
(2010) 06 MAD CK 0034

In the Madras High Court

Case No : Writ Petition (MD) No. 239 of 2010 and M.P. (MD) No. 1 of 2010

N. Subramanian

APPELLANT

Vs

District Elementary Educational Officer, The Assistant
Elementary Educational Officer, Bharathidasan Aided Primary
School and T. Amutha

RESPONDENT

Date of Decision : 11-06-2010

Acts Referred:

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 18

Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 — Rule 13, 15, 15(4)

Citation : (2010) 06 MAD CK 0034

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant; S.C. Herold Singh,
Government Advocate in R1 and R2 and Veera Kathiravan, R3 and R4, for the
Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2.The petitioner is working in the 3rd respondent School. The post of Head Master became vacant in the 3rd respondent school in the year 2006

and that was not filled up by the management for the reasons best known to them. Nevertheless, the 3rd respondent made the 4th respondent as

the Head Master in-charge. The 4th respondent was also acting as Secretary of the School Committee and hence, the first respondent initiated

proceedings, dated 10.10.2008 and withdrew the recognition or approval granted in favour of the 4th respondent from acting as Secretary and

further directed payment on the ground that she is employed in the School as Secondary Grade Assistant and an employed teacher cannot be a

Secretary of the School Committee. The 3rd respondent challenged the said proceedings in W.P.(MD) No. 9279 of 2008. The 2nd respondent

also directed the 3rd respondent to appoint a senior most teacher in that School to act as Head Master to receive grant in aid from the

Government, by his proceedings dated 13.10.2008 and till such time, grant in aid shall be paid directly to the teacher. That proceeding was

challenged in W.P.(MD) No. 9280 of 2008. The 3rd respondent obtained interim orders and on the basis of the interim orders, the 4th respondent

is acting as Head Master in-charge and also acting as Secretary of the School Committee. Meanwhile, the first respondent passed an order, dated

21.07.2009 directing the 3rd respondent to give promotion to the petitioner for the post of Head Master. That was challenged by the 3rd

respondent in W.P.(MD) No. 7585 of 2009 and this Court set aside the said order holding that u/s 18 of the Tamil Nadu Recognised Private

Schools (Regulation) Act, the School Committee is the competent authority to appoint teachers and to give promotions and therefore, the first

respondent has no jurisdiction to issue such order. It was also made clear in that order that the 4th respondent herein shall continue as Head

Master in-charge till a new Head Master was selected by the School Committee. Though, the petitioner herein filed W.A.(MD) No. 566 of 2009

challenging the order made in W.P.(MD) No. 7585 of 2009, later it was withdrawn, as Selection Committee was constituted by the management.

3. The 3rd respondent constituted a Selection Committee and it met on 27.11.2009 and in that said meeting, comparative evaluation of eligible

candidates were considered and the Selection Committee selected the 4th respondent as Head Master of the institution. It is stated by the

petitioner that the selection of the 4th respondent as Head Master is bad in law and the petitioner ought to have been selected as he is the senior

most person employed in the School. It is further stated that the School Committee which selected the 4th respondent consists of not only the 4th

respondent, but also the elder brother of her husband and Mr. Kaliamoorthy, her husband's cousin and the husband of the 4th respondent is also a

member of the School Committee, who is also working as teacher in the same School and another member Vijaya Lakshmi who is a close relative

of the 4th respondent and therefore, there is an element of bias against the petitioner in the constitution of the School Committee and as a senior

most teacher, the petitioner ought to have been selected and further the selection of the 4th respondent is also against G.O. Ms. No. 97, dated

05.07.2001 and therefore, the writ petition is filed by the petitioner to quash the selection proceedings of the School Committee.

4. The 2nd respondent filed a counter stating that the proposal of appointing the 4th respondent as Head Master by the Selection Committee was

not approved by the authorities and the same was returned stating four grounds and all the grounds stating therein are still hold good and the

selection was not made as per G.O. Ms. No. 97, dated 05.07.2001 and the School Committee, without considering the seniority, selected the 4th

respondent who is a junior most teacher in the School and she is also acting as Secretary of the School and as such, she cannot be appointed as

Head Master of the School.

5. The 3rd respondent filed a counter stating that the 4th respondent was elected as Secretary and her appointment as Secretary was also

approved by the first respondent by his proceedings, dated 30.05.2002 and the selection of the 4th respondent as Head Master is in accordance

with law and as per the the provision of Tamil Nadu Recognised Private School (Regulation) Act and rules and as per the direction of this Court

made in W.P.(MD) No. 7585 of 2009, the Selection Committee was validly constituted for selecting Head Master and 3 persons applied for the

post of Head Master, including the petitioner and the 4th respondent and after conducting interview and after considering the merit and ability of

the participants and on the basis of the marks obtained by the candidates, the Selection Committee finally decided that the 4th respondent secured

the maximum number of marks and therefore, accepting the recommendation of the Selection Committee, the school committee appointed the 4th

respondent as Head Master of the School.

6. It is further stated that the petitioner is not a graduate and is having the qualification of S.S.L.C. whereas the 4th respondent is having M. Phil

and B.Ed., and considering all these aspects, the 4th respondent was appointed as Head Master of the School. It is further stated that the 4th

respondent also assumed charge on 25.12.2009 and even though, the 4th respondent was the Secretary of the School Committee she did not

participate in the selection process and only on the basis of the recommendation

of the School Committee, the 4th respondent was appointed. It is further stated that the order of the 3rd respondent in appointing the 4th respondent as Head Master is an appealable order and if any person aggrieved can prefer an appeal before the appellate authority and as per Rule 15(4) of the Act, merit and ability are to be considered and seniority shall be taken into consideration only when merit and ability are apparently equal and therefore, it cannot be contended that the senior most person is entitled to be appointed as Head Master, without considering the merit and ability of other persons. The 3rd respondent also denied the fact of bias in selecting the 4th respondent as Head Master of the School and the selection was so transparent and there was no bias in selecting the 4th respondent.

7. Mr. G.R. Swaminathan, the learned Counsel appearing for the petitioner submitted that admittedly, the School Committee is consisting of members, who are close relatives of the 4th respondent and the 4th respondent is also admittedly acting as Secretary of the School Committee, despite the withdrawal of recognition of her appointments as Secretary was made by the first respondent, by his proceedings, dated 10.10.2008 and it is admitted by the 4th respondent that the Selection Committee was constituted by the 4th respondent and when she also applied to the post of Head Master to be selected by the Selection Committee, she should not have participated in the constitution of Selection Committee and therefore, the Selection Committee constituted is bad in law and cannot be said to have been validly constituted Selection Committee and hence, the entire process is vitiated. Though, Mr. G.R. Swaminathan, the learned Counsel appearing for the petitioner submitted that no allegation of bias is stated against the members of the Selection Committee, the petitioner is attacking the constitution of the Selection Committee by the 4th respondent and according to him, the petitioner was also a member of School Committee and having decided to appear as a candidate for the post of Head Master, he did not participate in the meeting of the School Committee for selecting the Selection Committee and likewise, the 4th respondent, who is acting as Secretary of the School Committee ought to have rescued herself from that process and having participated in selecting the Selection Committee, the constitution Selection Committee is illegal

and consequently, the selection of the 4th respondent is also liable to be set aside.

8. He further submitted that as per Rule 13 of the rules, a Head Master can be appointed as Secretary of the School Committee in the official capacity and the vice-a-vice is not contemplated and hence, a Secretary cannot be appointed as Head Master of the School.

9. On the other hand, Mr. Veera Kathiravan, the learned Counsel appearing for the 3rd and 4th respondents submitted that the School Committee was formed in pursuance of the provision of the Act and rules and as per the direction of this Court made in W.P.(MD) No. 7585 of 2009 and as per the provisions of Rule 15 of the Rules, the Selection Committee has to be constituted for selecting the candidates for the post of Head Master and as the Secretary of the School Committee, she has to convene the School Committee and admittedly, no allegation has been made against the members of the Selection Committee and they are not related to the 4th respondent and therefore, the Selection Committee was validly constituted.

10. He further submitted that the Selection Committee evaluated the performance of three candidates as seen from the page 2, 3, 4 and 5 of the typed set of papers and after considering the various aspects stated therein, it was found that the 4th respondent herein has secured highest marks, than the other two candidates and all the three members of the Selection Committee had given highest marks to the 4th respondent and therefore, accepting the recommendation of the Selection Committee, the 4th respondent was appointed as the Head Master.

11. Further, he submitted that as per Rule 15(4) of the Rule, for giving promotion merit and ability are to be considered and when merit and ability are apparently equal seniority can be considered and therefore, a senior most teacher cannot claim to be appointed as Head Master as of right and

G.O. Ms. No. 97 is only recommendatory in nature and the said G.O. cannot override the provision of Rules, framed under the statute and

hence, the appointment of the 4th respondent is perfectly valid and that cannot be interfered with.

12. The learned Government Advocate appearing for the respondents 1 and 2 submitted that a senior most teacher has to be appointed as per the

provisions of G.O. Ms. No. 97 and in this case, the petitioner is the senior most and he ought to have been considered for appointment for the

post of Head Master and further, the 4th respondent is acting as Secretary by the interim orders of this Court passed in W.P.(MD) No. 9279 of

2009 and the first respondent has already withdrawn the recognition or approval granted to the 4th respondent to act as Secretary, and hence, the

appointment of the 4th respondent as Head Master in the 3rd respondent School was not accepted by the respondents 1 and 2 and the proposal

was returned and hence, the appointment of the 4th respondent is not in accordance with law.

13. I have given my anxious consideration to the submission made by both parties.

14. Before going into the merits of the case, it is necessary to state certain admitted facts. The 4th respondent was appointed as Secretary of the

School Committee and the appointment was also approved by the first respondent, by proceedings, dated 30.05.2002 and at the time, the 4th

respondent was not a teacher employed in the 3rd respondent School and subsequently, she was appointed as teacher in the 3rd respondent

School and therefore, the first respondent withdrew the approval granted in favour the 4th respondent as Secretary. The first respondent also by

the same proceedings ordered direct payment as there is no validly appointed Secretary for that School. This proceedings of the first respondent

was challenged in W.P.(MD) No. 9279 of 2009 and the order of the first respondent was upheld by me in a separate order passed today. The

2nd respondent also issued the proceedings, dated 13.10.2008 directing the 3rd respondent herein to appoint the petitioner herein, who is the

senior most teacher to act as Head Master and till such time, resorted to direct the payment and that was challenged in W.P.(MD) No. 9280 of

2008 and both the writ Petition Nos. 9279 & 9280 of 2008 were heard together by me along with this writ petition and a common order was

passed, dismissing the W.P.(MD) No. 9279 of 2008 and W.P.(MD) No. 9280 of 2008 with certain observations stated therein. Therefore, by

reason of the orders passed in W.P.(MD) No. 9279 and 9280 of 2008, the 4th respondent cannot function as Secretary till her appointment as

Secretary on the basis of her appointment as Head Master is approved. I have also held in the said order that the withdrawal of the approval

granted in favour of T. Amutha as Secretary by the first respondent is valid and having regard to the fact that the 3rd respondent has appointed the

4th respondent as Head Master of the School, she is also eligible to be appointed as Secretary of the School Committee and till such nomination is

made by the School Committee, she cannot act as a Secretary of the School Committee. Now the petitioner has challenged the proceedings of the

School Committee dated 24.11.2009 in selecting the 4th respondent as Head Master of the School.

15. Mr. G.R. Swaminathan, the learned Counsel appearing for the petitioner further submitted that by virtue of the interim orders passed in W.P.

(MP) No. 9279 of 2008, the 4th respondent is continuing as Secretary of the School Committee and the Selection Committee was constituted by

the School Committee wherein she also participated and she also convened the School Committee for selecting the Selection Committee and

therefore, the constitution of Selection Committee is vitiated, since the 4th respondent was also one of the candidates, appeared before the

Selection Committee for the post of Head Master and she also happened to be the Secretary of the School Committee.

16. He further submitted that Mr. Veeramani, who is one of the members of the Selection Committee and also the President of the School

Committee, is the brother of the husband of 4th respondent and therefore, by appointing a relative to a School Committee, there is every likelihood

of influence in the selection and hence, the selection process is vitiated and the constitution of the Selection Committee is also vitiated. He further

submitted that as per Rule 13 of the Act, the Head Master can be appointed as Secretary of the School Committee and the converse is not

permissible and hence, a person acting as Secretary cannot be appointed as Head Master.

17. On the other hand, Mr. Veera Kathiravan, the learned Counsel appearing for the respondents 3 and 4 that the petitioner is estopped from

challenging the vires of constitution of Selection Committee after having participated in the selection process without raising any objection and it is

not open to the petitioner to question the same after knowing that he was not selected.

18. He further submitted that as per Rule 15, senior teachers need not be appointed as Head Master and the School Committee has to appoint

persons after considering the merit and ability and therefore, Selection Committee after considering the various aspects as stated in their report

came to the conclusion that the 4th respondent is the most suitable person and recommended her appointment and that was approved by the 3rd

respondent and there was nothing illegal.

19. Therefore, we will have to see whether the constitution of the Selection Committee is valid as contended by the learned Counsel appearing for

the petitioner and whether there is any element of bias in the appointment of the 4th respondent and whether the petitioner is estopped from

challenging the constitution of Selection Committee after appearing before the Selection Committee without raising any protest or objection?

20. In this connection, it is useful to quote the following passage from the Principles of Administrative Law by Jain & Jain, Vol. I, 6th edn. Page

565 under the caption ""Group Decision"" - ""Where a decision is taken by a group of persons, such as a board or Committee, bias of one member

affects the validity of the group decision and it does not matter that the biased member did not actively participate in the decision, or that he

remained silent and did not seek to influence the decision of other members in the group. The reason is that in such a case, the question is not

whether there was actual bias or not but whether there was a reasonable likelihood of bias. The Supreme Court in the celebrated judgment of

A.K. Kraipak and Others Vs. Union of India (UOI) and Others, said that in a group decision, each member of the group is bound to influence the

other. This view has been reiterated since then in a number of cases, Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, . In

Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, , the Supreme Court reiterated the proposition that bias on the part of a

member of the Selection Committee for filling certain posts may vitiate its recommendations. On this point, the Court had stated: ""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.

One member can subtly influence the minds of the other members in his favour. In *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram*

(Co-education) Higher Secondary School and others, the Supreme Court quashed a group decision on Account of the bias of one of its members.

When a Selection Committee to select persons for civil posts includes as a member the son-in-law of a selected candidate (while some of his

seniors were not selected), the selections were quashed on the ground of bias, even though the Committee was presided over by an independent

person, e.g. the Chairman of the Union Public Service Commission [*D.K. Khanna Vs. Union of India (UOI) and Others*,]. The doctrine of bias,

the court held, would apply in case the relationship between the adjudicator and a party before him was so closed as to give rise to the reasonable

likelihood of the adjudicator espousing the cause of the party as his own. In the instant case, the relationship between the Committee member and

the candidate selected was sufficiently close to bring the doctrine against bias into play. "The nearness of the relationship could reasonably give the

impression to the other candidates that there was a "real likelihood" of the member espousing the case of his father-in-law". The court emphasised

that the facts that the member concerned remained silent in the Committee meeting, or that he did not influence the members of the Committee, or

that the Committee was aware of the member's relationship with the candidate, were of no consequence. The law was not concerned with

whether the member concerned in fact participated in the consideration of his father-in law's candidature, or spoke to the prejudice of other

candidates. "The law is concerned with determining whether there was a reasonable likelihood of bias". In a group discussion, each member of the

group influences the other. The selection list was therefore quashed as, in the court's opinion, the petitioners could have legitimately believed that

there was a "reasonable likelihood of bias" in favour of the candidate selected to the detriment of the petitioners because of the presence of his

son-in-law on the Committee. When the mother-in-law of a candidate for post-graduate course in a medical college was a member of the

Selection Committee, his selection was quashed. A similar question has now been considered in some detail by the Supreme Court in *Ashok*

Kumar Yadav and Others Vs. State of Haryana and Others, . The basic question raised in the case was; when a near relation of a member of a

Selection Committee is a candidate, what should the member do? should he desist from interviewing all the candidates or only his relation? Taking a broader view of the matter, the court has laid down the following proposition: if a Selection Committee is constituted for the purpose of selecting candidates on merits, and one of its members is closely related to a candidate appearing for the selection, such member should not merely withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process, otherwise all selection would be vitiated on account of reasonable likelihood of bias affecting the selection process.

In *J. Mohapatra and Co. and Another Vs. State of Orissa and Another*, the Supreme Court applied the same principle. The Court ruled that mere non-participation in the discussion by an interested member or even his withdrawal from deliberations of the Committee when his books are being considered for selection, would not suffice because the evil of quid pro quo cannot be eliminated by this. "Members deliberating would bear in mind that the turn for selecting their books would also come and the concerned member who had not participated or had withdrawn would then be favourably inclined to select their books.

Therefore, it is seen from the above principles laid down by the Honourable Supreme Court that even in the case of non-participation in the selection process by an interested member the element of bias cannot be eliminated and such constitution of the Committee cannot be upheld.

21. The Honourable Supreme Court in the judgment reported in AIR 1957 SCC 425, in the case of *Manak Lal Advocate v. Dr. Prem Chan*

Singhvi and others has held as follows: "It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases 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

22. This case was followed in all the subsequent cases referred to above and therefore, from the above judgments, if one of the candidate is also a member of the Committee, even though that candidate did not participate in the selection process or withdrew from the constitution of the Selection Committee, the elements of bias can be attributed and their selection cannot be upheld. But in this case, even though the petitioner was aware that the Selection Committee was constituted by the School Committee wherein the 4th respondent is acting as Secretary and her relatives are members of the School Committee and her husband and his eldest brother, is also acting as President of the School Committee, he did not raise any objection to the constitution of Selection Committee and participated in the interview conducted by the Selection Committee and after knowing that he was not selected, questioned the constitution of Selection Committee in this writ petition.

23. Further, Mr. G.R. Swaminathan, the learned Counsel appearing for the petitioner made it clear that it is not the case of the petitioner that the members of the Selection Committee are biased towards the 4th respondent and according to him, the 4th respondent being the Secretary of the School Committee ought not to have participated in the constitution of the Selection Committee and the petitioner, who is also a member of the School Committee withdrew himself from participating in the meeting convened for the selection of Selection Committee and likewise, the 4th respondent ought to have rescued herself from participating in the meeting, while selecting the Selection Committee, but the 4th respondent participated in the said meeting and hence, the constitution of Selection committee cannot be considered to be a valid one.

24. In this case, we will have to see the role of the 4th respondent. Admittedly, the 4th respondent is the Secretary of the School Committee and as a Secretary, she has to discharge certain functions. It has been held in the judgment reported in State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, as follows:

13. It is true that the principle of natural justice is based on two pillars; (i) nobody shall be condemned without hearing; and (ii) nobody shall be a judge in his own cause.

14. It is, however, well known that the principles of natural justice can be

excluded by a statute. They can also be waived.

15. In a case where doctrine of necessity is applicable compliance with the principles of natural justice would be excluded.

16. Referring to the doctrine of necessity, Sri William Wade in his Administrative Law stated:

But there are many cases where no substitution is possible, since no one else is empowered to act. Natural justice then has to give way to

necessity; for otherwise there is no means of deciding and the machinery of justice or administration will break down.

It was further stated: "In Administrative cases the same exigency may arise. Where the statute empowers a particular minister or official to act, he

will usually be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested.

Transfer of responsibility is, indeed, a recognised type of ultra vires. In one case it was unsuccessfully argued that the only minister competent to

confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply

for a local Act of Parliament.

Therefore, by applying doctrine of necessity, the 4th respondent as the Secretary of the School Committee has to necessarily convene the School

Committee meeting and merely because she has participated in the meeting, while selecting the Selection Committee it cannot be stated that she

could have influenced the other members while selecting the Selection Committee.

25. As rightly contended by the learned Counsel appearing for the respondents 3 and 4, Mr. Veera Kathiravan, the petitioner having participated

in the selection process without raising objection has waived his right to challenge the right of the constitution of the Selection Committee and is

estopped from the constitution of the Selection Committee.

26. In the judgment reported in Manak Lal Vs. Dr. Prem Chand, it has been held as follows:

The next question which falls to be considered is whether it was open to the appellant to take this objection for the first time before the High Court.

In other words, has he or has he not waived his objection to the presence of Shri Chhangani in the tribunal? Shri Daphtary does not seriously

contest the position that the objection could have been effectively waived. The alleged bias in a member of the tribunal does not render the

proceedings invalid if it is shown that the objection against the presence of the member in question had not been taken by the party even though the

party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of his right to challenge the presence of the

member in the tribunal. It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection.

Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in

question. As Sir John Romilly, M.R. has observed in *Vyvyan v. Vyvyan* (1861) 30 Beav 65 ; 54 E.R.813 (E) waive or acquiescence, like election,

presupposes that the person to be bound is fully cognizant of his right and that being so, he neglects to enforce them, or chooses one benefit

instead of another, either but not both, of which he might claim. ""If in the present case, it appears that the appellant knew all the facts about the

alleged disability of Shri Chhangani and was also aware that he could effectively request the learned Chief Justice to nominate some other member

instead of Shri Chhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from

the tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High

Court for the first time. In other words, though the point of law raised by Shri Daphtary against the competence of the tribunal be sound it is still

necessary for us to consider whether the appellant was precluded from raising this point before the High Court by waiver or acquiescence.

9.From the record it is clear that the appellant never raised this point before the tribunal and the manner in which this point was raised by him even

before the High Court is somewhat significant. The first ground of objection filed by the appellant against the tribunal's report was that Shri

Chhangani had pecuniary and personal interest in the complainant Dr. Prem Chand. The learned Judges of the High Court have found that the

allegations about the pecuniary interest of Shri Chhangani in the present proceedings are wholly unfounded and this finding has not been challenged

before us by Shri Dephtary. The learned Judges of the High Court have also found that the objection was raised by the appellant before them only

to obtain an order for a fresh enquiry and thus gain time. It may be conceded in favour of Shri Dephtary that the judgment of the High Court does

not in terms find against the appellant on the ground of waiver though that no doubt appears to be the substance of their conclusion. We have,

however, heard Shri Daphtary's case on the question of waiver and we have no hesitation in reaching the conclusion that the appellant waived his

objection deliberately and cannot now be allowed to raise it. Shri Daphtary does not contend that at the material time the appellant did not

remember the fact that Shri Chhangani had appeared for Dr. Prem Chand in the criminal proceedings. Indeed such a plea cannot be raised by the

appellant in view of the affidavit which the appellant sought to place before us in the present appeal. Under this affidavit, the appellant's case

appears to be that until he met his advocate Shri Murli Manohar for filing objections to the report of the tribunal, the appellant did not know that

Shri Chhangani was legally disqualified from acting as a member of the tribunal. It is obvious that this ground necessarily implies that the appellant

knew about the facts giving rise to the alleged disqualification of Shri Chhangani to act as a member of the tribunal. In substance the contention is

that though the appellant knew that Shri Chhangani had appeared for Dr. Prem Chand in the criminal proceedings in question, he was not aware

that in consequence, Shri Chhangani was disqualified to act as a member of the tribunal. It is this limited aspect of the matter which is pressed

before us by Shri Daphtary. Shri Daphtary contends and no doubt rightly that if we are satisfied that the appellant did not know about the true legal

position in this matter and his rights arising therefrom, his failure to challenge the appointment of Shri Chhangani on the tribunal would not raise an

effective plea of waiver. However, in our opinion, it is very difficult to accept Shri Daphtary's argument that his client did not know that true legal

position or his rights until he met Shri Murli Manohar. No doubt the appellant is a junior at the Bar but even so he can claim ten year's standing at

the Bar. Besides, he had the assistance of a lawyer in defending him in the present proceedings and it appears extremely difficult to assume that

neither the appellant nor his lawyer knew that the presence of Shri Chhangani in the tribunal could be effectively challenged by them. We are

disposed to think that even a layman, not familiar with legal technicalities and equitable principles on which this doctrine of disability has been based

would have immediately apprehended that the lawyer who had appeared for Dr. Prem Chand was authorised to sit in judgment over the conduct

of the appellant and that might cause embarrassment to the appellant and might lead to prejudice against him. From a purely common-sense point

of view of a layman, the position was patently awkward and so, the argument that the appellant was not conscious of his legal rights in this matter

appears to us to be an after-thought. Since the appellant was driven to adopt this untenable position before the High Court is seeking to raise this

point for the first time at that stage, we are not surprised that the High Court took the view that the plea had been taken late in order to gain time

and to secure a fresh enquiry in the matter. Since we have no doubt that the appellant knew the material facts and must be deemed to have been

conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of

waiver against him. It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted

and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.

27. Further, in the judgment reported in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, the Honourable Supreme Court

has held as follows: "We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real

likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the

interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the

Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and

question the constitution of the Committee." This is also followed in the judgment reported in *Shri Bishan Dass Bagha Vs. Government of Punjab*

and others, .

Therefore, The petitioner having participated in the interview conducted by the Selection Committee cannot question the constitution of the

Selection Committee, after knowing that he was not selected and hence, as held by the Honourable Supreme Court, the petitioner cannot challenge

the constitution of the Selection Committee and according to me, the Selection Committee was validly constituted as per the provisions of the rules

and the 4th respondent was selected on the basis of the evaluation done by the Selection Committee and hence, the appointment of the 4th

respondent is perfectly valid and the same cannot be challenged by the petitioner.

28. In the result, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.