

(1978) 12 KL CK 0019
In the High Court Of Kerala
Case No : Writ Appeal No. 151 of 1978

M. Madhavan Pillai

APPELLANT

Vs

K.A. Balan and Others

RESPONDENT

Date of Decision : 07-12-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala University Act, 1974 — Section 34, 60

Citation : AIR 1979 Ker 120 : (1978) 37 FLR 59 : (1979) 1 ILR (Ker) 374

Hon'ble Judges : P. Gopalan Nambiyar, C.J.; V. Balakrishna Eradi, J.; George Vadakkal, J

Bench : Full Bench

Advocate : Manuel Paikedy and Mathai Paikedy, for the Appellant; T.C.N. Menon, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, C.J.—A Physics Lecturer of the S. N. M. College, Meliankara -- a private college managed by a Corporate Educational Agency, the H. M. O. P. Sabha, Vadakekara, Parur --has preferred this appeal against the judgment of the learned Judge dismissing his writ petition. The Principal of the College made an appointment of the Head of the Department of Physics. The appellant was one of those who strongly resented the appointment and regarded it as an act of favouritism. The form and manner of the appellant's protest led to disciplinary proceedings being initiated against him and to his suspension pending enquiry. A junior of the Manager's Standing Counsel was, in the first instance, appointed Enquiry Officer. The appellant protested, and filed O. P. No. 3747 of 1975 in this Court. The Management agreed for appointment of a fresh Enquiry Officer. The 2nd Respondent, an Advocate of this Court was chosen as the fresh Enquiry Officer. The appellant repeated his protest alleging that the said 2nd Respondent was intimately associated with the Standing Counsel for the Management. He raised the fundamental and basic objection that the Management was really the accuser against him, and cannot be a Judge in its own cause against the

fundamental principle of natural justice forbidding such a course of action. The Management could not, it was added, do indirectly through the medium of an Enquiry Officer, what it cannot do directly, itself. The learned Judge held that having regard to Section 60 of the Kerala University Act, 1974, the Management's action in appointing the Enquiry Officer was legal and valid and not open to challenge, and dismissed the writ petition.

2. We may extract Section 60 of the University Act, 1974.

"60. Conditions of service of teachers of private colleges. -- (1) Notwithstanding anything contained in any law or in any contract or other document, the conditions of service of teachers of private colleges, whether appointed before or after the commencement of this Act, including conditions relating to pay, pension, provident fund, gratuity, insurance and age of retirement, shall be such as may be prescribed by the Statutes.

(2) No teacher of a private college shall be kept under suspension by the educational agency except when disciplinary proceedings are initiated against him.

(3) When a teacher of a private college is suspended for a period exceeding fifteen days, the matter, together with the reasons for the suspension, shall be reported to the Vice-Chancellor.

(4) Any disciplinary proceedings initiated under Sub-section (2) shall be completed within a period of three months or within such further period as may be allowed by the Vice-Chancellor after hearing the parties concerned.

(5) Any person aggrieved by an order of the Vice-Chancellor under Sub-section (4) may, within a period of thirty days from the date of receipt of the order by him, appeal to the Appellate Tribunal.

(6) No disciplinary action shall be taken against a teacher without giving him a reasonable opportunity of showing cause against the action proposed to be taken against him.

(7) Any teacher aggrieved by an order passed after the commencement of this Act in any disciplinary proceeding taken against him may, within sixty days from the date on which a copy of such order is served on him or within sixty days after the Appellate Tribunal has been constituted under this Act, whichever period expires later, appeal to the Appellate Tribunal and the Appellate Tribunal may, after giving the parties an opportunity of being heard, and after such further inquiry as may be necessary, pass such order thereon as it may deem fit, including an order of reinstatement of the teacher concerned:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause for not presenting the appeal within the said period.

(8) Any order passed by the Appellate Tribunal under Sub-section (7) may be

executed through the Subordinate Judge's Court having jurisdiction over the area in which the private college is situate as if it were a decree passed by that Court.

(9) Any person who objects to an order passed by the Appellate Tribunal under Sub-section (7) may within sixty days from the date on which a copy of such order is served on him, prefer a petition accompanied by court-fee stamps of the value of ten rupees to the High Court on the ground that the Appellate Tribunal has either decided erroneously, or failed to decide, any question of law.

(10) The provisions of Section 5 of the Limitation Act, 1963, shall be applicable to any proceedings under Sub-section (9).

(11) The High Court shall, after giving the parties an opportunity of being heard, pass such order on the petition, as it deems fit.

(12) Where the High Court passes any order under Sub-section (11), the Appellate Tribunal shall amend the order passed by it in conformity with the order of the High Court." The Section provides that the conditions of service of teachers of private colleges shall be such as may be prescribed by the Statutes. Section 2 Clause (14) defines the expression "prescribe" to include prescribed by Statutes (in view of the definition, the reference to prescription by Statutes in Section 60(1) seems redundant). Section 34 of the Act authorises the framing of statutes. It was agreed that the First Statutes which had application to the instant case, is the First Statutes of 1972, framed under the prior Act (vide Section 82(3) of the Act). Chapter L deals with disciplinary action against teachers of private Colleges. Statute 1(c) defines disciplinary authority as follows :

" "Disciplinary authority" in relation to the imposition of a penalty on the teacher of a private college means the management."

Statutes 8 and 9 provide for imposition of minor penalties by the disciplinary authority. Statute 10 provides for imposition of major penalties. Under Statute 10(1) (b), the decision whether a formal enquiry may be conducted, is to be by the management. We shall extract Statute 10(1)(c).

"10. Procedure for imposing major penalties:--

(1) (a) & (b) x x x x x x

(c) The formal enquiry may be conducted by :

(i) the management of the private college, or

(ii) any authority or person authorised by the management of private college:

Provided that the person so authorised shall be an advocate of ten years" standing or a Professor not below the rank of the teacher concerned." Statute 10(5) provides for enquiry; and 10(7) for finding by the enquiry authority in regard to the charges. Under Statute 10(9) the disciplinary authority, if it is not

the enquiry authority is to consider the record of enquiry and record its findings. In the light of these provisions there is no substance in the contention that the Management can only initiate the enquiry, but cannot process or proceed with the same.

3. The argument of counsel for the appellant was that in a case where the management itself is the accuser or prosecutor, it cannot conduct the enquiry either directly or indirectly and that the rule of natural justice enjoining a person not to be a judge in his own cause, should be applied to disqualify the Management in such a case, from conducting or directing the enquiry. It was argued that Statute 10(1)(c) should be read down so as to conform to this fundamental principle of natural justice and that the said principle should be read into the Statute. Counsel cited the well-known passages from the judgment in *Frome United Breweries Co. Ltd. v. Bath Justices* 1926 AC 586 At p 590 Viscount Cave L. C. stated:

"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 judges of the rights of others.

X X X X X X From the above rule it necessarily follows that a member of such a body as I have described cannot be both a party and a judge in the same dispute, and that if he has made himself a party he cannot sit or act as a judge, and if he does so the decision of the whole body will be vitiated."

Lord Atkinson, inter alia, quoted a passage from the judgment of Cotton C. J. in *Leeson v. General Council of Medical Education* (1890) 43 ChD 366 which was to this effect:

""Of course the rule is very plain, that no man can be plaintiff, or prosecutor, in any action, and at the same time sit in judgment to decide in that particular case -- either in his own case, or in any case, where he brings forward the accusation or complaint in which the order is made."

We refrain from further quotations from that classic judgment. Counsel referred us to the Donoughmore Committee Report pages 76-77 and 103 and to the decisions of the Supreme Court in *Manak Lal Vs. Dr. Prem Chand*, ; *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, ; *Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*, . Counsel also referred to the decision of the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, . It was observed:

(At p 42)

"7. As observed by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , "the aim of rules of natural justice is to secure justice Or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". It is true that if a statutory provision can be read consistently with the principles of natural justice, the Court should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision, conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

The appellant argued that by reading the principle of natural justice in the Statute 10(1)(c), the Management must be disqualified either from holding or from directing the enquiry. Statute 10 (1)(c) provides only two modes of conducting the enquiry, one directly by the Management, and the other, by a person authorised by the Management. No other mode of conducting the enquiry is provided. To a question from us whether the importation of a disqualification based on the rule of natural justice would not result in a total effacement of the Statute, and the creation of a vacuum in the manner of conducting the enquiry, Counsel very fairly admitted that this was so. But he pleaded that the omission must be made good by judicial intervention. We do not, and cannot, think that the rule of natural justice pleaded by Counsel, should be let in to override the plain and clear statutory provision. A typical example of a statutory provision which can be read down to square with principle of natural justice, is afforded by the decision of a Division Bench of this Court in Kumara Mannadiar v. Dist. Educational Officer, Palghat (1976 KLT 639) The Division Bench was there concerned with the scope of the proviso to Section 12A of the Kerala Education Act which required the Educational Authorities to give the first option of taking disciplinary proceedings against a teacher to the Manager of a private aided institution before taking the action itself. It was ruled that the proviso had obviously to be read down so as to be inapplicable to the case of a Manager being himself the teacher proceeded against. After referring to the fundamental principle of natural justice that a prosecutor or plaintiff cannot sit in judgment over his own case, this Court observed:

"2..... To apply the proviso giving to it its literal grammatical meaning will therefore lead to the position that this Court has directed that something should be done which is opposed to the principle that we have stated. This of course we

cannot do and we do not think we can read the proviso as insisting upon any such procedure being followed as such procedure would lead only to manifest injustice. We cannot therefore accept the argument that has been advanced by Counsel for the appellant that the order Ext. P1 must be set aside on the ground that the proviso to Section 12-A had not been complied with. In those circumstances, we have to apply another well-known principle as has been stated by Justice Venkatarama Ayyar in the decision in *Tirath Singh Vs. Bachittar Singh and Others*, . The principle is:

(At p. 833)

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, a hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

This principle has been relied on by the Supreme Court in a number of other decisions but we may refer to only one more decision in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, . Applying this principle, we will read the proviso as non-applicable to cases where the manager happens to be the teacher against whom action is to be taken."

But in this case an application of the principle of natural justice results in, not an attenuation of the statutory provision, but in its total effacement or extinction. On the authorities, that is not permissible.

4. Counsel for the appellant contended that in England Parliament is supreme, whereas in our country the law made by Parliament is subject to Chapter III of the Constitution on fundamental rights. But even in our country while a statutory provision can be read in appropriate cases so as to square with the principles of natural justice, it is not to be overridden by such principles.

5. Next, we may usefully refer to a case falling on the other side of the line, the decision of a Division Bench of this Court which has exhaustively surveyed whether the principle of natural justice can override a plain statutory provision. We refer to the pronouncement of a Division Bench in *Chirakkal Devaswam's case Rama Varma Valia Raja v. Inspector, H. R. & C. E. (Ada) Dept. Cannanore* 1959 KLT 1147 The statutory provision there considered was Section 57 of the Madras Hindu Religious Endowments Act 1951, which empowered the Deputy Commissioner to enquire into and decide inter alia, whether an institution is a religious institution. The argument was that to allow the Deputy Commissioner to do so on a petition preferred by his own department, would be to constitute him a judge in his own cause. This Court observed.

"7. There is no doubt that the first and most fundamental principle of natural justice is that a man may not be a judge in his own cause and that disqualifying interest is by no means confined to a pecuniary interest. Halsbury deals with bias

by interest as follows:

"It is an elementary principle, that in the absence of statutory authority or consensual agreement no man can be a Judge in his own cause. Therefore where persons who have a direct interest in the subject-matter of an inquiry before an inferior tribunal take part in adjudicating upon it the tribunal is improperly constituted and is without jurisdiction, and the court will grant an order of prohibition to restrain it from adjudicating or an order of certiorari to quash a determination arrived at by it.

Any pecuniary interest however small in the matter in dispute disqualifies a person from acting as Judge unless the disability is removed by statute.

Where the interest of the person adjudicating is not pecuniary, the order will not be granted unless it is shown that his interest is substantial and of such character that it will give rise to a real likelihood of bias, or that his decision was actually biased. A mere suspicion, or even a reasonable suspicion, of bias will not of itself suffice". (3rd Edition, Vol. II, page 67).

8. In (1951) 2 ALLER 850, Slade, J., posed the question for determination as follows:

"What interest in a judicial or quasi-judicial proceeding does the law regard as sufficient to incapacitate a person from adjudicating on it or assisting in adjudicating on the ground of bias or appearance of bias?" and answered:

"It is, of course, clear that any direct pecuniary or proprietary interest in the subject-matter of a proceeding, however small, operate as an automatic disqualification. In such a case the law assumes bias. What interest short of that will suffice? In the present case, it is claimed that a reasonable suspicion of bias is enough. It is true that there are dicta and passages to be found in judgments which lend some colour to this claim, but the authorities as a whole are almost overwhelming in support of the requirement that, to use the well-known words of Blackburn, J., in (1865) 1 QB 230 (233) "a real likelihood" of bias must be proved to exist before proceedings will be vitiated on the ground that a person who has taken part or assisted in adjudicating them was in law incapacitated by interest from doing so."

9. The "suspicion" test derived considerable support from the following passage in the well-known judgment of Lord Hewart, C. J. in (1924) 1 KB 256 (259) :

"But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." Lord Hewart's dictum -- it was invoked in this case also -- was dealt with as follows by Lade J:

"The frequency with which allegations of bias have come before the courts in recent times seems to indicate that the reminder of Lord Hewart C. J. in (1924) 1

KB 256 (259) that it is "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

Is being urged as a warrant for quashing convictions or invalidating orders on quite unsubstantial grounds and, indeed, in some cases, on the flimsiest pretexts of bias. While indorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart, C.J., this Court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done,"

10. There is no doubt that the legislature if it so decides, can dispense with all or any of the hallmarks of natural justice and make a person a Judge in his own cause. Coke, in his Institutes suggested that a statute which violated the principles of natural justice could be held to be of no effect but as pointed out by Keston in Current Legal Problems, 1955, page 30 "such a doctrine was obsolete even in his day."

11. Herbert, C. J. is reported to have said that "even an Act of Parliament made against natural equity as to make a man a judge in his own case, is void in itself." Broom's comment is:

"Although it is contrary to the general rule to make a person judge in his own cause the legislature can and no doubt in a proper case would, depart from that general rule, and an intention to do so being clearly expressed the Courts give effect to their enactment" Legal Maxims, 10th Edn.

page 72.

Of course, as pointed out in 1954 AC 216, if there is any ambiguity in the statute, the Court will lean against a construction which makes a man a judge in his own cause."

This Court then examined the Supreme Court's decision in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and commented as follows:

14. The positions of the Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and that of the Deputy Commissioner u/s 57 of the Madras Hindu Religious and Charitable Endowments Act, 1951, are entirely different. Sub-section (2) of Section 68D of the Motor Vehicles Act, 1939, under which the hearing was given only says that "the State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State Transport undertaking to be heard in the matter, if they so de-sire, approve or modify the scheme". It does not specify any particular officer as is done in Section 57 of the Madras Hindu Religious and Charitable Endowments Act, 1951. In other words, there is no statutory mandate to the Secretary of the Transport Department u/s 68D of the Motor Vehicles Act, 1939, as there is to the Deputy

Commissioner u/s 57 of the Madras Hindu Religious and Charitable Endowments Act, 1951.

15. A clear legislative provision will certainly prevail as against any canon of natural justice. Such a provision is embodied in Section 57. This is apparent not merely from the wording of that section but also from the absence of any alternative arrangements for inquiry and decision in case it is held that the Deputy Commissioner is not competent to act in a given case,

The decision is directly in point. The statutory provision we are dealing with is *ad idem*, and the importation of the rule of natural justice would lead to its evisceration. Equally in point, is the decision of another Division Bench of this Court in *State of Kerala and Others Vs. M.C. Joseph*, , which laid down that the principles of natural justice cannot avail against an express contractual term entered into by agreement or consensus of the parties, providing for a particular mode of adjudication of disputes arising under the contract. The two decisions in 1959 KLT 1147 and *State of Kerala and Others Vs. M.C. Joseph*, exemplify the statement in *Halsbury's Laws of England*, 3rd Edn. Vol. II p. 67 that the principle of natural justice that no man shall be a judge in his own cause cannot prevail against an express statutory provision, or a consensual term.

6. Counsel for the appellant argued that while principle of natural justice may be overridden by a statutory provision, the same result cannot be achieved by a subordinate legislation, such as rules, or as in the present case, by the University Statutes. We do not think the argument is tenable. In *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, the Supreme Court observed:

(At p. 1337)

"16. In England subordinate legislation has, if validly made the full force and effect of a statute, but it differs from a statute in that its validity whether as respects form or substance is normally open to challenge in the Courts."

17. Subordinate legislation has, if validly made, the full force and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing, the result of a breach thereof, is, in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute. *Re Langlois and Eiden*, (1891) 1 QB 349 and *Kruse v. Johnson*, (1838) 2 QB 91." In view of the position thus stated, we see no force in the argument of Counsel for the appellant.

7. It is really unnecessary to multiply citations or authorities, as, on the clear language of the statutory provision with which we are concerned in the instant case, we are satisfied that there is no room to read the principle of natural justice into Statute 10(1)(c) of Chapter L of the First Statutes 1972, as contended for by Counsel for the appellant.

8. We may refer to the recent (Fourth) Edition of Wade's Administrative Law, Chapter 14, page 400 where the maxim "No man shall be a judge in his own cause" has been fully discussed. Of particular interest is the following passage:

"Indivisible authorities cases of necessity.

In all the cases so far mentioned the disqualified adjudicator could be dispensed with or replaced by someone to whom the objection did not apply. But there are many cases where no substitution is possible, since no one else is empowered to act. Natural justice then has to give way to necessity, for otherwise there is no means of deciding and the machinery of justice or administration will break down.

9. We may also observe that we see nothing wrong on principle in vesting of the disciplinary powers and powers of enquiry in the management vis-a-vis the private teachers under its employment. In an allied sphere, relating to the power to take disciplinary proceedings against teachers of private aided institutions, it was ruled by Mathew J of this Court (as he then was) in *P. R. Mamoo v. Manager, Mooveri Mapala L.P. School*, 1968 KLT 537 that the right belongs to the management and not to the.....educational authorities. This was responsible for the introduction of Section 12-A in the Kerala Education Act. This aspect of the matter apart, we are also not satisfied, that at this stage the petitioner has made out any case for interference under Article 226. The college concerned is a purely private college, affiliated no doubt to the University but that would not make it a statutory body, nor give the teacher a statutory status. In the absence of these, it has been well recognised by series of decisions that the aggrieved teacher would not be entitled to relief under Article 226. In *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, , Mathew J. surveyed the case law on the subject with special reference, in particular to the *Vidyodaya University's* case (1964-3 All ER 865), and to the decision of the House of Lords in *Malloch v. Aberdeen Corpn.* (1971 1 WLR 1578), and the many decisions of the Supreme Court, and summarised the position thus:

(At p. 1455)

"13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in *S.R. Tewari Vs. District Board Agra* and Another, might apply, it is necessary that..... the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing Committee in question, is not a statutory body and so the argument of Mr. Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has sub silentio sanctioned

the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, and, therefore, the fact that the college or the managing committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court." The principle was reaffirmed recently in Vaish College case (AIR 1976 SG 888) where the court observed:

(At p. 892)

"It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, at p. 1339 this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A. N. Ray C. J. observed as follows: "A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. If it is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute."

It is therefore clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountain-head of its powers. The Question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.

In Arya Vidya Sabha, Kashi and Another Vs. Krishna Kumar Srivastava and Another, the same position was repeated in regard to the Dayanand Mahavidyalaya Degree College, Varanasi, an institution affiliated to the Banaras Hindu University. It was said that it was not a creature of the statute but an entity like a company or a cooperative Society or other body created under the statute. The matter arose out of proceedings in a suit. The same was the position in regard to the Vaish College.

10. In Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra, the question directly arose in writ proceedings in regard to Colvin Taluqdar College, Lucknow, run by a society registered under Societies' Registration Act. The disciplinary action taken by the college against a teacher was sought to be quashed in writ proceedings. It was observed

(At p. 336):

"It is not correct to think that since the college has to have a committee of management as required by Section 16-A a managing committee that looks after the affairs of the basic section of the college must also be functioning as a statutory body discharging duties under the Intermediate Education Act and governed by the Regulations framed thereunder. The Division Bench sought support for the view it had taken from some provisions in the Educational Code of Uttar Pradesh but, as pointed out by the learned single Judge, the Code is only a compilation of the various administrative rules and orders relating to educational institutions in the State and has no statutory force." The decision is directly applicable.

11. It remains for us to examine the correctness of the decision in Cochin Devaswom Board Vs. Akhileswara Iyer, , on which the strongest reliance has been placed by the counsel for the petitioner. The dispute was between the Principal and the Management of Sri Kerala Varma College. Trichur a private college run and administered by the Cochin Devaswom Board, vested with authority over the College u/s 62 of the Hindu Religious Institutions Act, 1950, which is as follows:

"62. (1) The administration of incorporated and unincorporated Devaswoms and Hindu Religious Institutions which were under the Management of the Ruler of Cochin immediately prior to the first day of July 1949 either u/s 50-G of the Government of Cochin Act, XX of 1113 or under the provisions of the Cochin Hindu Religious Institutions Act, I of 1081, and all their properties and funds and of the estates and all institutions under the management of the Devaswom Department of Cochin, shall, vest in the Cochin Devaswom Board.

(2) Notwithstanding the provisions contained in Sub-section (1) the regulation and control of all rituals and ceremonies in the temple of Sree Poornathrayeesa at Trippunittura and in the Pazhayannur Bhagavathy Temple at Pazhayannur shall continue to be exercised as hitherto by the Ruler of Cochin."

Sri Akhileswara Iyer was appointed in 1947 as Professor and Head of the Department of History and Economics. In June 1951 he became the Vice-Principal; and from 1st December 1951 he was appointed the Principal. There was dissatisfaction in the Devaswom Board about his administration of the College, which resulted in the Principal being served in October 1958 with a resolution by the Board. In regard to the resolution of the Board Sri Iyer countered. An explanation was demanded from the Principal. This was followed up by memorandum from the Secretary to the Board directing that the College or

Library be checked. This resulted in a number of questions being put to the Principal and in his suspension in December 1958. This was challenged and the order was quashed by learned Judge. One of the appeals was against the said order. After the quashing of the management's action aforementioned, the Principal demanded arrears of salary from 1st October 1958, The Devaswom Board then issued a notice asking the Principal to substantiate the allegations made by him against the Board in the affidavit in his writ petition. Explanation was also demanded in respect of the charge drawn up after the Library checking. After consideration of the explanations the Principal was dismissed. A writ petition was filed to quash the order and the main ground taken was that the order was vitiated because the Board was a Judge in its own cause. A learned Judge of this Court held that the Board had no jurisdiction to pass orders, or proceedings and charges, intended to be taken at one time, but closed long ago. The second of the appeals disposed of in Akhileswara Iyer's case was against this judgment of the learned Judge.

12. The Principal sent a letter to the Board requesting reinstatement and repeating that if the disciplinary proceedings were to be continued, the Board should refer the matter to an independent Tribunal under the University Act. The Board rejected the request and called from the Principal to file his explanation. The Principal thereupon filed a writ petition to restrain the Board from proceeding with the enquiry. On behalf of the Board the argument advanced was that no writ of certiorari or prohibition could be issued against it. The learned Judges posed the question for determination in paragraph 5 of the judgment thus:

"In our opinion, the question inviting adjudication in the two appeals is whether the proceedings complained against were of an authority exercising quasi-judicial power and whether they were vitiated by failure to observe principles of natural justice. It is not disputed that the appellant asked the principal to furnish statements under Rule 18 of the Conditions of Service of teachers in the College, of which the relevant extracts read as follows:--

"18. (1) The Management shall have the power to terminate the services of any teacher when he becomes a permanent member of the Staff of the said College:

(a) Without notice for any or all of the following reasons:

Wilful neglect of duty serious misconduct; gross insubordination; mental unfitness;

(b) With three months notice or three months salary in lieu thereof for the following reasons:--

Incompetence; retrenchment; physical unfitness of any other good cause:

Provided that:--

(a) The Management shall not terminate the services of any teacher whether summarily or otherwise without informing him in writing of the grounds on which

they intend to take action and giving him what, in their view, is a reasonable opportunity for stating his case In writing and before coming to a final decision, shall duly consider his statement, and if he so desires, give him a personal hearing."

It is clear that Rule 18(1) confers authority on the Board to determine questions affecting the rights of teachers and, when exercising such power, the Board is under the duty to act Judicially. That duty is further emphasised by the proviso requiring the action under both Rules 18(1)(a) and (b) to be after written information of the grounds and after affording opportunity for representation against the action intended, There Is again the requirement of considering the representation before coming to final decision. It follows that in determining the liability of the Principal for being dismissed the appellant would be acting judicially, and any decision by biased minds would be neither a proper performance of the duty, nor a fair compliance with the proviso. The decision would be so treated, because the rule is well settled that no man shall be Judge in his own cause, and interest disqualifies."

The learned Judges then examined certain English and Indian decisions to which It Is not necessary to refer, and stated as follows:

"6. It follows that proceedings by Tribunals under duty to act judicially are governed by principles of natural justice, and one such principle excludes persons with biased minds from being Judges in the cases where their minds be not open or Impartial It is further clear that the principle is of general application and proceedings of contractual domestic tribunals cannot claim being exempted. In support we would refer to what Maugham, J., has said in *Macleaq v. Workers' Union*, (1929) 1 Ch D 602. The learned Judge at p. 626 says:

"That some members of the tribunal may go out of their way to Up themselves in a special position as prosecutors and thus to x x x disable themselves from sitting in a quasi-judicial capacity at the inquiry cannot be denied."

Therefore, contractual domestic tribunals are also under obligation to inquire with minds that are not biased, and the point to be determined in the two appeals is whether the minds of the deciding authority were not biased.

It was held that the decision was vitiated by bias and that the order of suspension was void. The Division Bench substituted a declaration for the relief of certiorari that had been granted by the learned Judge.

13. The first comment that we make on the decision is that it is unfortunate that the attention of the learned Judges was not drawn to the earlier pronouncement of the Division Bench in the *Chirakkal* case 1959 KLT 1147 . No arguments either, seem to have been addressed to the learned Judges, that the principle of natural justice cannot override an express statutory provision. We shall assume, without deciding, that Rule 18 quoted in *Cochin Devaswom Board Vs. Akhileswara Iyer*, was a statutory rule, although we have some doubt whether the same would fall

within Section 62(d) of the Travancore-Cochin Hindu Religious Institutions Act; and If so, whether it would make the management of the Kerala Varma College a statutory body. In the light of the decisions in Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, and Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra, , we think the learned Judges were wrong in interfering in Akhileswara Iyer's case. We are further of the view that the learned Judges were wrong in importing the requirement of the principle of natural justice against the statutory rule (assuming that such it was). Neither on principle, nor on the authorities that we have noticed were the learned Judges justified in doing so.

In the result we have no hesitation in declaring that Cochin Devaswom Board Vs. Akhileswara Iyer, was wrongly decided and in overruling the same. It follows that the appellant cannot derive any advantage from the said decision.

14. In the result, we confirm the judgment of the learned Judge and dismiss this appeal, with no order as to costs.