
(1999) 08 MP CK 0081

In the Madhya Pradesh High Court

Case No : Writ Petition No. 213 of 1999

M.P. Sate Co-operative Marketing Federation and Others

APPELLANT

Vs

Commissioner and Registrar Co-operative Societies and Others

RESPONDENT

Date of Decision : 09-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 1 MPHT 664 : (2000) 1 MPLJ 229

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

**Advocate : N.S. Kale, Greesham Jain and Harbinder Singh, for the Appellant;
S.A. Dharmadhikari, for the Respondent No. 5, for the Respondent**

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

By this writ petition filed under Article 226 of the Constitution of India, petitioner prays for quashing of the order dated 24-8-1998 passed by the President, Board of Revenue, whereby he has allowed the appeal filed by respondent No. 5 and set aside the order of termination of his service dated 18-10-1993 as also the order of his suspension dated 13-8-1988. He has further directed for payment of all back wages to respondent No. 5.

Shorn of unnecessary details, facts giving rise to the present writ petition are that respondent No. 5 joined the service of M.P. Co-operative Marketing Federation Ltd. as Assistant Engineer on 1-5-1969. Thereafter he was promoted as Executive Engineer by order dated 25-6-1979. While he was working as Executive Engineer, by order dated 31-12-1984 he was directed to perform the work of Chief Engineer till alternative arrangement is made. While he was functioning as such by order dated 4-12-1987 he was put under suspension. He challenged the same by filing M.P. No. 3986/87 and a Division Bench of this

Court by order dated 3-5-1988 allowed the writ petition and quashed the order putting him under suspension. However, while doing so, it gave liberty to the employer to put him under suspension in accordance with law. Respondent No. 5 was again put under suspension by order dated 13-8-1988 and a Departmental Enquiry was initiated against him.

Respondent No. 4 D.C. Jain, who had retired from Government Service, by order dated 12-6-1989, was appointed as Chief Engineer of the petitioner M.P. State Co-operative Marketing Federation (hereinafter referred to as the Federation), until further orders from the date he reports for duty. It is relevant here to state that respondent No. 5 had also filed M.P. No. 2122 of 1988 praying therein for regularisation of his appointment as Chief Engineer. This Court by order dated 31-7-1989 dismissed the writ petition on the ground that he had equally efficacious alternative remedy u/s 54 of the M.P. Co-operative Societies Act (hereinafter referred to as the Act). Respondent No. 5 preferred SLP before the Supreme Court and by order dated 28-3-1990 it dismissed the SLP with liberty to respondent No. 5 to file writ petition before the High Court "claiming that his right to be considered for promotion under old Rules has become vested right and the appointment of respondent No. 4 as Chief Engineer was bad". As observed by the Supreme Court respondent No. 5 then filed M.P. No. 983/1990 impleading respondent No. 4 D.C. Jain as respondent No. 3 in the said writ petition. When the matter was taken on 28-7-1990 he withdrew the writ petition in order to avail the alternative remedy u/s 55 (2) of the Act.

Aforesaid D.C. Jain who was appointed as Chief Engineer until further orders came to be appointed as the Enquiry Officer by order dated 21-12-1989 to conduct the departmental enquiry initiated against respondent No. 5. Respondent No. 5 raised objection to his appointment as Enquiry Officer and requested for change of the Enquiry Officer. This was not acceded to and D.C. Jain the Enquiry Officer submitted his report dated 16-7-1990; holding respondent No. 5 guilty of charges 1, 2, 3, 5, 6 and 10. The report of the Enquiry Officer was placed for consideration before the Administrative Committee of the Federation in its meeting dated 19-6-1992 and it resolved to impose the punishment of removal from service.

It is relevant here to state that respondent No. 5 prior to the order of removal had filed M.P. No. 1562/1992 against the order of suspension. During the pendency of the aforesaid writ petition he was removed from service and by way of amendment he impugned the order of removal also. This Court by order dated 24-8-1994 dismissed the writ petition on the ground that he had statutory alternative remedy u/s 55 (2) of the Act. Thereafter respondent No. 5 raised the dispute before the Registrar, Co-operative Societies. Additional Registrar, Co-operative Societies by order dated 3-10-1996 dismissed his application filed and maintained the order of removal from service dated 8-10-1993. Respondent No. 5 aggrieved by the same preferred appeal and the President, Board of Revenue by order dated 24-8-1998 allowed the appeal, set aside the order of suspension

as also the order for removal of service. While doing so, the Board of Revenue found that the enquiry was not conducted as per prescribed procedure as also on the ground that when respondent No. 5 challenged the impartiality of the Enquiry Officer it would have been wiser for the petitioner to change the Enquiry Officer. Accordingly the Board of Revenue found the enquiry to have been vitiated, having been conducted by D.C. Jain an interested person. On these grounds the President, Board of Revenue, allowed the appeal.

Mr. N.S. Kale, appearing on behalf of the petitioner submits that the Board of Revenue committed an error of law in holding that the Enquiry Officer was an interested person to hold the enquiry, which would render his report illegal. He submits that the Enquiry Officer D.C. Jain was a retired employee of the State Government and thereafter he was appointed to act as a Chief Engineer in the Federation and he had nothing to do with the continuance or otherwise of the service of respondent No. 5 and therefore, cannot be said to be person interested. He submits that apprehension of respondent No. 5 that the Enquiry Officer D.C. Jain had any bias is absolutely misconceived as no reasonable intelligent person could come to this conclusion. Mr. Dharmadhikari appearing on behalf of respondent No. 5 submits that in the facts and circumstances of the present case respondent No. 5 had reasonable apprehension that Enquiry Officer D.C. Jain shall not conduct the enquiry fairly.

It is relevant here to state that by order dated 31-12-1984 respondent No. 5 was asked to perform the function of Chief Engineer temporarily till further orders. He was put under suspension by order dated 4-12-1987 and thereafter by order dated 13-8-1988 Enquiry Officer D.C. Jain was appointed as Chief Engineer in the Federation until further orders by order dated 12-6-1989. He was appointed as Enquiry Officer on 21-12-1989 and he submitted his report on 16-7-1990. Thus D.C. Jain was a person who was appointed as Chief Engineer to the post becoming available on account of suspension of the respondent No. 5. Order of appointment dated 12-6-1989 clearly shows that his appointment was until further orders. Continuance or otherwise of the service of D.C. Jain dependant upon the fate of respondent No. 5. Not only this respondent No. 5 filed M.P. No. 2122/1988 for regularisation of his appointment as Chief Engineer, which was dismissed by this Court on the ground of existence of alternative remedy. Petitioner appealed to the Supreme Court and the Supreme Court by order dated 28-3-1990 passed in SLP No. 980/1989 gave liberty to the petitioner to approach the High Court again. In the said case the Supreme Court observed as follows :--

"The claim that petitioner's right to be considered for promotion under old rules had become a vested right and could not have been defeated by the amendment and that the appointment of Shri D.C. Jain as Chief Engineer was bad could also be raised."

Thereafter respondent No. 5 it seems filed M.P. No. 983/1990, but the same was permitted to be withdrawn by order dated 28-7-1990 to enable him to raise the dispute u/s 55 (2) of the Act. From the facts narrated above, it is evident that

D.C. Jain was appointed as Chief Engineer in the Federation to the post becoming available because of suspension of respondent No. 5. His appointment was until further orders. Therefore, continuance of D.C. Jain, i.e., Enquiry Officer was dependant upon the fate of respondent No. 5 in the departmental enquiry. Further respondent No. 5 had questioned the appointment of D.C. Jain as Chief Engineer before this Court, as also before the Supreme Court. It is relevant here to state that respondent No. 5 sought for change of the Enquiry Officer immediately after D.C. Jain was appointed as Enquiry Officer. In view of the aforesaid facts one is required to consider as to whether respondent No. 5 had reasonable likelihood of bias expected from the Enquiry Officer.

Mr. Kale submits that mere suspicion or apprehension of respondent No. 5 that D.C. Jain is biased, shall not disqualify him from acting as the Enquiry Officer. In support of his submission Mr. Kale has placed reliance on a judgment of the Supreme Court in the case of International Airports Authority of India Vs. K.D. Bali and Anr, ; and my attention has been drawn to the following passage from paragraph 6 of the said judgment:--

"Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision. It is the reasonableness and the apprehension of an average honest man that must be taken note of. In the aforesaid light, if the alleged grounds of apprehension of bias are examined, we find no substance in them. It may be mentioned that the arbitrator was appointed by the Chief Engineer of the petitioner, who is in the service of the petitioner."

Another decision on which Mr. Kale has placed reliance is the judgment of the Supreme Court in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, . He has drawn my attention to the following passage from paragraph 11 of the said judgment:--

"This Court has laid down that the test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

Yet another decision on which Mr. Kale has placed reliance is the judgment of the Supreme Court in the case Bhajan Lal, Chief Minister, Haryana Vs. Jindal Strips Ltd. and Others, ; and my attention has been drawn to paragraph 23 of the judgment which reads as follows :--

"Bias is the second limb of natural justice. Prima-facie no one should be a judge in what is to be regarded as "sua causa", whether or not he is named as a party. The decision maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject matter, from a close relationship or from a tenuous one."

One of the facets of the principle of natural justice is rule against bias or interest and is based on three maxims--

- (i) No man shall be a judge in his own cause;
- (ii) Justice should not only be done, but manifestly or undoubtedly be seen to be done;
- (iii) Judge like Ceaser's wife should be above suspicion.

In other words the deciding authority must be impartial and without bias. Any kind of bias pecuniary or otherwise will disqualify the person from acting as Enquiry Officer, for justice requires that justice should not only be done but should also appear to be done. Bias means a preconceived opinion or a predisposition or pre-determination of a judge to decide an issue in a particular manner, so much so that such predisposition does not leave the mind open for any other conclusion. It is, in fact, a condition of mind, which sways Judgments and renders the Judge unable to exercise impartiality. Bias has many forms, e.g., pecuniary bias, personal bias, policy bias etc. In the instant case, it is the personal bias which is projected.

Further in my opinion the real question is not whether D.C. Jain was biased. It is difficult to prove that the state of mind of a person. The test of bias come up for consideration before the House of Lords in the case of Regina v. Gough (1993) A.C. 646; wherein it has been held as follows :--

"In my opinion, if in the circumstances of the case (as ascertained by the Court), it appears that there was a real likelihood, in the sense of a real possibility, of bias on the part of a justice or other member of an inferior tribunal, justice requires that the decision should not be allowed to stand. I am by no means persuaded that, in its original form, the real likelihood test required that any more rigorous criterion should be applied. Further-more the test as so stated gives sufficient effect, in cases of apparent bias, to the principle that justice must manifestly be seen to be done, and it is unnecessary, in my opinion to have recourse to a test based on mere suspicion, or even reasonable suspicion, for that purpose."

In my opinion, bias is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias and hence the Courts have devised tests, i.e., real likelihood of bias or reasonable suspicion of bias or average man test or real danger test. In the present case I am not dealing on each of the tests as in my opinion applying the real likelihood of bias test not even from the reasonable man's but from the Court's point of view, the decision should not stand, and D.C. Jain disqualified himself to be the Enquiry Officer on the principle of bias. It cannot be said to be suspicion on part of respondent No. 5. In my opinion, while appointing D.C. Jain as Enquiry Officer, the rule of natural justice was completely discarded and all canons of fairplay was grievously violated. He was appointed to the post becoming available on account of suspension of respondent No. 5. His

continuance dependant upon discontinuance of respondent No. 5. Respondent No. 5 challenged the appointment of D.C. Jain as Chief Engineer in legal proceedings. In such a situation, it was not possible for D.C. Jain to reach a fair decision. This disqualified him from acting as Enquiry Officer. Justice must not only be done, but must also appear to be done is the maxim deep rooted in our system.

As D.C. Jain was disqualified to conduct the enquiry on the principle of bias, enquiry report submitted by him is vitiated on this ground alone. As the order of punishment is based on such an enquiry report, the same was fit to be set aside and has been rightly set aside by the President, Board of Revenue by the impugned order.

In the result, I do not find any merit in the writ petition and it is dismissed accordingly. This decision, however, will not preclude the petitioner from proceeding afresh with the Departmental Enquiry against respondent No. 5 from the stage of issuance of charge sheet. In the facts and circumstances of the case, there shall be no order as to cost.