
(1960) 02 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1008 of 1959

K.R. Chari

APPELLANT

Vs

Secunderabad Cantonment Board

RESPONDENT

Date of Decision : 09-02-1960

Acts Referred:

Cantonments Fund Servants Rules, 1937 — Rule 11, 12
Constitution of India, 1950 — Article 226

Citation : AIR 1961 AP 37

Hon'ble Judges : Seshachalapati, J

Bench : Single Bench

Advocate : I.V. Rangacharya and M. Dwarkanath, for the Appellant; J.A. Pinto, for the Respondent

Final Decision : Dismissed

Judgement

Seshachalapati, J.—This is a petition under Article 220 of the Constitution of India for the issue of a writ of prohibition restraining the Respondent Secunderabad Cantonment Board from enquiring into the charges framed against the petitioner.

2. The petitioner is a Sanitary Inspector in the service of the Secunderabad Cantonment Board. One Sri Abdul Rahman, Sanitary Overseer working under the petitioner lodged a complaint with the Assistant Health Officer in the service of the Respondent Board that the petitioner had abused and assaulted him. Thereupon, the Assistant Health Officer, one Major Lopez, conducted a preliminary enquiry and, it is stated in the counter affidavit that Major Lopez called for a written explanation, from the petitioner and intimated to him that he would make an enquiry on 28-7-59. On 28-7-59 Major Lopez questioned the parties and some witnesses. The petitioner filed his explanation before Major Lopez on 29-7-59. Eventually, Major Lopez forwarded the complaint of Sri Abdul Rahman to the Executive Officer, Secunderabad Cantonment Board on 3-8-59. The Executive Officer in his turn put up the matter before the Cantonment Board

with his note dated 4-8-59.

3. The Cantonment Board which meets once a month met on 2-9-59 and constituted an enquiry Committee consisting of Messrs. Jagannadham, Kista Reddy, B. Devarajan, H. S. Gundappa, the Garrison Engineer and the Squadron leader T. W. Mullendeux to investigate into the complaint made by Abdul Rahman and submit a report to the Board. On the same day the petitioner was placed under suspension under the Orders of the Executive Officer of the Respondent Board. The Enquiry Committee met on 14-9-59 and framed certain charges under Rule 12 of the Cantonment Fund Servants Rules, 1937 and caused a memo of the charges to be duly served on the petitioner. The following are the charges :

"You, Sri K. R. Chari, Sanitary Inspector, Cantonment Board, Secunderabad, are charged with the following offences viz :

(i) Behaving in a manner unbecoming to an official of the Cantonment Board towards your subordinate Staff.

(ii) Committing assault upon the person of a subordinate.

The above charges are based on the following allegations.

Charge : (i) and (ii). In that it is alleged by Sri Abdul Rahman, Sanitary Overseer, Cantonment Board, Secunderabad, that on the 18th July 1959 at about 12-30 in the premises of the Bainmrai office you did abuse and use vulgar language towards, and strike Sri Abdul Rahman Sanitary Overseer on the right hand with, a ruler and slapped him on the right cheek.

You are required to submit a written statement in defence of the above charges to reach the undersigned by 12 noon on the 23rd September 1959. The undermentioned witnesses and documents will be examined by the Inquiry Committee in connection with the above mentioned charges. Charge (i) & (ii) :

Witnesses Sri Abdul Rahman S. O.

Fazulla Hussaln " "

Azeez Baig "

" Mohd. Zafar "

" Sathyanarayana T. M.

" Sundarshan Rao A.M. Hyd.,

Mazddor S. Supr :

" Ghouse Khan

Any other witness whom the Enquiry Committee may find necessary to call before them to give evidence. Documents :

- (1) Written copy of the allegations made by Sri Abdul Rahman.
- (2) Office Order Book.
- (3) Service Record Book.
- (4) Any other documents which the enquiry Committee may find necessary to be placed before them in evidence."

With reference to these charges, the petitioner submitted an explanation on 23-9-59 denying the allegations made against him. It is not necessary for me to go into the particulars of either the charges or the denials, as such an enquiry would certainly be not germane to the scope of the present petition.

4. One of the objections raised in the explanation submitted by the petitioner on 23-9-59 was that Sri Devarajan by virtue of his being a Joint Secy. of the Secunderabad Cantonment Board Employees Union of which Abdul Rahman and other witnesses were members and which in its letter dated 14-8-59 submitted the complaint of Abdul Rahman was obviously an interested party.

5. On the 6th of October 1959, the Cantonment Board met and in view of the objection of the petitioner to the appointment of Sri Devarajan, decided to dissolve the enquiry committee and to enquire into the charge by the Full Board at its special meeting to be held on 16-10-59.

6. The Committee met on the 16th of October 59. Among the nine members present Mr. Devarajan was one. At that meeting the petitioner raised an objection with respect to the participation by Devarajan in the meeting of the Board u/s 33 of the Cantonment Act. The petitioner also requested for the assistance of a counsel to help him in his defence. The committee overruled the objection of the petitioner with respect to the inclusion of Sri Devarajan, but allowed the petitioner to be represented by a counsel subject to strict compliance with the procedure laid down in Rule 12 of the Cantonment Fund Service Rules, 1937.

The proceedings were adjourned to 17th October. On that day the petitioner was represented by counsel. The objection to the inclusion of Dsvarajan was again raised and was over-ruled. The counsel requested for time to prepare bis defence and also for the grant of certain copies. Both the requests were accorded and the case stood adjourned to 20-10-59. On 20-10-59, the counsel of the petitioner presented a petition to the Board alleging inter alia that Brig. G. S. Bal had on some previous occasions reprimanded him (petitioner), employing rude & abusive language, and that the petitioner was afraid that with the Brigadier and Devarajan on the Board he would not get impartial justice. The Board overruled this objection and adjourned the case to 21-10-59.

7. At this stage, it is stated, that the petitioner suddenly got ill and had examined himself by the Superintendent, K. E. M. Hospital into which he was admitted on 21-10-59 and later was discharged. The Board assembled on

24-10-59. The petitioner was absent but a medical certificate was produced. It is alleged in the affidavit filed by the petitioner that Brig. G. S. Bal exclaimed as to how the Doctor could give the medical certificate and that he would "report the matter to the D. M. S. and fix him." "It is also alleged that the Brigadier said "the witnesses will not come forward to give evidence; if they come I know how to fix them." To substantiate these allegations the petitioner has filed along with his petition two supporting affidavits from two of the members of the Board viz., Messrs. N. K. Shamlal and K. M. Narsimha Rao.

The petitioner thereupon filed this writ on 21-11-59, praying for a writ of prohibition restraining the Respondent Cantonment Board as represented by its President Brig, G. S. Bal from enquiring into his case in accordance with the resolution (22) dated 6-10-59. Brig, G. S. Bal has filed a long counter-affidavit inter alia refuting the personal allegations made against him as to any animus or preconcieved hostility to the petitioner and stating that as the head of the Cantonment Board he had on some occasions felt the need of correcting the petitioner and that would not sustain the charge of any prejudice.

The allegations as to Brig. G. S. Bal having said that he would report against the Superintendent of K. E. M. Hospital and that the witnesses dare not depose in favour of the petitioner, were denied. I have no reason why I should not accept the statements of Brig. G. S. Bal who is a responsible Officer. But, I am relieved of the need to pursue the question of the petitioner's allegations against Brig. G. S. Bal and his (petitioner's) objections to his participation in the enquiry, for the simple reason that it is stated at the Bar that Brig. G. S. Bal has now been transferred and a new officer has taken charge.

8. Mr. Ranga Chari, therefore, has confined his objections to the present enquiry by the Board only with respect to the participation of Sri Devarajan. The objection of the learned counsel is that Sri Devarajan is the Joint Secretary of Secunderabad Cantonment Board Employees Union and that one Heeroji Rao, General Secretary of the Union had addressed a communication dated 14-9-59 to the Executive Officer, Cantonment Board at Secunderabad making various allegations against the petitioner and, in particular, the alleged action of the petitioner against the Sanitary Overseer Sri. Abdul Rahaman.

It is therefore, argued, that the Secunderabad Cantonment Board Employees Union is championing the cause of Abdul Rahman and, therefore Devarajan who is an office-holder in that union must be regarded as being interested in the case of Abdul Rahman and by reason of that bias Devarajan cannot participate in the enquiry against the petitioner. It is argued that no man can be a Judge in his own cause and the presence of Devarajan on the Board vitiates the legality of the proceedings such that they should be interdicted by the issue of a writ of prohibition.

9. On the contrary, it is argued by Mr. Pinto, the learned Counsel for the Secunderabad Cantonment Board first, that the mere fact that Devarajan is an

office-holder of the Secunderabad Cantonment Board Employees Union is not enough in law to raise the presumption of bias; secondly that before the petitioner could ask the intervention of this court, he should establish not merely the suspicion but a reasonable likelihood of bias and, lastly, that in any event, in the case of a disciplinary action sought to be taken by an employer against its employee, the question of bias is wholly irrelevant.

10. Before proceeding to consider these contentions, it will be necessary to refer to the nature of the Secunderabad Cantonment Board and the rules under which it is purporting to take action. The Cantonment Board is governed by the provisions of the Cantonments Act II of 1924. u/s II, the Cantonment Board is made a body corporate having perpetual succession and a common seal with power to acquire and hold property both movable and immovable and to contract by the said name and to sue and be sued. There is a provision made for the appointment of an Executive officer. The Powers of the Board and of the Executive Officer have been defined in the Act, and it is not necessary to refer to them in detail.

Section 280 empowers the Central Government after previous publication to make rules to carry out the purposes and objects of the Act including--among other things-- appointment, control, supervision, conditions of service, pay and allowances, suspension, removal, dismissal and punishment of the servants of the Board. In notification dated 18-9-37 published by the Government of India Defence Department, Rules called the Cantonment Fund Servants Rules have been made. Under Rule 7(1) of the said Rules, the Executive officer is given the power to appoint all servants whose salary on appointment will not exceed Rs. 25/- per mensem, and all other servants should be appointed by the Board. Rules 11 and 12 provide for the suspension, removal and dismissal of the Cantonment Servants, to whom the rules would apply. Rule 11 provides that the Board or the officer appointing a servant may for reasons to be recorded in writing, censure, withhold increment or promotion, fine, suspend, reduce, remove or dismiss such servant. Rule 12 regulates the procedure to be followed in the case of action taken under Rule 11, Rule 12 is in these terms :

Rule 12 "(1) No order of dismissal, removal or reduction shall be passed on a servant (other than an order based on facts which have led to his conviction in a criminal Court) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case, and a list of documents and witnesses by which each charge is to be sustained.

He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so

desires or if the authority appointing the servant so directs, an oral enquiry shall be held. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing be waived, where there is a difficulty in observing exactly the requirements of the rule and these requirements can be waived without injustice to the person charged.

(2) A copy of the finding and grounds thereof shall be delivered to the servant personally or by registered post. In the event of the servant appealing, the whole proceedings, together with his service roll or service book, if any shall be forwarded with, the memorandum of appeal.

(3) In the case of a menial servant, an equally elaborate inquiry need not be made, but there shall be delivered to him personally or by registered post a copy of the document, showing the ground or grounds on which his reduction, removal or dismissal was ordered."

11. The notice given to the petitioner is admittedly under Rule 12 of the Rules and, therefore, the Board is entitled to enquire into the conduct of the petitioner, and Devarajan as one of the members of the Board would, therefore, normally be entitled to participate in the enquiry. The objection to his participation was sought to be rested before the Board on 16-10-59 on the terms of Section 32 of the Act which is in these terms:

"No member of a Board shall vote at a meeting of the Board or of any committee of the Board on any question relating to his own conduct or on any matter, other than a matter affecting generally the inhabitants of the cantonment, which affects his own pecuniary interest or the valuation of any property in respect of which he is directly or indirectly interested or of any property of or for which he is a manager or agent."

12. There is no question of any pecuniary interest of Devarajan in the matter under enquiry or the valuation of any property in respect of which he is directly or indirectly interested, or of any property of which he is manager or an agent. The respondent Board, therefore, was right in overruling the objection raised by the petitioner on the basis of Section 32 to the participation of Sri Devarajan in its proceedings, D/- 16-10-59.

13. Mr. Ranga Chari, however, contends that even though Section 32 of the Act

may not have any application, still, the participation of Devarajan is opposed to the principles of natural justice, because of his bias in favour of the complaint of Abdul Rahman. As stated already on 14-9-59 Heroji Rao, the Secretary of the Secunderabad Cantonment Board Employees' Union had addressed a communication to the Executive Officer of the Board as to the behaviour of the petitioner. In that letter it is mentioned that the Union received a copy of a petition signed by 10 Sanitary Overseers expressing their protest against the alleged acts of the petitioner on 18-7-59 against Sri Abdul Rahman. On that petition the Executive Officer made a noting to the effect that the allegations against the official were the subject matter of an enquiry by the Board and that all concerned would be informed when the proceedings were finalized. There was a further communication on 16-9-59 by the Union signed by the General Secretary, Mr. Heroji Rao, repeating inter alia the allegations against the petitioner with respect to his treatment of Abdul Rahman. The Executive Officer noted on the letter that no action was required on that till a report is called for by the higher authorities. Mr. Devarajan is not alleged to have had any previous prejudice against or hostility to the petitioner. Admittedly, he has not signed the letters referred to above.

There is no evidence that actually Devarajan was interesting himself in the complaint of Abdul Rahman regarding the conduct of the petitioner. But what is contended is that as a Joint Secretary in the Employees Union, Mr. Devarajan must be deemed to be interested in the cause which the Union has been espousing and that would mean that Shri Devarajan who is a member of the Board, now making the enquiry is affected with bias disqualifying him from participating in the further proceedings.

14. It may be recalled that due to the objection-raised by the petitioner to the inclusion of Devarajan as a member of the Enquiry Committee the Board by its resolution dated 6-10-59 dissolved that Committee and decided to make the enquiry itself, that is, by the full board. It is argued that if Devarajan was found unsuitable to be a member of the Enquiry Committee, he cannot also sit in the full board. Whether in the circumstances of this case the Cantonment Board was found in law to have dissolved the Enquiry Committee or not, it is obvious that it did so for the purpose of allaying the apprehensions of the petitioner as to the conduct of the enquiry. But it seems to me that different considerations would arise when the objection is taken as to Devarajan sitting as a member of the full board,

15. Mr. Rangachari, has contended that it is a cardinal principle of natural justice that a man can-not be a judge in his own cause and by reason of his presumed interest in Abdul Rahman, Devarajan, is disqualified from sitting as a member of the Board to enquire into the charges. He placed reliance on the decision of the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, Subba Rao J., speaking for the majority of their Lordships of the Supreme Court in that case observed that it is one of the

fundamental principles of judicial procedure that the person or persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter.

After citing the view of the English authorities including the decision of Lord Hewart C. J. in *Rex v. Sussex Justices; Ex parte McCarthy*, 1924-1 K. B. 256 the learned Judge held that even in quasi-judicial proceedings the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or the other in the dispute. "It is also a matter of fundamental importance" said the learned Judge :

"that the 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."

In the case which His Lordship had to consider the doctrine of bias, the facts were as follows: Under Chapter IV-A of the Motor Vehicles Act as amended by Act 100 of 1956 a statutory authority called the State Transport Undertaking was created with statutory functions. The State Transport Undertaking of the Andhra Pradesh published a Scheme for running the transport service in a particular area. On the publication of that scheme persons interested could file their objections before the State Government which can, after considering the objections and giving personal hearing to such of the objectors as desired a personal hearing, approve or modify the scheme, as the case may be. In that case a number of private operators filed representations objecting to the proposed scheme.

Though the final order was passed by the Chief Minister, the personal hearing was granted by the Secretary to the Government who was head of the Transport Department. The case of the petitioners before the Supreme Court was that the Secretary who heard their objections had an official interest in the State Transport Undertaking. It is in that context that the learned Judge held that the hearing given by the Secretary, Transport Department offended the principles of natural justice by reason of his interest in one of the parties to the dispute.

16. In the case of proceeding before the Court it is elementary that any pecuniary or other interest disqualifies the judge from hearing the case. The classic example of this rule is the case of *Dimes v. Grand Junction Canal Co.*, (1852) 3 HLC 759, where the House of Lords held that the decree passed by Lord: Cottenham, L. C, in appeal in favour of the canal company was voidable and must be reversed, on the ground that when he made the decree he was a share-holder of the company and this fact was unknown to the other party to the action. This principle has been extended to the case of tribunals performing quasi-judicial functions. In *Frome United Breweries Co. Ltd. v. Bath Justices* 1929 AC 586, Lord Chancellor Cave observed;

"My Lords, if there is one principle which forms an integral part of the English

law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially; and it has been held over and over again that if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute or is in such a position that a bias must be assumed, he ought not to take part in the decision or even to sit upon the tribunal. This rule has been asserted, not only in the case of Courts of justice and other judicial tribunals, but in the case of authorities which, though in no sense to be called courts, have to act as Judge of the rights of others."

In a case where a member of a tribunal exercising judicial or quasi-judicial functions has a pecuniary or proprietary interest, however small, the law assumes bias and under the law of England there is an automatic disqualification. It is, however, interesting to notice that in very recent case in *R. v. Barnsley Licensing Justices* 1959-3 W L R 96 Lord Parker C. J. with whom Donovan J., agreed (Salmon J. dissenting), held that u/s 45(5) of the Licensing Act, 1953, there was an express provision abrogating the disqualification based on pecuniary interest and even so where pecuniary interest is not substantial there cannot be a real likelihood of bias.

17. In cases where the bias is founded on considerations other than pecuniary interest, the question is whether it is enough if there is mere suspicion of bias or whether there should be a real likelihood of bias. The view of Lord Hewart C. J; in 1924-1 KB 256 would mean to indicate that mere suspicion of bias is enough for the disqualification. But there is a strong current of authority that mere suspicion is not enough but that there should be a real likelihood of bias. In *R. v. Rand*, (1866) 1 QB 230, Blackburn J., had to consider this question. In that case the facts were as follows: Under the Waterworks Act, 1854, the waterworks company was empowered to take the water of certain streams without the assent of the millowners until it had been certified by the justices.

On an application made to the justices the millowners opposed, but the certificate was granted. It was found that two of the justices were trustees, of a hospital and a friendly society each of which had lent moneys to the Corporation. On a motion for Certiorari a bench consisting of Cockburn C. J., Blackburn and Shee JJ., discharged the rule. Blackburn J., who delivered the judgment of the Court held:

"There is no doubt that any direct pecuniary interest however small, in the subject of enquiry, does disqualify a person from acting as a judge in the matter; and if by any possibility these gentlemen, though mere trustees, could have been liable to costs, or to other pecuniary loss or gain, in consequence of their being so, we should think the question different from what it is : for that might be held an interest. But the only way in which the facts could affect their impartiality, would be that they might have a tendency to favour those for whom they were trustees; and that is an objection not in the nature of interest, but of a challenge to the favour. 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;"

The test propounded by Blackburn J. as to the real likelihood of bias has been, approved and applied in several decisions of the English Courts. In *Frome United Breweries Co's Case* 1926 AC 586 the House of Lords have approved of the real likelihood test. The Lord Chancellor observed :

"This being so, the justices who are members of the authority are bound to act judicially and not to sit if they are subject to that which in (1866) 1 QB 230 was referred to by Blackburn J., as a "real likelihood of bias,"

Lord Atkinson also took the same view. Lord Sumner in his speech said:

"The question which we have to determine is, I apprehend, that stated by Blackburn J., in delivering the judgment of the Queen's Bench in 1866-1 QB 230, namely, was there in this case such, an interest on the part of the justices whose decision is impugned as to create a likelihood that they would have a bias in favour of the applicant....." In *R. v. Camborne Justices*, 1954-2 All EU 850., Slade J., reviewed the authorities hearing on the question and held that :

"To disqualify a person from acting in a judicial or quasi-judicial capacity on the ground of interest (other than pecuniary or proprietary) in the subject matter of the proceedings, a real likelihood of bias must be shown."

18. Quite apart from the question whether it is the suspicion test that should apply or the real likelihood test, the rule as to bias has certain exceptions. One is necessity, as where an action is brought against all the judges of a Court "in a matter over which the Court has exclusive jurisdiction", or where the judge commits a party to contempt of court. In such cases the principle of no man can be a judge in his own cause" may have no application. The second exception is where the statute itself provides that notwithstanding the presence of pecuniary or other interest the members of a tribunal are not disqualified from participating in the proceeding as in several licencing Acts.

The third exception is where the parties consent to the award by a referee who necessarily has interest in the dispute (8) (*Broom's Legal Maxims*, 10th Edn. 68). Such is the case of certain types of works contracts where the Chief Engineer is appointed as the sole arbitrator even though he was one of the parties to the contract and would have had opportunity for forming the opinion about the matters in dispute : vide *McKenzies Ltd. v. Sulleman and Co.*, AIR 1933 Sind 75; *Ives and Barker v. Williams*, (1894) 2 Ch. 478 and also *Jubilee Chamber of Commerce Ltd. Ravalpindi v. Amrit Shah* AIR 1940 Lah 180.

19. The question of bias is a relevant factor in the case of a tribunal discharging judicial or quasi-judicial functions when it is adjudging between two contesting parties and where there is what is called a "triangular situation", of two parties to a dispute and a third person to decide as in the case of *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and*

Another, . In this case that is not the position. On the complaint being made by Abdul Rahman and on the report of Major Lopez the charges were framed by the sub-committee and it is the entire Board that is now investigating into the charges. The lis is not between Abdul Rahman on the one hand and Mr. Chari on the other. It is a case where the Secunderabad Cantonment Board, as the employer is taking disciplinary action against its employee on certain charges. The dispute if it could be called one is between the master and the servant. Further, under Rule 11 of the Cantonment Fund Servant Rules, it is the Board that should take the disciplinary action.

It is, therefore, a case where the petitioner as the servant of the Board had rendered himself liable as a part of the contract of his employment to be removed, suspended or dismissed by the Board in accordance with the procedure prescribed under Rule 12, It would not be open to him to say that the tribunal has no jurisdiction to take action against him on the ground that one of the members has already formed pre-conceived opinions in the matter. If that be the case, it would be a disqualification that would be common to all the members of the Board for the reason that the very fact that they propose to enquire into the charges would show that they have reason to believe that a case has been made out for enquiry.

In a case of this kind where under the rules, the appropriate authority has to take disciplinary action, the fact that one of its members is presumed to have previous knowledge of the facts of the charge cannot disqualify him from sitting on the Board or invalidate the proceedings.

20. I may in this connection refer to the decision in *R. v. Bishop of St. Albans* (1882) 9 QBD 454 which seems to me to have a direct bearing on the facts of the instant case. The facts of that case were as follows: Under the Church Discipline Act, 1840 a Bishop was authorised to hear and determine a charge against a clerk in Orders of having committed an ecclesiastical offence. A complaint was made against the Vicar by a person. The Bishop directed his secretary, to act as a promoter, and on the application of the secretary, issued a commission addressed to commissioners to inquire into allegations against the Vicar.

The Commissioners held an enquiry and reported to the Bishop that there was *prima facie* ground for institution of further proceedings against the Vicar, who was served with the citation and articles. The citation which was issued under the hand of the Bishop required the vicar either in person or by his agent to appear before the Bishop at a certain place within the diocese on a certain day. The articles were promoted by the secretary of the Bishop. The vicar did not appear and when the Bishop was about to proceed to hear and determine the case with assessors, a motion was made for the issue of a rule of prohibition to the Bishop on the ground that he is disqualified by interest from hearing the case. Field J. with whose opinion Cave J. agreed declined to interdict the enquiry by the Bishop and discharged the rule. It was there observed :

"The Bishop, in the exercise of his duty as pastor of the diocese, thinks it right to proceed on the report of the commission. If he is to be restrained, it can only be on the general principle of law that a judge shall not be judge of his own cause. The principle is of the highest importance. But there is no doubt also that for public convenience, and for the sake of justice at large there are some cases where a man may be judge in his own cause; as in case of necessity, for example when a judge commits person for contempt of his Court. The law deems this necessary for the administration of justice. The legislature itself has directly interposed in some cases, and declared that justices, although ratepayers, may hear rating appeals, the effect of which may be to reduce their own contribution to the rate. Therefore, exceptions to the general rule are not unknown to the law."

21. The principle of the above decision has to my mind direct application to the facts of this case. Under the rules of employment which are as much binding upon the petitioner as on the Cantonment Board, the disciplinary action within the meaning of Rule 11 has to be taken by the Cantonment Board. When it proposes to take action, it can only be on the footing that it has formed a prima facie opinion that action should be taken. In such a case, it would not be open to the employee to say that the employer has already pre-conceived ideas. One can imagine a case where two or three members of the Board were deputed to look into the work of an employee and, if, on their report that the work was not satisfactory, charges are framed by the Board, could it be said that those persons who had made a preliminary investigation could not sit on the Board?

Supposing there is only a single employer and during the course of his official duties he notices derelictions of duty on the part of the employee and takes disciplinary action, could it be said that it is open to the employee to say that the employer cannot take action against him because he has pre-conceived ideas? When a principal of a college seeks to take action against a student for misconduct of which he has personal knowledge, could it be said by the student that the principal cannot take action against him? If, under the staff regulations and standing orders of an industrial concern a general manager has the duty and the power to take disciplinary action against workmen, I doubt if it is open to the workman to say that the general manager, because of his prior knowledge of the conduct of the workman, is disentitled to conduct the enquiry. In all such cases, the maxim *Nemo Debet Esse Judex In Propria Sua Causa* will have no application. The other principles of natural justice would, however, apply, viz., whether the employee has had reasonable notice and whether he has had opportunities of presenting his case.

22. On the facts of this case it would be found that it was not Devarajan that initiated the complaint. Mr. Abdul Rahman made a complaint and it is on the preliminary report of Major Lopez that the Board decided to take action, It was not Devarajan who wrote letters to the Executive Officer on the 14th and 10th of September 1959. There is no evidence that he has had any personal hostility to

the petitioner. AH that can be said is because of his official position in the Employees. Union, he must be assumed to be in sympathy with the allegations made against the petitioner by Abdul Rahman. That is a charge that could be brought against all members of the Board, because, they had decided to proceed with the enquiry and in that decision is implicit their belief that there is a prima facie case which the petitioner has to meet. I hold, therefore, that it is not a case in which at this stage the petitioner is entitled to invoke the jurisdiction of this Court and ask for a writ of prohibition.

23. If, however, the enquiry is not conducted in strict conformity with the rules of procedure laid down in the rules or other principles of natural justice, it is open to him to seek such remedies as he has under the Cantonment Fund Servants Rules or seek for such reliefs as he may be entitled to under the general law.

24. The petition therefore fails and is dismissed with costs, Advocate's fee Rs. 50/-.