

(1980) 09 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 3555 of 1979

N. Raveendran

APPELLANT

Vs

Registrar, University of Kerala and Another

RESPONDENT

Date of Decision : 18-09-1980

Acts Referred:

Kerala University Rules — Rule 4(2)

Citation : (1980) 09 KL CK 0012

Hon'ble Judges : Subramonian Poti, J;Bhat, J

Bench : Division Bench

Advocate : M. Ramakumar and B. Satheesh Chandran, for the Appellant; V. Bhaskaran Nambiar, for the Respondent

Final Decision : Allowed

Judgement

Subramonian Poti, J.—The Petitioner before us was a candidate for selection to the post of Lecturer in Sociology in the University of Kerala. He has resorted to this Court before the selection was held by the Committee constituted for the purpose. The allegation of the Petitioner by way of challenge to the selection process is that the second Respondent in the Original Petition who is the Professor and Head of the Department of Sociology is biased against him and therefore he has no faith in a fair consideration of his case for selection by any Committee in which the second Respondent participates as member. When he sought a stay of the selection proceedings in this Original Petition this Court by its order dated 20th October 1979 directed that the interview which had already been fixed may be held but the recommendations which may be made by the Committee pursuant to such interview would be purely provisional and subject to the result of the Original Petition. It is said before us by counsel for the first Respondent that the Committee held the interview and submitted its recommendations to the Syndicate but the Syndicate has not taken any decision thereon in view of the interim order of this Court. Of course, counsel is not in a position to enlighten us about the recommendations since he is not in possession

of the report of the Committee placed before the Syndicate.

2. There are several facts stated in the petition to support the plea of bias on the part of the second Respondent. The long and short of it is that the second Respondent Dr. Nayar is not well disposed towards the Petitioner and the Petitioner's chances of being selected for certain posts as well as selected for research have been prejudiced on previous occasions by the conduct of the second Respondent. It is particularly mentioned that in the interview which was to be held pursuant to the invitation of applications by the University for the post of Lecturer in Sociology there was one Babu as a candidate and the said Babu is a very close relative of the second Respondent. Of course, if this be true the second Respondent would certainly be disqualified from participating in any deliberations as provided in Rule 4(2) of Chapter III of the First Statute of the Kerala University. That provides that no member of the Committee who is an Applicant for the post or is related to or interested in any of the Applicants for the post shall take part in the deliberations of the Committee, so far as that post is concerned. If the second Respondent was interested in Babu, a candidate, he could not have taken part in the deliberations relating to the selection of the candidates at the interview concerned. But that ground need not be gone into here because it appears from the counter-affidavit of the second Respondent that he himself brought this to the notice of the University but before the University could pass any orders thereon Babu, the candidate concerned, had withdrawn his application with the result that thereafter there could be no bar in the participation of the second Respondent as a member of the Committee. If these be the circumstances--We see no reason to think otherwise--We do not think that there is any disability on the part of the second Respondent to sit in the Committee on this ground.

3. Though it is urged in the petition that the second Respondent was only a Reader in Sociology in the University and his appointment as Professor was not an appointment in accordance with the rules it is submitted at the hearing by Petitioner's counsel that there is an Original Petition pending in this Court, a petition by way of quo warranto at the instance of a rival claimant, for the post of Professor and on this ground the Petitioner is not seeking adjudication on this petition. We do not propose to go into this here.

4. There are other grounds urged in support of the plea of bias. Now we will advert to those averments and the relevant reply of the second Respondent. The matters mentioned in ground C of the petition are (1) When the Petitioner appeared for the viva voce examination in M.A. Sociology the second Respondent was one of the members of the Board which conducted viva voce, in spite of the good performance of the Petitioner he was awarded only a second class in the first instance and therefore he had to make a representation to the Vice Chancellor to have an enquiry conducted. As a result of such enquiry the Petitioner was found entitled to be placed in the first class and that class was awarded to him. It is averred by the Petitioner that the second Respondent was

responsible for placing him in the second class. (2) The Petitioner applied for registration for research in sociology for the year 1976-77. There were 4 candidates but there were only 3 places for which candidates could be selected. The second Respondent placed the Petitioner as the 4th in rank while another Professor who was also concerned with the selection placed the Petitioner first in rank. It goes without saying that if the Petitioner was 4th in rank he would not be selected while if he was placed first in rank he would have been selected. The matter went up to the Vice Chancellor who thought it better not to act upon the 1st and did not register any of the four candidates. (3) The Petitioner applied for research under another Lecturer Dr. Thulaseedharan Pillai of the N.S.S. College, Pandalam. But due to the intervention of the second Respondent recognition granted to Dr. Thulaseedharan Pillai to be a supervising teacher was itself taken away. (4) In the year 1978--79 the second Respondent recommended 7 candidates for research and most of them were found to be unqualified. The Petitioner got admission that year only because, according to the Petitioner, the entire question was thrown upon for examination by this Court, in O.P. No. 937 of 1979, (5). The Petitioner had appeared for interview 4 times to the posts respectively of Editorial Assistant of State Institute of Encyclopaedia Publication, Trivandrum. Welfare Officer of the Central Social Welfare Board, Lecturer post in S.N. College, Quilon and N.S Section College, Changanacherry. In all the interviews the second Respondent participated as member of the Board and the Petitioner was not selected for anyone of the four posts. But he was selected as Assistant Labour Officer at an interview at which the second Respondent was not a member of the interviewing Committee. (6) Even in regard to the post held by the Petitioner in the Labour Department as Assistant Labour Officer the second Respondent has created trouble for him by writing to that Department conveying some information to the Department on the basis of which a memo, Ext. P-3, has been issued to the Petitioner.

5. We must say at the outset that the reply by the University in regard to these matters particularly in regard to the first of the allegations in respect of which a more specific reply could have been given, is quite unsatisfactory. When there is a case for the Petitioner that he who had passed M.A. Sociology in the first class was placed in the second class, that he had to move the Vice Chancellor to get it corrected, that it was due to the second Respondent, as member of the Board that he happened to be placed in the second class and the fact that the Petitioner who had been declared to have passed in second class was declared to have passed in first class later one would expect a more specific answer than a mere statement that this was due to a clerical error. This statement does not meet the averments. There should have been an attempt to explain to the court what exactly were the circumstances under which the mistake in the matter of giving a wrong class to the Petitioner in the first instance was committed. In the circumstances we should take it that this allegation has not been explained or duly met. It is the conduct of the second Respondent which has been called in question but he says that the University has to explain. Coming to the second of

the points attempted to be made out by the Petitioner the facts are admitted. It is admitted that the second Respondent as Professor sent up a list and the other Professor also sent up another list. It is not denied that the Petitioner was 4th in the list of the second Respondent and first in the other list. Consequently the Vice Chancellor decided that none need be registered. The third of the points attempted to be made out by the Petitioner is explained by the University. Dr. Thulaseedharan, it is said, has never been recognised as a supervising teacher and therefore that ground does not hold good. The 4th ground that the 7 persons recommended for research were not qualified has not been substantiated. Coming to the next, it is seen from the averment of the Petitioner and the averment of the second Respondent in the counter-affidavit that it is true that the Petitioner had appeared for the interview for the 4 posts mentioned in the Original Petition at which interviews the second Respondent participated as a member of the interviewing Board. It is also evident that the Petitioner was not selected. May be he did not get selection because he was found to be of not sufficient merit or perhaps other candidates might have been of higher merits. Coupled with other circumstances he had perhaps reason to feel that he was not fairly dealt with. Coming to the last of the grounds the memo issued to the Petitioner Ext. P-3 is seen to have been on the basis of some letter written by the second Respondent and according to counsel for the Respondents that letter happened to be written because of an application forwarded by the Labour Department as indicated in the letter itself.

6. Before assessing the weight of these circumstances we may, in brief, refer to the scope of interference by a court when there is a plea of bias on the part of a person who participates in a committee empowered to take decisions. The decision here was an administrative decision. Even so it is now well settled that the decision must be founded on fair play. One of the requirements to make the decision good is that those who participate in the matter of such decision must be those who have no interest of their own and who have no bias or prejudice against the parties who would be affected by the decision. It is not necessary that a court should find that bias on the part of a decision making authority is established. In fact in many cases it may be difficult to find that bias as against a Tribunal or an authority has been proved. Courts have formulated the test of reasonable likelihood of bias as determining the disqualification of the person who is to decide even in administrative matters. Reference may be made in this context to the decision of the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . At page 612 of the decision *Beg, C.J.*, referring to the plea of bias urged on behalf of the Petitioner there in observed thus:

She has to be protected against even the appearance of such a prejudice or bias.

37. It appears to me that even executive authorities when taking administrative action which involves any deprivations of or restrictions on inherent fundamental rights of citizens must take care to set that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is

free from even the appearance of arbitrariness or unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

It may be of advantage to refer to the decision of the Supreme Court in *G. Sarana Vs. University of Lucknow and Others*, , In that case there was a plea that the person who is said to have been biased was not the sole member whose decision would be material and there being other members in the selection committee it cannot be said that the bias has in any way prejudiced the party who complained of it. Dealing with this the Supreme Court said in paragraph 11 thus:

11. Again as held by this Court in *A.K. Kraipak's case*, reiterated in *S. Parthasarathi v. State of Andhra Pradesh* (1974) 1 S.L.R. 427 (1972) 3 S.C.C. 459 1973 S.C.C. 580, and followed by the High Court of Jammu and Kashmir in *Ferooq Ahmed Bando v. Principal Regional Engineering College* 1975 J. & K.L.R. 427, the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to probe the mind of a person what has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or board is bound to influence the others, more so if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner.

The position has been succinctly stated in *De Smith's Judicial review of Administrative Action* at page 262. The learned Author says thus:

A "real likelihood" of bias means at least a substantial possibility of bias. The Court, it has been said will judge of the matter as a reasonable man would judge of any matter in the conduct of his own business. The test of real likelihood of bias, which has been applied in a number of leading cases in magisterial and liquor licensing law, is based on the reasonable apprehension of a reasonable man fully apprised of the facts. It is no doubt desirable that all judges like *Caesar's wife*, should be above suspicion.

We may also refer to the observation of Justice Jaswant Singh in the decision to which we have already adverted, at paragraph 14 as to the tests which should be applied in such cases. The learned Judge says thus:

...it clearly follows that what has to be seen in a case where there is an allegation of bias in respect of a member of an administrative board or body is whether there is a reasonable ground for believing that he was likely to have been biased. In other words whether there is substantial possibility of bias animating the mind of the member against the aggrieved party.

We need not find in this case that the second Respondent is really prejudiced against the Petitioner. Even without finding so if the circumstances are such that it would be reasonable to assume on the facts before us that it is likely that the Petitioner honestly believes that there may not be a fair deal to him in the background of what has happened earlier it would be fair to direct the second Respondent not to participate in the deliberations in the selection of the Petitioner. In this case no material prejudice to third parties would arise by such a direction because the selection process is not over and the Petitioner had approached this Court even before the selection was conducted. We think the materials which are shown in this case are sufficient to enable this Court to hold that there is a likelihood of reasonable apprehension in the mind of the Petitioner that he may not get a fair deal from the second Respondent as a member of the committee though we make it very clear that we are not finding that the second Respondent is in fact prejudiced against the Petitioner. Such a finding may not be called for in this case. We say so because we do not want to attach any stigma as against the second Respondent by reason of the decision we take. Suffice to say that on the facts shown we should direct the second Respondent to Keep off from any deliberations of the committee in regard to the selection for the post of Lecturer in Sociology in which the Petitioner is also a candidate.

7. It would have been easy for us to dispose of this case had the first Respondent been ready with information as to the recommendation said to have been made. We could have moulded the relief appropriately. Inasmuch as this has been withheld, may be inadvertently, we have necessarily to say that the process of selection at the interview already held would stand vacated. There maybe a fresh interview with the second Respondent not participating in the committee. The Original Petition is allowed to the above extent. Parties are directed to suffer costs.