
(1994) 03 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 32849 of 1993

K.G. Shenoy

APPELLANT

Vs

Disciplinary Authority

RESPONDENT

Date of Decision : 29-03-1994

Acts Referred:

Citation : (1994) ILR (Kar) 1550 : (1994) 2 KarLJ 490

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Judgement

Mohan Kumar, J.—The petitioner challenges Annexure-K Order passed by the 1st respondent. Certain irregularities were alleged against the petitioner and with respect to which Annexure-G charge-sheet was framed. By Annexure-H Order dated 16-7-1993, the 2nd respondent was appointed as an Enquiry Officer. On receipt of annexure-H, the petitioner submitted Annexure-J petition on 10-8-1993 before the 1st respondent making, inter alia, the following requests :

(i) That the 2nd respondent is an Officer of the same Grade and junior to the petitioner and as such it is not fair to appoint him as an Enquiry Officer.

(ii) That since the question involved raises questions of law, he may be permitted to engage an Advocate to represent him.

These requests were rejected by the 1st respondent by virtue of Annexure-K Order.

2. The petitioner impugns Annexure-K Order mainly on the following grounds :

(i) Since the 2nd respondent is an Officer junior to the petitioner, there will be an inherent bias on the part of the 2nd respondent since the career interest of the said respondent conflicts with the petitioner.

(ii) The Presenting Officer being a legally trained person and examination of witnesses involves questions of law, denial of the assistance of a lawyer amounts

to denial of a fair and reasonable opportunity to defend himself.

3. Elaborating on this first point, Sri P. S. Rajagopal, learned Counsel for the petitioner, urged that the petitioner and the 2nd respondent are borne on the Middle Management Grade II and that though the second respondent is a Specialised Officer, while the petitioner is on the General Banking side, by virtue of Clause 3.3 of the Promotion Policy for Specialized Officers framed by the 1st respondent, 2nd respondent will come in the same category of Officers as that of the petitioner for further promotion and this circumstance is the genesis for the ground of bias. Clause 3.3 reads as hereunder :

"3.3. The specialised officers will be afforded opportunity for conversion to general banking side after completion of five years of service in the Bank as officer. This will, however, not mean that on completion of five years service as Officer, they will automatically become eligible for conversion to general banking side. Such conversion will be granted entirely at the discretion of the Management and subject to their being found suitable for such conversion by a Committee constituted by the Managing Director from time to time. The Committee shall consist of three officers of the Bank, not below the rank of officers categorised in Scale VI.

The Committee, based on the merit of each individual officer shall prepare a list of such converters. This list will be valid till such time all converters are absorbed on general banking side. The conversion will be granted from the merit list to the extent the Management decides to fill up identified vacancies on the general banking side by such converters.

....."

It can be seen from the clause referred to above that the 2nd respondent cannot ipso facto come over to General banking side. This is depended on several factors. The petitioner came over to the Middle Management II Grade in 1979. The 2nd respondent came over to the said Grade only in 1985. That means, he can aspire to be in General Banking side only on and after 1990. Till this date, the Management has not exercised its power under Clause 3.3 and allowed the 2nd respondent to come over to the General Banking side. His eligibility will depend on the discretion being exercised by the Management subject to his being found suitable by the Committee constituted by the Management. The exercise of this power is by the Committee and is controlled as well. There is no allegation at all that the 2nd respondent will earn the benefit of conversion in any near future. Hence, the apprehension of the petitioner has to be termed as a remote sensitivity.

4. Sri Rajagopal then invited my attention to Vigilance Manual Volume I, para 23.3, to drive home the point that an Officer junior in rank to the petitioner like the 2nd respondent cannot be appointed as Enquiry Officer.

"... The Officer selected should be of sufficiently senior rank and one who is not

suspected of any prejudice or bias against the accused...." (*Italics for emphasis*)

This only means that the Enquiry Officer should be of sufficiently senior in rank; it does not mean that the Officer selected thus should be senior to the delinquent officer. Such a meaning cannot be attributed to the said sentence though Sri Rajagopal may very much desire so. There is no allegation as well to the effect that the 2nd respondent is not a senior officer.

5. Thus, there are no factual basis to infer the allegation contained in ground (a) of the writ petition. In this context, the learned counsel relied on the decision in *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, He drew my attention to the following paragraph :

".... For appreciating a case of personal bias or bias to the subject-matter the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. De Smith in his *Judicial Review of Administrative Action*, (1980) at page 262 has observed that a real likelihood of bias means at least substantial possibility of bias. In *R. V. Sunderland Justices* (1901) 2 KB 357 it has been held that the Court will have to Judge the matter as a reasonable man would Judge of any matter in the conduct of his own business. In *R. V. Sussex Justices* (1924) 1 KB 256 : 1923 ALL ER Rep 233 it has been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In *Halsbury's Laws of England*, 4th Edn., Vol. 2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The same principle has also been accepted by this Court in *Manak Lal Vs. Dr. Prem Chand*, This Court has laid down that 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 operate 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".

The fact of the instant case does not disclosed the existence of any circumstance to apply the above principles.

In the words of the Supreme Court, "a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias" vide *Secretary to Government, Transport Department v. Munuswamy Mudaliar* AIR 1988 SCC 2232. None of the circumstances pleaded by the petitioner is sufficient to indicate that the 2nd respondent is pre-disposed against the petitioner and will decide the cause against the delinquent officer without proper regard to the true merits of the dispute. Further the 2nd respondent has not so far held any sitting and the enquiry had not even commenced. The mind of the 2nd respondent vis-a-vis the dispute has not been exposed to the petitioner so far. It has also to be noticed that as can be seen from Annexure-A judgment, the 2nd respondent was the Enquiry Officer with respect to another set of charges against the petitioner.

The petitioner had then no complaint of bias against the 2nd respondent. This is also a relevant fact to be adverted to in answering the plea of bias.

6. It is settled law that unlike pecuniary bias, in the case of personal bias as now alleged, the delinquent officer has to establish that due to the circumstances alleged there "is a real likelihood of bias in the Judge". Real likelihood of bias means possibility of bias to a substantial degree. It has to be shown that the strength of the preconceived notion of the mind of the Judge will outweigh the fair trial expected of him. It may be apposite at this stage to refer to the following passage from the Administrative Law - C. K. Thakker (1992 Edn.) Page 182 :

"But at the same time, it should not be forgotten that the test of a real likelihood of bias must be 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 must 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. The following observations of Frank, J. in *Linhart v. Lord* (1943) 138 F 2d 650 (652) are worth quoting :

"If, however, "bias" and "partiality" be defined to mean the total absence of preconceptions in the mind of the Judge then no one has ever had a fair trial, and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the process of education formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition are prejudices."

Reasonable apprehension in the mind of a reasonable man is necessary. Such reasonable apprehension must be based on cogent materials. Again, there must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct."

As stated above, vague suspicion cannot be made a ground for bias. Nothing has been established by the petitioner to persuade this Court to come to the conclusion that there are strong circumstances to believe that the mind of the 2nd respondent is biased against the petitioner. The contention of the petitioner on this ground has therefore, to be rejected.

7. Sri. S. N. Murthy, learned counsel for the 1st respondent, invited my attention to the decision of the Supreme Court in *D. P. Maheshwari v. Delhi Administration & Ors.* AIR 1984 SC 153 and contended that the piecemeal challenge of the disciplinary proceeding by means of challenging of interlocutory orders cannot be permitted. From a perusal of the said decision, it is clear that the present challenge of Annexure-K order has to fail on that score as well.

8. Now as regards the contention based on the denial of permission to engage an Advocate to assist the petitioner, Sri Rajagopal relied on the decision of the Supreme Court in J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, In the said decision, it is to be noted that the Presenting Officer of the Employer Corporation was "a man of law" (vide para 8). In that context and taking into account the said circumstance, the Supreme Court stated thus :

"9. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior Executive and could have defended, and did defend, himself competently; but as was observed by the learned master of rolls in Pett. v. Greyhound Racing Association 1968 (2) All ER 545 that in defending himself one may tend to become "nervous" or "tonguetied". Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice. " (Italics for emphasis)

In fact in the preceding paragraph, the Hon^{ble} Supreme Court indicates the fact of granting of permission to engage the services of a Lawyer is in fact a matter of discretion. This is what is stated in para 8 of the Judgment :

"..... The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose some what liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of legal adviser". In the last analysis, a decision has to be reached on a case-to-case basis on the situational particularities and the special requirements of justice of the case.... " (Italics for emphasis)

This question again came up for consideration by a larger bench of the Supreme Court in Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi, their Lordships stated as follows :

"A delinquent appearing before a Tribunal may feel that the right to representation is implied in the large entitlement of a fair hearing based on other rule of natural justice. He may, therefore, feel that refusal to be represented by an agent of his choice would tantamount to denial of natural justice. Ordinarily it is considered desirable not to restrict this right of representation by Counsel or an agent of one's choice, but it is a different thing to say that such a right is an

element of the principles of natural justice and denial thereof would invalidate the enquiry.....".

Later in the same paragraph, after analysing various English Authorities, Their Lordships stated as hereunder :

"From the above decisions of the English Courts it seems clear to us that the right to be represented by a Counsel or agent of one's own choice is not an absolute right and can be controlled, restricted or regulated by law, rules or regulations. However, if the charge is of a serious and complex nature, the delinquent's request to be represented through a counsel or agent could be conceded".

As regards the law in India, after a detailed survey of leading decisions, their Lordships concluded as hereunder :

"12. It is therefore, clear from the above case law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right. The requirement of the rule of natural justice in so far as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent....."

Thus, it is clear that the right to be represented by a Counsel cannot be claimed as a matter of right.

9. Nevertheless as observed by several learned Authors, in a case where the delinquent is not in a position to express himself or his livelihood is in stake, or that his social or financial status are likely to be ruined, or where several complicated questions are raised which the delinquent is unable to comprehend, etc., the question of such delinquent employee being afforded the assistance of a Counsel can be considered. But in the instant case, Annexure-J submitted by the petitioner does not disclose any such circumstance existing at present warranting the granting of legal representation in the enquiry. Nor is it stated therein that the Presenting Officer of the 1st respondent is a legally trained man. In such circumstances, the discretion exercised by the 1st respondent declining permission to engage and Advocate at this cannot be described as arbitrary or illegal. The contention of the petitioner in this behalf has also to fail.

10. In the light of my finding, I dismiss the writ petition. But I make it clear that if after the commencement of the enquiry, the petitioner is able to show that circumstances do exist so to apply, then the dismissal of the writ petition will not prejudice the right of the petitioner to renew his request to permit him to engage a legal practitioner to defend him in the enquiry.