(1991) 07 AHC CK 0056

In the Allahabad High Court

Case No : Writ Petition No. 7375 of 1990

Gokaran Nath Lal APPELLANT

Vs

U.P.State Public Services Tribunal No.I, Lucknow and others RESPONDENT

Date of Decision : 09-07-1991

Acts Referred:

Citation : (1991) 07 AHC CK 0056

Hon'ble Judges : S.H.A.Raza, J

Final Decision : Dismissed

Judgement

S. H. A. Raza, J.

1. The fate of this writ petition hinges upon the reply to the question as to whether a person can be a judge in his own cause.

2. The admitted facts of the case are that the work of the petitioner was found incomplete. A chance was given to the petitioner to complete his work but he failed to carry out the orders. Thereafter the Judge, Revision, Sales Tax passed an order directing Sri G. K. Mathur, the then Additional Judge (Sales Tax) to report as to whether the petitioner had completed his work. Sri G. K. Mathur submitted his report that the work was not complete. Thereafter Sri G. K. Mathur was appointed as Enquiry Officer and upon issuance of the charge sheet, departmental enquiry proceeded, which ultimately resulted into removal of the petitioner from service, the petitioner approached the U.P. Public Services Tribunal (hereinafter to be referred as Tribunal).

3. To this aspect of the matter, as to whether the enquiry proceeding was vitiated due to the appointment of Sri G. K. Mathur as Enquiry Officer when he himself had made a written complaint, the Tribunal gave a finding to the effect that by mistake in the report made by Sri G. K. Mathur the word ''complaint'' had been mentioned when actually it was not a complaint but a compliance report by Sri G. K. Mathur to the Judge (Revision), Sales Tax, Sri P. S. Verma. The finding of the Tribunal on this point is vitiated for the reason of the fact that on January 28,

1976 Sri P. S. Verma, Judge, (Revision), Sales Tax, U.P., Camp at Gorakhpur addressed a notice to the petitioner which reads as under:

?Please find enclosed herewith a copy of an extract of complaint made against you by the Additional Judge (Revision) Sales Tax, Gorakhpur vide his confidential D.O. letter No. 193/1118 A. J. R. S. T. GKP dated January 27/28, 1976 and submit your explanation in writing by 3011976 failing which it will be presumed as though you have to say nothing and the action will be taken accordingly.?

A perusal of the copy of an extract of the complaint made against the petitioner by Sri G. K. Mathur, Additional Judge (Revision), Sales Tax, Gorakhpur indicates that it is full fledged complaint against the petitioner which he had made after making thorough enquiry. It cannot be said that Sri G, K. Mathur had only made a compliance report and the same was not actually complaint against the petitioner.

4. It has been rightly observed that no person can be the judge in his own cause and no witness can certify that his own testimony is true. Anyone who has a personal stake in any inquiry must keep himself aloof from the conduct of the inquiry. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and respondents, was speaking the truth, was decided by respondent 3 himself.

5. In State of U.P. v. Mohammad Nooh, AIR 1958 SC 86,

the Chief Justice Mr. S. R. Das, observed while speaking for the majority, that the roles of a judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the judge can hold the scales of justice even.

6. In the case of Baidyanath Mahapatra v. State of Orissa and another, (1989) 4 SCC 664, their lordships of the Supreme Court observedas follows:

?There is a disturbing feature of this case which vitiates Tribunal''s order. Shri Gian Chand, Chairman of the Tribunal, ex?Chief Secretary of the State of Orissa, Was member of the Review Committee which made recommendation against the appellant for his premature retirement, and in pursuance thereof the State Government had issued the impugned order. It appears that Shri Gian Chand, had later been appointed as Chairman of the Administrative tribunal. Shri Gian Chand participated in the proceedings of the Tribunal, and he is party to the decision of the Tribunal. These facts show that Mr. Gian Chand who had administratively taken a decision against the appellant, considered the matter judicially as a Chairman of the Tribunal, thereby he acted as a judge of his own cause. While it is true that there is no allegation of personal bias against Shri Gian Chand, he may have acted bona fide, nonetheless, the principles of natural justice, fair play, and judicial discipline required that he should have abstained from hearing the appellant''s case. While consider?ing the appellant''s case the Tribunal exercised judicial powers and it was required to act judicially, as the jurisdiction of the civil court and High Court have been excluded and vested in the Administrative Tribunal, The members of the Tribunal must follow rules of natural justice in administering justice; like judges they should not sit in judgment on their own decisions. Shri Gian Chand was disqualified to hear the appellant''s case. The order of the Tribunal is vitiated on this ground but as the appellant had not raised any objection before the Tribunal against the participation of Shri Gian Chand, we do not consider it necessary to grant relief to the appellant on the ground.?

7. It is relevant to mention here that on November 27, 1975, Sri P. S. Verma, Judge (Revision), Sales Tax, U.P., Lucknow made an inspection and found that the work of the petitioner Gokaran Nath Lal was very unsatisfactory. He directed Sri G. K. Mathur, Additional Judge (Revision), to make thorough enquiry and report to him within one month whether the work found in arrears with the petitioner Gokaran Nath Lal has been brought uptodate. It was however mentioned by Sri Verma in his order dated November 27, 1975, that if the work of the petitioner had not been brought uptodate he (Sri G. K. Mathur) would without waiting for further orders from him frame necessary charges against Gokaran Nath Lal and take disciplinary action against him. Thereafter on 2811976 Sri P. S. Verma, Judge (Revision), Sales Tax, U.P., Lucknow addressed a notice to the petitioner in which a copy of the extract of complaint made against him by Sri G. K. Mathur was also enclosed and directed the petitioner to submit his explanation in writing by 3011976, failing which it would be presumed that the petitioner had to say nothing and the action would be taken accordingly. Thus, it is clear that the entire enquiry against the petitioner proceeded on the report of Sri G. K. Mathur. A perusal of the report of Sri G. K. Mathur indicates that the charges sheet was issued to the petitioner on the basis of his report which contained more or less the same charges as indicated by Sri G.K, Mathur in his complaint or report. Thus, Sri G. K. Mathur assumed the position of a witness against the petitioner end he could not play the role of a judge as well. Certainly he had a personal stake in the enquiry and he was the main complaint and against the petitioner and it was futile to expect from him that he, in the capacity of an enquiry officer, could hold the enquiry in an impartial manner.

8. The order of dismissal passed against the appellant stands fully vitiated for the simple reason that no person can be a judge in his own cause. In this regard I may borrow the language of

S. R. Das, CJ, and record a finding on the facts of the case before me, that the illega?lity touching the proceedings which ended in dismissal of the petitioner is ? so patent and loudly obtrusive that it leaves an indeliable stamp of infirmity? on the enquiry report made by Sri G. K. Mathur. The punishing authority while agreeing with the report of the enquiry officer committed manifest error of law in passing the order of removal for the reasons stated above. The finding of the Tribunal is also vitiated for the reason of the fact that it failed to consider the implication of the appointment of Sri G. K. Mathur as Inquiry Officer upon whose complaint enquiry commenced,

9. As this writ petition succeeds only on this point, there exist no necessity for this Court to deal with the other questions raised in this writ petition,

10. In view of what has been indicated hereinabove the Writ petition is allowed. A writ in the nature of certiorari is issued quashing the impug?ned Older of dismissal dated 31121976 and 2411977 contained in annexures 3 and 4, the order by means of which the appeal of the petitioner was rejected which is contained in annexure No 14 and the order dated 671990 passed by the U.P. Public Services Tribunal I, Lucknow, A writ in the nature of mandamus is also issued commanding the opposite parties No. 2 to 4 to reinstate the petitioner in service with all emoluments and future benefits. However, it will be open to the opposite parties to hold, fresh enquiry against the petitioner from the stage of appointment of the Inquiry Officer by appointing another Inquiry Officer.

