

(1954) 10 PAT CK 0001
In the Patna High Court
Case No : Misc. J.C. No. 242 of 1953

Gurudeva Narayan Srivastava	Vs	APPELLANT
State of Bihar and Another		RESPONDENT

Date of Decision : 19-10-1954

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Public Servants (Inquiries) Act, 1850 — Section 21

Citation : AIR 1955 Patna 131

Hon'ble Judges : Ramaswami, J; Choudhary, J

Bench : Division Bench

Advocate : Baldeva Sahai, Shivanugraha Narain and Choudhary Nawalkishore Pd, for the Appellant; A.G. and K.P. Varma, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—In this case the petitioner Gurudeva Narayan Srivastava has moved this Court for the grant of a writ in the nature of certiorari under Article 226 of the Constitution for the purpose of quashing the proceedings drawn up against the petitioner and conducted by Mr. K.K. Banerji (as he then was) under the Public Servants (Inquiries) Act, 1850. The petitioner has also prayed for a writ in the nature of certiorari to quash the order of the Government dated 6-5-1952 suspending the petitioner from the office of Executive Engineer, Public Works Department Division, Saharsa.

2. The petitioner was appointed as an Assistant Engineer in the Bihar Engineering Service on 15-12-1948. In March 1949 the petitioner was posted as Assistant Engineer, Ganga Bridge Investigation Division. The petitioner was promoted to the rank of Executive Engineer in March 1950 and he was posted as Executive Engineer, Ganga Bridge Investigation Commission. He was subsequently transferred as Executive Engineer of the Public Works Department Division at Saharsa. On 6-5-1952 the Government of Bihar passed an order suspending the petitioner alleging that he had taken illegal gratification in the course of his

official work. On 21-7-1952 the Government of Bihar appointed Mr. K.K. Banerji as Commissioner u/s 3 of Act 37 of 1850 to enquire into the charges made against the petitioner. Mr. K. K. Banerji gave notice to the petitioner of his appointment. On 15-8-1952 the petitioner objected that Mr. K.K. Banerji should not hold the enquiry. The ground taken by the petitioner was that Mr. K.K. Banerji was Law Secretary and Legal Remembrancer to the Government of Bihar and therefore was not competent to hold judicial inquiry into the charges levelled against the petitioner. The petitioner also pointed out that Mr. K. K. Banerji had appointed Mr. K.P. Verma Advocate, as a junior counsel to Mr. S.K. Mitra who had been nominated by the Government to conduct the prosecution.

Mr. Banerji rejected the petition of objection on the ground that he had been District & Sessions Judge of Patna till 12-7-1952 on which date he took charge as Law Secretary to the Government of Bihar. Mr. Banerji also observed that he had not advised the Government on any matter regarding the case against the petitioner and had not even seen the file regarding the petitioner in his office. The appointment of Mr. K.P. Verma as a junior counsel was a formal matter and Mr. Banerji had sanctioned the engagement of Mr. K.P. Varma at the instance of the Government Advocate, Mr. S.K. Mitra, who had requested that Mr. K.P. Verma should be appointed to assist him. Mr. Banerji therefore rejected the petition of objection and continued the enquiry against the petitioner. On 9-12-1952 Mr. Banerji submitted his report to the Government stating that in his opinion the charges of corruption and illegal gratification brought against the petitioner had been established.

3. In support of this application Mr. Baldeva Sahai put forward the argument that Mr. K.K. Banerji had no jurisdiction to conduct the enquiry against the petitioner and the proceedings and the report made by Mr. K.K. Banerji should be quashed on this ground. The contention of the learned counsel was that Mr. Banerji was disqualified by interest and that there was real likelihood of bias on the part of Mr. Banerji. The point taken by the learned counsel was that Mr. Banerji was acting as law Secretary and Legal Remembrancer during the period he was holding the enquiry and since the Government was prosecutor there was real likelihood of bias on the part of the Commissioner. Counsel further pointed out that on 28-7-1952 Mr. Banerji had in his capacity as Law Secretary sanctioned the appointment of Mr. K.P. Verma as a junior counsel to assist the Government Advocate in conducting the enquiry against the petitioner. The contention of petitioner, therefore, is that Mr. Banerji was disqualified by interest and that he should not have conducted the enquiry against the petitioner under the Public Servants (Inquiries) Act.

4. What are the legal principles applicable to this case? It is the basic principle of jurisprudence that no one is allowed to be a judge in his own cause. This rule applies and has been asserted not only in the case of Courts of justice in the proper sense but also in the case of administrative tribunals who are required to act judicially. For example, in -- "Reg v. London County Council, Ex parte

Akkersdyk (1892) 1 QB 190 the rule was applied to the proceedings of a London County Council in the matter of granting of a certain music and dancing licence. Similarly there is an Irish case, -- "Reg. (Monaghan County Council) v. Local Govt. Board", (1900) 34 ILT 196 where the authority in question was the Local Government Board of Ireland, in which a similar decision was reached. The rule has also been applied to licensing justices in England in -- "Rex v. Sunderland Justices (1901) 2 KB 357 and -- "Colchester Brewing Co. Ltd. v. Tendering Licensing Justices (1916) 2 KB 126 .

A consequence of the rule is that the least pecuniary interest in the subject-matter of the litigation will disqualify any person from acting as a judge. This is stated with clarity and eloquence in the leading case, -- "Dimes v. Proprietors of the Grand Junction Canal (1952) 3 HL Cas 759 . But there is a sharp distinction between a case of pecuniary interest and a case of non-pecuniary interest. In the case of pecuniary interest, the smallest interest in the subject-matter of the enquiry would result in the disqualification of the judge as a matter of course. But if the interest alleged is any other kind of interest, it must be shown by the petitioner that the interest is substantial so as to make it highly probable that the judge has a real bias. A mere possibility of bias is not enough to disqualify the judge.

In -- "Reg v. Rand (1865) 1 QB 230 Blackburn, J. explained the position as follows:

"Wherever there is a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act; and we are not to be understood to say that, where there is a real bias of this sort, this Court would not interfere".

In another case, -- "Reg. v. Meyer (1875) 1 QBD 173 Blackburn, J. stated as follows:

"In (1865) 1 QB 230 we held that there was no ground for quashing the certificate of the justices. The effect of our judgment in that case was that, though pecuniary interest in the subject-matter of dispute however small, disqualifies the justices, yet the mere possibility of bias did not "ipso facto" avoid the justices' decisions and we thought that, though there was a possibility of bias in that case, yet it was not real. But we expressly excepted a real bias, saying "that we must not be understood to say that where there is a real bias, this Court would not interfere. In the present case there is such a real bias".

The principle is further illustrated by the case of -- "Reg v. Handsley (1881) 8 QBD 383 where Cave J., delivering the judgment of the Court, stated:

"In order to disqualify the justice it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter."

The same test was applied by the Queen's Bench in "Ex parte", Medwin (1853)

118 ER 566 and in the case of -- "Reg v. Burton Ex parte Young" (1897) 66 LJQB 831. The principle was also reiterated by the Court of appeal in (1901) 2 KB 357 where a writ of certiorari was issued to quash a decision of the justices sitting as the confirming authority for the grant of a new licence under the Licensing Act of (1872). At page 366 the Master of the Rolls states:

"It appears to me that, in cases where the decision of justices is impeached on the ground of a bias such as is suggested in the present case, the decision must really turn on the question of fact, whether there was or was not under the circumstances a real likelihood that there would be a bias on the part of the justices alleged to have been so biased. If there is such a likelihood, then it is clearly in accordance with natural justice and common sense that the justices likely to be so biased should be incapacitated from sitting".

5. These principles are well established and indeed counsel on behalf of the petitioner did not challenge the correctness of these legal principles. But the difficulty in the way of the petitioner is that his case does not fall within the ambit of these principles. The difficulty is the perennial difficulty of the application of the law to the facts of a particular case. Two circumstances were pointed out on behalf of the petitioner suggesting that there was a likelihood of bias on the part of Mr. Banerji. In the first place, it was pointed out that Mr. Banerji was functioning as Law Secretary and Legal Remembrancer for the whole period during which the enquiry was conducted. Counsel for the petitioner pointed out that Mr. Banerji was legal adviser to Government and one of his duties was to give advice to Government in a case where sanction was required for prosecuting any person for a criminal offence.

Counsel further pointed out that the Legal Remembrancer had to be consulted if there was any proposal to engage or depute special lawyers in civil or criminal cases brought by or against the Government. In support of his argument counsel referred to page 209 of the Secretariat Instructions, 1952 edition. Counsel submitted in the second place that Mr. Banerji had formally appointed Mr. K.P. Verma as a junior counsel to assist the Government Advocate in prosecuting the petitioner. But these allegations must be considered in the context of the order of the Commissioner dated 18-8-1952 which is very important. Mr. Banerji took over charge as Legal Remembrancer on 12-7-1952 and in the course of this order Mr. Banerji states that he had not seen any file in the office regarding the case against the petitioner and that he had not seen any advice or any note of his predecessor-in-office in this connection.

It appears that the prosecution against the petitioner was lodged as a result of an enquiry made by the Anti-corruption Department, and the Judicial Secretary had nothing to do with this Department or with the initiation of the proceeding against the petitioner. As the prosecution against the petitioner was started not by the Law Secretary but by a different department of the Government, it cannot be said that there is a real likelihood of bias on the part of Mr. Banerji. As regards the appointment of Mr. K.P. Verma, it was argued by the Advocate General that

sanction was given by Mr. Banerji as a mere formality. Mr. Banerji did not appoint Mr. K. P. Verma on his own initiative but the Government Advocate, Mr. Mitra, had written a letter to the Legal Remembrancer to sanction the appointment of Mr. K.P. Verma as a junior counsel and sanction was given by Mr. Banerji in the formal course. It is therefore difficult to accept the argument of the counsel for the petitioner that Mr. Banerji was actively interesting himself in the prosecution of the petitioner or that the sanction for the appointment of Mr. K.P. Verma as a junior counsel was other than a mere formal act.

6. In my opinion there is nothing in the circumstances of the present case to suggest that there was any likelihood of bias on the part of Mr. Banerji. If the petitioner has to succeed he must establish not merely a bare possibility of bias but he must show in the circumstances of the case that there was a real likelihood of bias on the part of the Commissioner. The petitioner has failed in this respect and I therefore hold that Mr. Banerji is not disqualified by interest from conducting the proceedings under the Public Servants (Inquiries) Act of 1850. . The argument of the petitioner on this point must be rejected.

7. Counsel for the petitioner contended in the next place that the proceedings of the Commissioner should be quashed because there was an error of law apparent on the face of the record. Counsel pointed out that at page 10 of the report Mr. Banerji has referred to the evidence of Mr. M.C. Law and observed that he was not an accomplice and his evidence does not need corroboration. It was argued on behalf of the petitioner that this was an error of law apparent on the fact of the record. In my opinion this argument must be rejected. It is not necessary for me to express an opinion whether the Commissioner was right in holding that Mr. Law was not an accomplice; for the Commissioner has observed that even if Mr. Law was taken to be an accomplice there was sufficient evidence to corroborate his statement.

Counsel on behalf of the petitioner also advanced the argument that there was no fair enquiry by the Commissioner since the prosecution did not produce the note-book maintained by the petitioner as Assistant Engineer and the file relating to the purchase of the Motor-boats. This argument is without substance for the order-sheet dated 18-8-1952 shows that the Commissioner permitted the petitioner to inspect the note-book and also to inspect the file relating to the purchase of motor-boats. It appears that on 2-9-1952 the Government Advocate informed the Commissioner that the Note-book was lost. The Commissioner thereupon ordered the Government Advocate to adduce evidence as to how the notebook was lost. The grievance of the petitioner is that no such evidence was adduced by the prosecution and that the relevant portions of the file relating to the purchase of the motor-boats were not made available to the petitioner. From the order-sheet of the Commissioner it appears that the petitioner did not press his request on these points and, therefore, I am unable to agree with the contention of the counsel for the petitioner that the enquiry has been unfair.

8. The next contention made on behalf of the petitioner is that the order of

suspension passed by the Government on 6-5-1952 was "ultra vires" and without jurisdiction. It was urged that the order of suspension contravened Article 311 of the Constitution, as the petitioner was not afforded a reasonable opportunity of showing cause against the order of suspension. This argument must be rejected. The question whether an order of suspension is tantamount to an order of "reduction in rank" within the meaning of Article 311 of the Constitution was examined by this Bench in a recent case --"Jyoti Narain v. State of Bihar", Misc. J.C. No. 168 of 1953 dated 22-9-1954 (Pat) (K). In that case it was held by this Bench that an order of suspension is not tantamount to an order of "reduction in rank" and that Article 311 of the Constitution does not apply to an order of that description. The authority of this decision is binding upon us and I accordingly hold that the argument of the petitioner on this point must be rejected and that the order of suspension passed by the Government on 6-5-1952 is not illegal and that it does not violate Article 311 of the Constitution.

9. It was also argued by Mr. Baldeva Sahay that Government has no power to pass an order of "ad interim" suspension against the petitioner. It was conceded by the learned counsel that there is a statutory rule expressly giving power to the Government to suspend an officer. Counsel referred in this connection to Rule 49 of the Civil Services (Classification, Control and Appeal) Rules. But the point taken by the Counsel was that the suspension contemplated in that rule was suspension of a punitive nature and there was no statutory rule or provision empowering the Government to suspend an officer pending an enquiry into the charges made against him. The argument of the Counsel was that suspension in such a case would be of a non-punitive character and Government had no power to suspend an officer in this sense. The Advocate General on behalf of the State of Bihar said that he could find no provision in the Rules expressly granting power to Government to suspend an officer "ad interim" pending an enquiry. But the Advocate General argued that such a power of suspension must necessarily be implied in the power of the Government to investigate into the charges made against an officer.

I shall assume in favour of the petitioner that there is no statutory rule which empowers the Government to suspend an officer pending an enquiry. But I think that even in the absence of a statutory rule Government have power to suspend an officer from performing the duties of his office pending an enquiry into the charges levelled against him. In this connection a distinction must be drawn between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words the employer is regarded as issuing an order to the employee Which, because the contract is subsisting, the employee must obey. This view is supported by the observation of

Lord Justice Cotton in "Boston Deep Sea Fishing & Ice Co. v. Ansell (1888) 39 Ch D 339 where a distinction is drawn between "dismissal" and "suspension" in a contract of service. I think therefore that the argument of Mr. Baldeva Sahay on this point is without substance and must be rejected.

10. For the reasons I have expressed I hold that the petitioner has made out no case for the issue of a writ in the nature of a certiorari under Article 226 of the Constitution. In my opinion this application must be dismissed with costs. Hearing fee Rs. 100.

Chaudhary, J.

11. I agree.