at the enquiry from Respondent No. 2 cannot be said to be far-fetched or wholly unreasonable, imaginary or hypersensitive in nature. While it is true that "rely because of the pending litigation, Respondent No. 2 cannot be said to be biased against the petitioner yet, it is not the existence of actual bias which matters in such situation. What is important is whether the petitioner would be justified in assuming that Respondent No. 2 would in all reasonable likelihood be biased against him. It is the test of "reasonable apprehension" of a "reasonable man" fully cognizant of the facts that the Courts apply to cases of this type. For the Court to interfere it is sufficient, if a reasonable man would think on the basis of existing circumstances that he is likely to be prejudiced. Seen in that light. the fact that the parties are engaged in litigation against each other, is sufficient to give to the petitioner the feeling of a possible bias against him.

9. That apart, it is well settled that justice must not only be done, but must patently and undoubtedly seen to have been done. This would not be true if a person against whom the petitioner has filed a writ petition and whose promotion to the next higher position is challenged, is made to sit as a Judge in his case. One of the most well recognised requirements of the doctrine of due process of law in the American Constitutional system analogous to the principles of natural justice as known to Indian law is that the authority which is called upon to try issues in judicial and quasi-judicial proceedings must be able to act judicially, that is to say imperfect, objectively and without bias. The impartiality of the tribunal holding the trial or enquiry against the delinquent is thus one of the essential prerequisites for a sound and sustainable determination of the issues tried by it. Being able to act above suspicion of unfairness lies at the heart of the requirements of the principles of natural justice and any charge of bias is expanded by the Courts on the touch-stone of the dual type of reasonableness and likelihood of bias from the stand point of a reasonable man.

10. I do not find any substance in the argument advanced by the respondents that the Bank had no option but to appoint the second respondent as an Enquiry Officer. It is not possible to justify the appointment of the second respondent on the doctrine of necessity for admittedly apart from 15 Senior Managers, who are parties to the previous petition, there are three Senior Officers available to the Bank viz., one General Manager and two Chief Managers, one of whom could have been appointed as Enquiry Officer. The argument that none of these Officers could be spared for conducting the enquiry or that the same would disturb the Bank's functioning, does not commend itself to me. Simply because the Officers had some other bank business to attend, is no justification for the

respondent-Bank to appoint the second respondent as an Enquiry Officer knowing fully well that such an appointment would not stand judicial scrutiny.

11. In the result, this petition succeeds and is accordingly allowed. The impugned order dated April 6, 1995 passed by the first respondent appointing the second respondent as Enquiry Officer to conduct the enquiry into the charges against the petitioner, is hereby quashed, reserving liberty to the first respondent to appoint an Enquiry officer afresh in accordance with law and keeping in view the observations made hereinabove.