

(2002) 09 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition 2629 of 1998

Mahendra Singh	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2002) 5 WLN 692

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 16.7.1998 with a prayer that by a appropriate writ, order or direction, the order dated 15.7.1997 (Annex. A/4) passed by the Executive Officer, Ganganagar Central Co-operative Bank Ltd., Sri Ganganagar (respondent No. 5) by which the petitioner was removed from the service be quashed and set aside and further more, the judgment dated 22.4.1998 passed by the Selection Committee (respondent No. 4) by which appeal of the petitioner was dismissed be quashed and set aside.

2. The facts of the case as put forward by the petitioners are as under:

(i) That the petitioner was appointed on the post of Manager in the Primary Agriculture Co-operative Society, Nohar on 26.10.1979.

(ii) That the petitioner was served with a charge-sheet on 17.4.1997. Copy of memorandum of charges levelled against the petitioner is marked as Annex. A/2.

(iii) the petitioner submitted parawise reply (Annex. A/3) on 6.5.1997 to the charges levelled against him.

(iv) That after receipt of the reply from the petitioner, the Executive Officer (Mr. Yusuf Khan) of Ganganagar Central Co- operative Bank Ltd. (Respondent No. 5)

through order dated 15.7.1997 (Annex. A/4) found the charges levelled against the petitioner proved and removed the petitioner from service.

(v) That aggrieved from the order dated 15.7.1997 (Annex. A/4) passed by respondent No. 5, the petitioner preferred an appeal (Annex. A/5) before the Selection Committee (respondent No. 4). The Selection Committee (respondent No. 4) through judgment dated 22.4.1998 dismissed the appeal filed by the petitioner.

(vi) The further case of the petitioner is that Selection Committee (respondent No. 4) consisted of 3 members, out of which respondent No. 5 (Executive Officer, Shri Yusuf Khan) who passed the order dated 15.7.1997 (Annex. A/4) was also one of the members. Hence, this writ petition with the above mentioned prayer.

4. The first ground which has been taken by the petitioner in his writ petition is that Executive Officer. Yusuf Khan who himself was disciplinary authority was Member - Secretary of the Selection Committee (respondent No. 4) constituted under Rule 5 of the Agriculture Credit Co-operative Societies Manager's Service Rules, 1991 (hereinafter referred to as the Rules of 1991) and "since in the Selection Committee, one of the members was Executive Office, Mr. Yusuf Khan (respondent No. 5) who was disciplinary Authority who passed the removal order dated 15.7.1997 (Annex. A/4) of the petitioner and since the impugned order dated 15.7.1997 (Annex. A/4) was passed by respondent No. 5 (Executive Office Mr. Yusuf Khan), therefore, he should have not sat in the Selection Committee as one of the members and since appeal was heard by him as one of the members, therefore, the appellate judgment dated 22.4.1998 (Annex. A/6 is no judgment in the eye of law and has become biased judgment and therefore, it should be set aside.

5. Reply to the writ petition was filed by the respondents denying the allegations levelled by the petitioner and the learned Counsel for the respondents submitted that the judgment dated 22.4.1998 (Annex. A/6) passed by the Selection Committee (respondent No. 4) is perfectly in accordance with law and hence this writ petition should be dismissed.

6. I have heard both and perused the record.

7. To verify the fact whether the respondent No. 5 (Executive Officer Mr. Yusuf Khan) who passed the removal in the capacity as disciplinary authority was member of the Selection Committee or not, original record was summoned and was perused.

8. There is no dispute on the point that respondent No. 5 (Executive Officer, Mr. Yusuf Khan) was one of the members of the Selection Committee constituted under the Rule 5 of the Rules of 1991. As per Rule 5 of the Rules of 1991, the Selection Committee shall consist of President, Central Co-operative Bank as President of the Selection Committee, President, Dist. Sahkari Sangh as Member, Assistant Registrar, Co-operative Societies as Member and Executive Officer as

Member - Secretary of the Selection Committee. Thus, the Selection Committee consists of four persons and the appeal of the petitioner was heard by 3 members and 3rd member was Executive Officer (Mr. Yusuf Khan), Respondent No. 5 who was disciplinary authority who passed the order dated 15.7.1997 (Annex. A/4) by which the petitioner was removed from the service and in appeal the order dated 15.7.1997 (Annex. A/4) passed by respondent No. 5 (Executive Officer Shri Yusuf Khan) was under challenge.

9. The question which arises for consideration is whether in the circumstances just mentioned above, the appellate judgment dated 22.4.1998 (Annex. A/6) has become vitiated or not.

10. It has been submitted by the learned Counsel for the respondents that no doubt, Executive Officer (Mr. Yusuf Khan), respondent No. 5 was one of the members of the Selection Committee (respondent No. 4) who passed the judgment dated 22.4.1998 (Annex. A/6), but he sat in the Selection Committee (respondent No. 4) in the capacity as Member - Secretary.

11. In my opinion, it is immaterial in what capacity he sat, but he was one of the members of the Selection Committee who passed the appellate judgment dated 22.4.1998 (Annex. A-6) by which the appeal of the petitioner was dismissed. When this being the position, the whole appellate judgment dated 22.4.1998 (Annex. A/6) has become biased judgment and is liable to be set aside for the reasons mentioned hereinafter.

12. Doctrine of natural justice as understood in England rests on two broad principles resting on Latin Maxims, which were drawn by common law from "just naturale"

(a) "Nemo debet esse iudex in propria causa", which means that no one should be a judge in his own cause or that the tribunal must be impartial and without bias.

(b) "Audi alteram partem", which means - "hear the other side, or that both sides in a case should be heard" (before it can be decided) or that no man should be condemned unheard.

13. The present case pertains to principle No. (a). It means that no one should be a judge in his cause. The rule is of a wide application and means that a judicial or quasi-judicial authority should not only himself be a party, but must also not be interested as party in the subject-matter of the dispute which he has to decide. In short, "Judges, like Caesar's wife, should be above suspicion." In the celebrated observation of Lord Hewart (R. v. Sussex Justices (1924) 1 K.B. 256) "It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

14. In my opinion, a decision of the Court or Tribunal is vitiated by the mere fact that an interested person sat at the hearing, even though such person did not take part in the discussion or did not vote. The mere presence of the interested

person may vitiate the decision if he sat in such a position that gave an appearance that he was a member of the Tribunal.

15. In the present case, Respondent No. 5 (Executive Officer, Shri Yusuf Khan) passed the order of removal of the petitioner dated 15.7.1997 (Annex. A/4) in the capacity as disciplinary authority and when he was one of the members of the Selection Committee (respondent No. 4), he would certainly be called as an interested person and his presence would certainly vitiate the decision of the appeal. From this point of view, the appellate judgment dated 22.4.1998 (Annex. A/6) stands vitiated.

16. The argument of the learned Counsel for the respondent that he was sitting as member - Secretary and did not take active part is immaterial and the judgment dated 22.4.1998 (Annex. A/6) rendered by the Selection Committee has become biased judgment.

17. Bias may be of different forms such as judicial bias, administrative bias, political bias. It may have different further types too, like, official bias, legal bias, legislative bias, bias of subject-matter, pecuniary bias, and personal bias.

18. The present case is a case of judicial bias. The principle guiding judicial bias was stated by Lord Cave in *Frome United Breweries Co.'s case* *Frome United Breweries Co. v. Bath Justices* (1926) AC 586 in these words

My Lords, if there is one principles which forms an integral part of the English Law, it is that every member of a body engaged in 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 such a bias (whether financial or other) in favour of or against either party to be 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.

19. The above principles are applicable in India with full force and it can be said that the rule of law about judicial conduct is as strict as it is old. No judge can be considered to be competent to hear a case in which he is directly or indirectly interested. A proved interest in a Judge not only disqualifies him but renders his judgment a nullity. In the present case, the position is more severe on the point that the person who passed the initial order dated 15.7.1997 (Annex. A/4) of removal of the petitioner from the service, sat in the Selection Committee as one of the members to hear the appeal against the order dated 15.7.1997 (Annex. A/4). From this point of view also, the judgment dated 22.4.1998 (Annex. A/6) passed by the Selection Committee (respondent No. 4) has become nullity because of presence of respondent No. 4 (Executive Officer Shri Yusuf Khan) in the Selection Committee (respondent No. 4).

20. The argument that respondent No. 4 had to sit in the Selection Committee (respondent No. 4) because of necessity of vires is to be rejected at threshold because under Rule 5 of the Rules of 1991, Selection Committee consists of four

members and since three members sit in the Selection Committee, therefore, in place of respondent No. 5 (Executive Officer, Shri Yusuf Khan) other member could have sat in the selection Committee.

21. The argument of the learned Counsel for the respondents that this point was not raised by the petitioner before the Selection Committee (respondent No. 4), therefore, this point cannot be raised here is not to be appreciated at all as the judgment dated 22.4.1998 (Annex. A/6) itself has become nullity and, therefore, the point which goes to root of the case can be raised in the writ petition for the first time. Hence the law laid down in the case of Messrs. J. Mohapatra & Co. v. State of Orissa and Anr. reported in 1994 UJ 1137 (SC) would not be helpful to the learned Counsel for the respondents.

22. Apart from this, the Hon"ble Supreme Court in the case of State of West Bengal and Others Vs. Shivananda Pathak and Others, has observed as under:

Constitution of India, Articles 14 & 226--Natural Justice--Bias on account of judicial obstinacy - Direction given by Judge in writ petition overruled in appeal - Same Judge sitting in subsequent proceedings between the same parties reiterates the overruled direction - Has a biased mind.

23. The law laid down by the Hon"ble Supreme Court in the case of State of West Bengal v. Shivananda Patha (supra) is fully applicable with the facts of the present case and this Court is constrained to observed that it was not competent for Mr. Yusuf Khan to have sat in the Selection Committee as one of the Members in which the impugned order dated 15.7.1997 (Annex. A/4) was under challenge. In fact, he should have disassociated himself from the Selection Committee (respondent No. 4) in keeping with the high traditions of the Institution so as to give effect to the rule that "justice should not only be done, it should manifestly be seen to have been done apart from sitting in appeal, though collaterally, over his own judgment.

24. For the reasons mentioned above, the judgment dated 22.4.1998 (Annex. A/6) passed by the Selection Committee (respondent No. 4) is liable to be set aside and the writ petition deserves to be allowed to that extent.

Accordingly, the present writ petition is allowed in the manner that the judgment dated 22.4.1998 (Annex. A/6) passed by the Selection Committee (respondent No. 4) is set aside and the matter is remanded back to the Selection Committee for fresh decision and the respondents are directed to constitute a new Selection Committee in which respondent No. 5 (Executive Officer Shri Yusuf Khan) would not be a member. It is further made clear that the petitioner shall be at liberty to raise all the submissions before the newly constituted Selection Committee at the time of hearing

Cost made easy.