

(1978) 03 KL CK 0031
In the High Court Of Kerala

Madhavan Pillai

APPELLANT

Vs

Balanand and Others

RESPONDENT

Date of Decision : 28-03-1978

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1978) 2 LLJ 450

Hon'ble Judges : Chandrasekara Menon, J

Bench : Single Bench

Judgement

Chandrasekara Menon, J.—The petitioner is a permanent lecturer in the Department of Physics of the S.N.M. College, Maliankara, which is under a corporate Educational Agency known as H.M.D.P. Sabha at Vadakekara, Parur. The first respondent in the O.P., is the Chairman of the Managing Council of the College as well as the Manager of the Institution while the Principal is its ex-officio Secretary. The petitioner alleges in the writ petition that the present Principal who is a local man with considerable influence over the Sabha is an intriguer of some sort who creates difficulties for those who stands up to him.

2. According to the petitioner, the college being only a junior college in respect of science with only lecturers with equal status and duties in the department of Physics, the principal is alleged to have unauthorisedly raised one of the lecturers in the department, said to be a favourite of his as head of the department. Though this action raised a mild protest among the members of the staff it is alleged that only the petitioner and another colleague of his finally stood unyielding to this injustice.

3. According to the petitioner, because of the aforementioned attitude of the petitioner and his colleague, the first respondent adopting the Principal's accusations that they questioned the authority of the principal and thereby of the management, framed a set of charges against them, suspended them and initiated disciplinary proceedings against them. It is also alleged that junior of the Manager's Standing Counsel was appointed as inquiry officer. Petitioner and

the other protested against this proposal and asked for an independent disinterested inquiry officer who should be above all suspicion of bias and partisanship. As their demand was not accepted they filed O.P. 3747 of 1975. That O.P., was finally disposed of by this Court, counsel for the management agreeing for the appointment of a new inquiry officer, cancelling the appointment already made, I think it would be proper if I extract herein below the statement of the petitioner in the O.P., with regard to what happened in that matter :

At the hearing of this O.P. the counsel for the manager (Ist respondent) did not dispute the disqualifying facts shown against his inquiry officer and agreed to have the appointment cancelled. As for the 2nd prayer the Court felt that since the next course that the 1st respondent may choose to take as to whether he should proceed with the inquiry or not was not certain, it was not expedient to decide yet the question of competency to choose his now inquiry officer in this case.

4. On 29-9-1977 the petitioner received notice dated 22-9-77 from the manager-Ist respondent - saying that he has again appointed an inquiry officer, 2nd respondent in this case. The new inquiry officer is an advocate of this Court. The petitioner objected to the appointment in a written communication to the Ist respondent. According to the petitioner, the present inquiry officer is intimately connected and associated with the standing counsel of the Management. Apart from that, his main objection is that the Ist respondent cannot be permitted under any circumstances the right or freedom to choose his own person to function as Judge in this matter. He cannot indirectly do what he cannot directly do in violation of the principle of natural justice that " no man shall be a Judge in his own cause."

5. As the management was not willing to accede to the complaint of the petitioner, this O.P. has been filed, wherein he seeks a writ of certiorari or any other appropriate writ to quash the impugned appointment of the 2nd respondent as inquiry officer, for declaration that the Ist respondent is incompetent to appoint an inquiry officer himself or through any person in his behalf, for appointment of a fit and proper person as inquiry officer, who is independent and disinterested and absolutely above all suspicion of being or likely to be biased or influenced. And, finally for a writ of mandamus or any other writ commanding the 2nd respondent to for-bear from functioning as the inquiry officer in the case.

6. The grounds on which the notice of the management is attacked are : (a) The choice and appointment of the 2nd respondent as inquiry officer by the Ist respondent, who is the accuser, is illegal and incompetent, inasmuch as it is a violation of the cardinal principle of natural justice that " no man shall be a Judge in his own cause ", and that what one cannot do directly he cannot do indirectly by using an agent therefor. (b) If Statute 10(1)(c) of Chapter 50 of Kerala University First Statutes, 1972 confers such competency on the management, then it is ultra vires and void to that extent. (c) The second respondent himself is

a person intimately connected and associated with, and under the sway and influence of, the first respondent's standing counsel and hence is neither truly independent and disinterested nor above reasonable suspicion of being biased and interested in favour of the 1st respondent. The petitioner points out that the impugned act of the 1st respondent and its proposed implementation by the 2nd respondent if allowed to take effect will cause irreparable injury and injustice to the petitioner and a grave miscarriage of justice and the rule of law.

7. It is no doubt true that generally not only is a person affected by an administrative decision entitled to have his case heard by the agency seized with its determination, but he has also got the right to insist on his case being heard by a fair Judge, one free from bias. Bias in this context has usually meant that the adjudicator must have no financial interest in the matter under dispute, but it is not necessarily so limited, and allegations of bias have been upheld in circumstances where there was no question of any financial interest. One of the earliest decision, where this principle was laid down is in *Dr. Bonham's case*, (1610-8 Co. Rep. 107). There a doctor of medicine was summoned before a Board of the College of Physicians, and fined and imprisoned for contempt because he had failed to take out a licence to practise from the college. Coke, when the case came before him on an action for false imprisonment, held that the Board had no power to fine Dr. Bonham, because the Board was a Judge in its own cause (as half the fine would be payable to the Board) and this would be, " against common right and reason, repugnant or impossible to be performed the common law will control it, and adjudge such act to be void ".

8. As Professor De Smith (*Judicial Review of Administrative Action*, 3rd Edn. at pp. 215-218) has said the rule that a Judge must be free from bias was developed in our legal system through the supervisory jurisdiction of the High Court over inferior Judges, Now it has become clear that an administrative Tribunal or other authority acting judicially must be free from bias and must not be a Judge in his own cause.

9. Another important decision of the English Court in the matter is the decision of the House of Lords in *Dimes v. Grand Junction Canal*, (1852 3 H.L.C. 759). There the decision of the former Lord Chancellor, Lord Cottenham was set aside when it appeared that he was a substantial shareholder in a company which was a party before the Court. There Lord Campbell said :

no one can suppose that Lord Cottenham could be, in the remotest degree influenced by the interest that he had in this concern.

10. Though this is a fundamental principle of natural justice, the " freedom from bias principle seems to be particularly vulnerable a statutory exclusion of judicial review". In *Wilkinson v. Barking Corporation*, (1948-1 All E.R. 564) the local Government (Superannuation) Acts provided that questions as to the entitlement of an employee of a local authority to a superannuation allowance were to be determined initially by the local authority, and on appeal by the Minister of

health. An action was brought asking for a declaration the decisions of the local authority and the Minister were void, as they had acted as Judges in their own cause, both these bodies being required under the statute to make contributions to the superannuation fund out of which any allowance granted to the employee would be payable. The Court of appeal were impressed with this argument, but decided that as the statute had made provision for this method of adjudication in the circumstances the Courts were powerless to interfere with the Minister's decision. Similarly, in *Franklin v. Minister of Town and Country Planning*, (1947-2 All E.R. 289), an attempt was made to quash a decision of the Minister to establish a new town at Stevenage under the New Towns Act, 1946, on the ground that the Minister had, in confirming his own order, made u/s 1 of the Act, acted as Judge in his own cause and, therefore, contrary to the principles of natural justice. The House of Lords drew a line between the judicial and administrative functions of the Minister, holding that in deciding (after receiving a report on a local inquiry) to confirm his own order the Minister was not acting judicially but administratively and was taking a policy decision. In regard to this, Professor Wade in his *Administrative Law*, 3rd Edn. pp. 182-185, points out that the reasons given by the Court of Appeal for coming to the same decision in this case are greatly to be preferred, for they accepted the argument that the statute conferred the power of decision on the Minister and that he had followed the prescribed procedure ; therefore, his action was in no sense open to criticism in the Courts, (See *Garner on Administrative Law*, 4th Edn. pp. 124-125).

11. Mr. Paikedy, learned Counsel for the petitioner, on the basis of certain observations in the well-known case of *The State of West Bengal Vs. Anwar Ali Sarkar*, , pointed out that the principles of natural justice are really fundamental in character and there could be no question of the Legislature making any inroad into these principles ; the Legislature could have no authority on that, However, it might be noted that the matter had been considered by the Supreme Court in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, . There Justice Hegde speaking for a Bench of two Judges of the Supreme Court said basing on the decision of the Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , that 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. The Court said in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, :

It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts 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 principle 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.

12. In this view we will have to take into consideration the provisions of the Kerala University Act. u/s 56 of the Kerala University Act, 1969 (hereinafter referred to as the 1969 Act) no teacher of a private college shall be dismissed, removed, or reduced in rank by the governing body or managing council without the previous sanction of the Vice-Chancellor or placed under suspension by the governing body or managing council for a continuous period exceeding fifteen days without such previous sanction. And 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". This would indicate that it is the management which will have to initiate disciplinary proceedings and also decide the matter, no doubt subject to the limitations placed on the management under the section.

13. Under the Kerala University Act, 1974 (hereinafter referred to as the 1974 Act), which had repealed the 1969 Act, Section 60 (of 1974 Act) specifies the conditions of service of teachers of private colleges. Section 60 reads :

(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 of 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 3 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 30 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 proceedings taken against him may, within 60 days from the date on which a copy of such order is served on him or within 60 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 60 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.

This would also indicate that it is the management that will have to initiate disciplinary proceedings in the matter.

14. In the First Statutes, 1972 framed in exercise of the powers conferred by Section 76 of 1969 Act, by the Government of Kerala, Chapter L, Part IV of the First Statutes indicates the provisions in regard to taking disciplinary action against the teachers of private colleges. There, "disciplinary authority" in relation to the imposition of a penalty on the teacher of a private college is defined to mean the management. Penalties that could be imposed is given in Statute 8 of the Chapter, and procedure for imposing major penalties is indicated in Statute 10. Procedure for imposing minor penalties is given in Statute 11. I might quote here Statute 10 (b), which reads :

(b) Whenever a complaint is received or on consideration of the report of an investigation or for other reasons, the disciplinary authority or the appointing authority or any other authority empowered by the appointing authority in this

behalf is satisfied that there is prima facie case for taking action against the teacher of a private college, such authority shall frame, definite charge or charges which shall be communicated to the teacher of a private college, together with the 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. The teacher concerned of the private college shall be required to submit within a reasonable time to be specified in that behalf a written statement of his defence and also to state whether he desires to be heard in person. The teacher of the private college may on his request be permitted to peruse or take extract from the records pertaining to the case for the purpose of preparing his written statement provided that the disciplinary authority referred to above may, for reasons to be recorded in writing refuse him such access if in its opinion such records are not strictly relevant to his case. After the written statement is received within the time allowed, the authority referred to above, if it is satisfied that a formal inquiry shall be held into the conduct of the teacher of the private college may if it is not the management forward the records of the case to the management concerned who may decide whether a formal inquiry may be conducted.

This would clearly indicate that power has been given to the management to conduct the enquiry against teachers and to take decision on the same. Statute 10 (c) specifically states that formal enquiry may be conducted by the Management of the private college or, 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.

15. In view of these provisions, especially the statutory provision in Section 60 of the 1974 Act, it cannot be contended that the management itself conducting the disciplinary proceedings or appointing an inquiry officer, no doubt subject to the qualifications prescribed in the statute, would be acting illegally. It might be that to a certain extent here the question of bias has been watered down by statutory provisions. However, in certain circumstances, in the case of quasi-judicial Tribunal, it is inevitable and in any view if the Legislature sanctions such enquiries, the Court has no jurisdiction to question it.

16. I might in this connection refer to a Full Bench Decision of the Travancore-Cochin High Court in *Nambooripad v. C.D. Board* AIR 1956 T.C. 19 F.B. There Justice M.S. Menon (as he then was) observed :

In quasi-judicial proceedings the maxim that a man shall not be judge in his own cause is very difficult to apply. As stated in *Koir and Lewson's* cases in Constitutional Law, p. 340, it may be easy to insist that a public officer shall not exercise discretionary power in a case where he has a pecuniary interest or where he has already shown that he has a definite bias.

But beyond this it is almost impossible to go ; for in all cases of this kind the

person deciding between the claims of the public and the private individual is himself a public officer, and, therefore, a Judge in his own cause. Moreover, in contrast to the Judge, who can do nothing until some one brings a dispute before him, a public officer entrusted with quasi-judicial functions may regularly be empowered to take the initiative himself. In fact, he must be constantly on the watch, ready to act whenever, in his opinion, the public interest requires it. The more zealous he is as an administration, the more likely he is to favour the public interest. The difficulty is inevitable and no satisfactory solution has yet been suggested.

17. In the matter of relationship between the management of private college and its teachers even in spite of the statutory inroads into their relationship, there is still an element of master and servant relationship or perhaps to put in a more proper terminology employer and employee relationship. Only to the extent statutory provisions have made inroads into this relation, the right of the employer to terminate the services of the employee or of the right to take disciplinary proceedings itself has been curtailed. As the Statute allows disciplinary proceedings to be taken by the management and the enquiry has to be conducted either by the management or an officer of his choice, it is difficult for this Court to interfere in the matter. I certainly see much force in Mr. Paikeday's contention that in such circumstances there would be difficulty for a teacher to get full justice, but it is a matter for the Legislature to take note of. Certainly, if the principles of natural justice are made fundamental rights under the Constitution, it would have been entirely a different question. But in the light of the later Supreme Court decision it is difficult to sustain the case that principles of natural justice are in the same pedestal as fundamental rights.

18. As De Smith has pointed out in his *Judicial Review of Administrative Action*, 3rd Edn. p. 218 :

In developing the modern law relating to disqualification of judicial officers for interest and bias, the superior Courts have striven to apply the principle that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done, without giving currency to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done. The emphasis has shifted from the simple precepts of the law of nature to the more subtle refinements of public policy. In order that public confidence in the administration of justice may be fully maintained, no man who is himself a party to proceedings or who has any direct pecuniary interest in the result is qualified at common law to adjudicate in those proceedings. If, however, it is alleged that the adjudicator has made himself a partisan, or is to be suspected of partisanship, by reason of his words or deeds or his association with a party who is instituting or defending the proceedings before him, the Courts will not hold him to be disqualified unless the circumstances point to a real likelihood or reasonable suspicion of bias. They have generally (but not invariably) disclaimed any power to inquire whether bias

has in fact been shown by a Judge or magistrate.

But there itself as De Smith further points put, " the common law disqualifications for interest and bias may be waived. They may also be removed by statute, by express words or necessary intendment". The position is not different in India as the principles of natural justice have not been equated to fundamental right in Part III of the Constitution.

19. In view of this, I see no reason to interfere in the matter. However, I might say here that in view of the allegations that have been made against the 2nd respondent, which have been strongly urged before Court, it would be rather delicate for him to conduct the enquiry, I would leave it to the good senses of the Management to appoint another enquiry officer to conduct the enquiry against the petitioner, I might make it clear that I am not casting any reflections on the 2nd respondent or accepting the allegations that are made.

20. I dismiss the O.P., with the above observations. I make no order as to costs.