
(2007) 04 KAR CK 0034
In the Karnataka High Court
Case No : Writ Appeal No. 314 of 2006

Mr. B.S. Dwarakanath

APPELLANT

Vs

The Karnataka Handloom Development Corporation Limited
and Others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

Citation : (2008) ILR (Kar) 244 : (2008) 2 KarLJ 561

Hon'ble Judges : Cyriac Joseph, C.J;B.S. Patil, J

Bench : Division Bench

Advocate : K. Subba Rao, for Harikrishna S. Holla, for the Appellant; B.C. Prabhakar, for R1 to R4 and A.N. Venugopal Gowda, for R5, for the Respondent

Final Decision : Allowed

Judgement

Cyriac Joseph, C.J.—This writ appeal is filed challenging the order dated 10.1.2006 passed by the learned single Judge in W.P. No. 43546 of 1999, which was dismissed by the learned single Judge. The appellant is the petitioner in the writ petition and the respondents herein fire the respondents in the writ petition.

2. The appellant, was Chief Manager (Quality Control) in the Karnataka Handloom Development Corporation Limited, Hubli (1st respondent herein). Disciplinary action was initiated against the appellant mid vide Annexure-M order dated 16.2.1999 the penalty of compulsory retirement from the services of the Corporation was imposed on him with immediate effect. Against Annexure-M order of the disciplinary authority viz., the Managing Director of the Corporation, the appellant filed Annexure-N statutory appeal dated 25.2.1999. The said appeal was considered by the appellate authority viz., the Board of Directors and vide Annexure-R1 order dated 10.1.2000 the appeal was rejected. Therefore the appellant filed Writ Petition No. 43546 of 1999 praying to quash Annexure-M order and to declare that the disciplinary action initiated against the petitioner was null and void and violative of principles of natural justice. The learned single Judge dismissed the Writ Petition as per the order dated 10.1.2006. Aggrieved by

the dismissal of the Writ Petition, this Writ Appeal has been filed.

3. The learned Counsel for the appellant contended that Annexure-R1 order passed by the appellate authority is vitiated by the illegality that the disciplinary authority himself was party to the decision on the appeal filed by the appellant. Learned Counsel pointed out that in paragraph-26 of the Writ Petition, it was specifically pleaded that the action taken by the Board of Directors to reject the appeal in which the 3rd respondent (the then Managing Director) had actively participated is highly arbitrary, illegal, contrary to law and biased. He also pointed out that the above averment of the petitioner was not denied in the counter affidavit filed by the respondents and that the above contention of the writ petitioner was not considered by the learned single Judge in the impugned order. In support of his contention, learned Counsel for the appellant relied on the decision of the Supreme Court in Amar Nath Chowdhury Vs. Braithwaite and Company Ltd. and Others, in which an identical question arose and the Hon''ble Supreme Court held that the decision of the Board of Directors was vitiated on account of has as the Managing Director who was the disciplinary authority presided over and participated in the deliberation of the Board of Directors which decided the appeal filed by the employee.

Learned counsel for Respondents 1 to 4 made available for the perusal of the Court the proceedings of the 149th meeting of the Board of Directors held on 31.12.1999. It is seen that the appeal filed by the appellant against Annexure-M order dated 16.2.1999 was considered by the Board of Directors as Subject No. 13. It is also seen that Sri K.A. Belliappa, Director ; Sri R. Suresh, Director AND Sri A. P. Joshi, Managing Director participated in the meeting of the Board of Directors. Sri A.P. Joshi was the Managing Director who passed Annexure-M order dated 16.2.1999 imposing the penalty of compulsory retirement on the appellant. The proceedings of the Board meeting do not show that Sri A. P. Joshi, Managing Director had abstained from the meeting when Subject No, 13 was considered. On the other hand it is seen that the Board of Directors had noted the plea of the appellant that the Managing Director had ill-will against him and that he had quoted some instances of complaints against certain officials and some cases against some officers of the Corporation, But the said plea was brushed aside observing that it had no bearing with the initiation of disciplinary proceedings against the appellant and that the disciplinary proceedings were initiated against the appellant because he had prima facie committed misconduct as per the Staff Regulation of the Corporation. Thus it is clear that, inspite of the fact that the order under appeal was passed by Sri A.P. Joshi, Managing Director and that one of the contentions of the appellant was that the Managing Director had ill-will against the appellant, Sri A, P. Joshi, Managing Director actively participated in the deliberations in the meeting of the Board of Directors, which decided to reject the appeal of the appellant. Hence the Managing Director who passed Annexure-M order as disciplinary authority, is a party to the decision on Annexure-N appeal.

4. In *Amar Nath Chowdhury Vs. Braithwaite and Company Ltd. and Others*, the Hon"ble Supreme Court held as follows:

(6) One of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as "*Debet Esse Judex in Propria Causa*", which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a Judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias. Bias may be of different kind and form. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid form of bias. What we are concerned with in the present case is whether an authority can sit in appeal against its own order passed in the capacity of Disciplinary Authority. In *The Financial Commissioner (Taxation) Punjab and others Vs. Harbajan Singh*, , it was held that the Settlement Officer has no jurisdiction to sit over the order passed by him as an Appellate Authority. In the present case, the subject-matter of appeal before the Board was whether the order of removal passed by the Disciplinary Authority was in conformity with law. It is not disputed that Shri S. Krishnaswami, the then Chairman-cum-Managing Director of the Company acted as a Disciplinary Authority as well as an Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function is not permissible on account of established rule against bias. In a situation where such a dual function is discharged by one and the same authority, unless permitted by an act of legislation or statutory provision, the same would be contrary to rule against bias. Where an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already prejudged the matter otherwise such an appeal would be termed an appeal from Caesar to Caesar and filing of an appeal would be an exercise in futility, In that view of the matter, in the present case fair play demanded that Shri Krishnaswami the then Chairman-cum- Managing Director of the Company ought not to have participated in the deliberations of the meeting of the Board when the Board heard and decided the appeal of the appellant.

5. In our view, the above decision of the Hon"ble Supreme Court squarely applies to the facts of this case. Hence we hold that Annexure-R1 order dated 10.1.2000 passed by the Board of Directors rejecting Annexure-N appeal filed by the appellant is illegal and it is liable to be quashed with a direction to the Board of Directors of the 1st respondent - Corporation to consider Annexure-N appeal afresh and in accordance with law.

6. It is brought to our notice that Sri A. P. Joshi is no more the Managing Director of the Corporation and therefore there is no legal impediment for the present Managing Director to participate in the proceedings of the Board of Directors while considering the appeal of the appellant.

7. Hence the Writ Appeal is allowed. The order dated 10.1.2006 passed in W.P. No. 43546 of 1999 is set aside. Annexure-R1 order dated 10.1.2000 passed by the Board of Directors of the 1st respondent - Corporation is quashed. The 1st respondent is directed to consider Annexure-N appeal afresh and to pass appropriate orders in accordance with law as expeditiously as possible and at any rate within a period of three months from the date of receipt of a copy of this judgment.