

(1954) 10 AP CK 0003

In the Andhra Pradesh High Court

Case No : Civil Revision No. 1231 of 1954

Pyda Venkatanarayana and Another

APPELLANT

Vs

Thota Ramaswamy and Others

RESPONDENT

Date of Decision : 19-10-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1898 (CrPC) — Section 526, 556

Citation : AIR 1955 AP 40

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : R. Venkatasubba Rao, P. Vendateswara Rao and K. Raghava Rao, for the Appellant; P. Somasundaram and K. Mangachari, for the Respondent

Judgement

(1) This petition is filed against the order passed by the Deputy Registrar of Co-operative Societies, Kakinada dated 23.8.1954 in A. R. G. No. 70/53-54 under Art. 227 of the Constitution. On 20.8.1954, the 1st petitioner herein filed an application before the Deputy Registrar of Co-operative Societies, Kakinada, that the proceedings in A. R. G. No. 70/53-54 might be transferred to another Deputy Registrar on the ground that he is a material witness and has to be examined as to what took place on the date of the election of the directors held on 22.7.1953. The Deputy Registrar by his order dated 23.8.1954 dismissed the application holding that the application was not bona fide. He further observed that

"in the interests of quick disposal, regard being had to several circumstances explained above and in the interests of equity, justice and good conscience, and regard being had to the fact that the object of filing a dispute before the Deputy Registrar is to assure speedy disposal. I consider that any further delay in the disposal cannot be allowed."

(2) In the application filed by the petitioners on 6.8.1954 for transfer of the case to the file of another Deputy Registrar and for the examination of the Deputy

Registrar as a witness, it was alleged that he was present throughout the election meeting, that he was aware as to what took place at the time and that, as the main questions to be decided in the election petition related to what transpired at the election meeting, he ought not to hear the election petition. It was also stated that as the Deputy Registrar was a material witness who had to be examined as to what happened at the election meeting, he ought not to act as a judge in respect of the dispute between the parties.

The Deputy Registrar by his order dated 6.8.1954 rejected the application for transfer without giving any reasons and dismissed the applications for his examination as a witness in the following words: "Not necessary". Under Art. 226, of the Constitution, "Writ Petn. No. 529 of 1954 (Andhra) (A)", was filed before this Court and the following order was made by the learned Chief Justice on 16.8.1954 :

"This is an application for issuing a writ of certiorari to quash the order of the Deputy Registrar of Co-operative Societies refusing to transfer the case now pending before him to some other competent Deputy Registrar. The petitioners' case is that the Deputy Registrar is an important witness in the proceedings now before him inasmuch as he was present throughout the election and he was informed of that fact at an early stage of the proceedings. If that was a fact. I do not believe that responsible Officer like a Deputy Registrar would himself conduct the proceeding ignoring the request. If it was a fact, it is left to the good sense of the Officer to transfer the case to another Deputy Registrar, so that the petitioners may be in a position to examine him before the latter. But this application cannot be sustained either as a writ of Certiorari or as a writ mandamus. The application is dismissed."

(3) On 20.8.1954, the petitioner once again applied to the Deputy Registrar to transfer the case to another Deputy Registrar relying on the observations made by the learned Chief Justice in "W. P. No. 529 of 1954 (Andhra) (A)". As already stated, the Deputy Registrar dismissed the application on 23.8.54 primarily on the ground that the transfer would involve further delay.

(4) It is not disputed that the Deputy Registrar was present at the election meeting. In his letter B. O. A. R. G. 79/53-54 addressed to the Additional Joint Registrar of Co-operative Societies he wrote as follows :

"The election of the Board of Directors of the Kakinada Co-operative Central Bank was conducted by the General Body held on 22.7.53. I attended the General Body Meeting on that day. While the meeting went on from 2 p. m. till 4.30. a. m. I remained till 2 a. m."

The issues of fact that have to be determined in the election petition relate to what took place at the election meeting at which the Deputy Registrar was present and issues 4 to 7 are in the following terms :

"4. Whether there was undue influence over the voters either by the President,

Directors. or Subordinates of the Bank ?

5. Whether the objection regarding the method and procedure of recording votes from illiterate members is valid as raised by the petitioners, and whether the mode of preparation of ballot papers noting names of candidates of one group after another, is calculated to lead the voter to a particular type of voting alone ?

6. (a) Whether Sri Y. Tammayya was denied of his franchise as a society delegate ?

(b) Whether the issue of a ballot paper to Sri Madiseti Tatayya, the representative of the Aratlakatta Field Labourers" Co-operative Society for a second time, is in order, and whether it was counted as a valid vote ?

7. Whether the meeting was convened late & whether the delay was utilized for canvassing and influencing the voters as alleged in petition ?"

(5) So, the first question that falls to be determined is, whether the Deputy Registrar who was present at the meeting and had personal knowledge as to what took place, is entitled to, or should be permitted to try this election dispute between the parties. As pointed out by Rajamannar, C. J., in -- Visakapatnam Co-operative Motor Transport Ltd., Visakapatnam Vs. G. Bangaruraju and Others, (B), there are two well - established principles of law and they are as follows :

"One of the great principles of civilised jurisprudence which is a part of the law in Britain and which has been adopted in this country, is that no man shall be a judge in his own cause. Closely allied to this principle is the other salutary principle that it is of fundamental importance that justice should not only be done but manifestly and undoubtedly seem to be done".

In "Sergeant v. Dale", (1877) 2 QBD 558 (C). Lush J., in dealing with the question whether a Bishop acting in a judicial capacity is disqualified from trying a case by reason of his right of patronage to the two benefices, enunciated the principle in the following forcible terms :

"One important object, at all events, is to clear away everything which might engender suspicion and distrust of the Tribunal, and so to promote the feelings of confidence in the administration of justice which is so essential to social order and security".

It has been authoritatively laid down by the Privy Council in -- Horpurshad v. Sheo Dyal", 3 Ind App 259 (PC) (D), that

"it ought to be known and their Lordships wish it to be distinctly understood. that a Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts"

and the learned Advocate for the respondent cannot and does not dispute this proposition. What he contends is that the Deputy Registrar must be left to his good sense and knowledge of law and presume (sic) that he would not import his

personal knowledge of facts as to what took place at the election meeting, but would strictly act on the evidence on record and that there is no legal disqualification preventing his from proceeding with the election petition. I do not agree. When the Deputy Registrar is the sole judge of fact and law, it is not only prudent but expedient in the sound administration of law, that he should transfer it to another Deputy Registrar so as to enable the parties to cite and examine him as a witness.

That was the view taken by the Calcutta High Court in -- "Gya Singh v. Mahomed Soliman", 5 Cal WN 864 (E), in transferring the case from the file of the Sub-Divisional Magistrate holding that "the Sub-Divisional Magistrate could hardly disabuse his mind of the impression that was formed at the time of the examination".

Phear J. "in re Hurro Chunder Paul", 20 Suth WR Cr 76 (F), in discussing the law as to what a Judge, who is a material witness in a case, should do, observed as follows :

"It has been held by this Court, and is accordant with the general Principal which govern the conduct of an English Court of Criminal Justice, that while a person is not necessarily disqualified from presiding as a Judge or acting as a Jurymen upon an inquiry into or investigation of facts, because he may have been himself a witness of some of the facts which are the subject of the inquiry or investigation, if he does do so, he so far from being under any such obligation as that which the Deputy Magistrate seems to have referred to, is bound to state to the prisoner or other person concerned or to make known to him so far as he can, what are the facts which he himself observed to which he himself can bear testimony. It is quite erroneous, in our opinion, to suppose on the contrary, as the Deputy Magistrate appears to have supposed, that he was bound to keep out of sight altogether the part which he had played in the matter and to pretend (we cannot use any other word than that) that he knew nothing about the facts excepting so much as the witness has told him in court. It is always dangerous for any man in whose right conduct others are concerned to set up and endeavour to carry out a fiction such as this The awkwardness of a criminal Judge being the principle witness in the case which he has to try is, no doubt, most apparent ; this however, is reason for his declining to try the case not for his endeavouring to assume an unreal character".

In -- "Lakshmayya v. Rajah Varadaraja Appa", 36 Mad 168 (G). Sadasiva Iyer J. laid down the following rule :

"I think the only practical rule which can be laid down in those cases is that if a Judge knows of his own knowledge as an individual observer of a past relevant concrete private incident and that fact cannot be subjected to ocular proof at the time of trial (such as a person's colour, resemblance of features, appearance, behaviour, chemical experiments of the present condition of the object) and if the truth of such incident is contested between the parties, he should mention his

private knowledge of such incident to the parties and he should refuse to be the Judge in that case, unless both the parties after he so mentions to them his said personal knowledge of that particular incident, state that they have no objection to his continuing as Judge. That the Judge was competent to give evidence in the witness box and to subject himself to cross-examination and then to decide the case was the old rule, but this has been discountenanced for obvious reasons in modern times and, in my opinion, should not be allowed."

The above cases merely lay down or reiterate the same principle which Lord Howari C. J., state in -- "Rex v. Sussex Justices ; Ex Parte Macarthy". 1924 1 KB 256 at p. 259 (H), that it "is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" and "that nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice". If the Deputy Registrar was present at the election meeting, and if he was aware of all the incidents that took place then, it is impossible for him to forget or dissociate himself from those facts and disabuse his mind of the impressions formed by him and decide the case on the evidence adduced before him.

He wrote to the additional Joint Registrar of Co-operative Societies by his letter dated 10.9.1953 about his presence and sought his advice as to whether he might proceed with the hearing of the election petition. The last sentence in the letter was, whether he might presume that nothing prevented him from hearing the dispute, though he was present at the meeting. The note that was made on the letter was that the Deputy Registrar was present at the General Body meeting in his administrative capacity as Deputy Registrar and that he would decide the dispute in a judicial capacity and that the Deputy Registrar might be told that his presumption was correct. In accordance with the note, a reply was sent to him that "the presumption made in your letter cited is correct".

In the order dated 23.8.1954 the Deputy Registrar states, in more than one place, that the question as to "whether he should even entertain and hear the petition weighed in the Deputy Registrar's mind. even at the time of entertaining the petition". Nowhere in the order does he categorically state that he was not aware of the facts or the incidents that took place at the election meeting or that he has no personal knowledge of any of them. If so, he ought to have informed the higher authorities that it was not fair or proper that he should decide the case, and the higher authorities ought to have transferred the election petition to another Deputy Registrar. The distinction drawn in the note that his presence at the election meeting was in an administrative capacity and that did not prevent him from deciding the dispute in a judicial capacity, appears to my mind, to be without substance and absolutely erroneous. Though the Deputy Registrar might not be under any legal disqualification to decide the dispute. I have no doubt that, in the circumstances stated above and for the reasons already mentioned, it is proper and desirable that he should not function as a Judge in deciding the election dispute.

(6) The learned Advocate for the respondent relied on the decision in -- "Queen v. Ferrant", (1888) 20 QBD 58 at p. 62 (I). Stephen J. discussed the legal principles as to how far bias disqualifies Magistrate and Judges in deciding cases and held, on the particular facts, that merely because Ferrant J. Suggested a settlement and advised the complainant not to go into a criminal court, no bias was made out and that he was consequently not disqualified from hearing the case. In the course of his judgment, he observed as follows :

"Then it is said that he is to be a witness at the hearing before the Magistrate. That may be a ground on which he may decide not to sit, but this is a matter for him to consider, not for us. It might cause great mischief if we were to hold as a matter of law that, because a Magistrate or a Judge is likely to be called as a witness, he is bound not to sit. Such a doctrine might cause great, inconvenience, as, for instance, if a Judge of Assize were subpoenaed just before the trial, the effect might be to necessitate a postponement to the next Assizes and it would be in the power of either party by serving a subpoena, to prevent any particular Judge or Magistrate from sitting. It would be a serious thing to by down a rule which might have such an application".

Relying on these observations, the learned counsel for the respondent contended that the order passed by the Deputy Registrar, dismissing the application for his examination as a witness as being unnecessary, amounted to the Deputy Registrar deciding that he was not a necessary witness. I do not agree with the observations of Stephen J., that it is entirely within the discretion of the Judge or Magistrate to decide, whether he should be a witness and whether he should sit and dispose of the case. There is no legal bar preventing the examination of a Judge or Magistrate as a witness, apart from what is contained in S. 121, Indian Evidence Act. The Deputy Registrar who was present at election meeting, like any other individual, might be summoned and examined as a witness to speak to the facts within his knowledge. It is not for him to say that he is not a necessary witness. His decision is not final.

As I felt that the observations of Stephen J. extracted above were not correct but rather wide. I requested the Advocates appearing for the petitioner and respondent to investigate whether those observations have ever been referred to with approval in later cases, or by leading text book writers, and I am informed that, though in dealing with the question of bias, the decision in -- "Queen v. Farrant", (I), is referred to, the observations are nowhere followed or approved.

In "Regina v. Gamborne Justices", 1954 3 WLR 415 at p. 422 (J), all the decisions bearing on the question of bias are reviewed and discussed by Slade J. and in deciding this case, I am fully alive to the note or warning sounded by him in the penultimate paragraph in the following terms :

"While indorsing and fully maintaining the integrity of the principle reasserted by Lord Howart, this Court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important

that justice should appear to be done than that it should in fact be done."

I hold, on the particular facts, that not only for the purpose of meeting out justice between the parties, but also for making it appear that justice is also meted out, the case should be transferred to the file of another Deputy Registrar.

(7) The next question that has to be considered is whether the Deputy Registrar was justified in dismissing the application on the ground that the transfer would involve delay in the disposal of the election petition. While Courts and judicial bodies should hear the parties or their advocate and quickly dispose of cases and clear arrears, the speed or quickness ought not to be at the expense of doing justice. While I am strongly of opinion that justice delayed might, in some cases, amount to denial of justice, I am equally clear that disposal mania to solve arrears in haste would undermine the sound administration of law and justice. The slogan of speedy disposal ought not to result in a denial of fair and proper hearing. If I am right in my view, that the Deputy Registrar who had personal knowledge of the events that took place at the election meeting ought not to hear the case, and should be examined as a witness, to ascertain the truth, "the ground of delay or speedy disposal" should not oppress him or stand in the way of the case being transferred to the file of another Deputy Registrar. The main ground on which he dismissed the application, namely that the objection to his hearing the case was not taken at an earlier stage and that the disposal of the case would be delayed, is, in my opinion, entirely erroneous.

I am assuming, for the purpose of my decision that the petitioner did not raise this objection, till he filed the application on 6.8.1954. A perusal of the B diary, however, does not disclose that the petitioner was wholly responsible for the delay in the hearing of the election petition. I do not agree with the Deputy Registrar that the application is not a bona fide one or that it is merely a ruse or device to prolong the hearing of the election petition. The remarks that the petitioner desires to continue in office by delaying the proceedings, assume that there is no substance in his defence and are, in my opinion, not well founded. In passing, I may observe that the effect of not transferring the case in spite of the objection being taken on 6.8.1954, has resulted in a further delay of over two months in the disposal of the election petition, and it could have been avoided, if the observations of the Chief Justice in Writ Petn, No. 529 of 1954 (Andhra) (A) were duly heeded or given effect to by the Deputy Registrar.

(8) The next contention that was urged by the learned Counsel for the respondent was that I should infer that the petitioner waived his objection to the hearing of the case, by the Deputy Registrar in spite of his having personal knowledge of the several facts arising for decision in the election petition, Reference was made to the decision in -- *The King v. Williams ; Ex Parte Phillips*", 1914 1 KB 608 (K). On the facts of the case, I do not agree with the learned Counsel that the petitioner waived his right or, by his conduct, precluded himself from putting forward that objection. Even assuming that he did not raise that objection till the petitioner finished the examination of the witnesses, and

raised it only on 6.8.1954, in my opinion, it does not amount to impliedly authorising the Deputy Registrar to hear the case. His application for transfer and for examination of the Deputy Registrar as a witness clearly indicates his state of mind. So, there is no substance in the objection relating to waiver.

(9) It was faintly argued that as the application under Art. 226 for the issue of a writ was dismissed, an application under Art. 227 of the Constitution ought not to be entertained. The scope of Art. 227 is entirely distinct and different from Art. 226. Article 227 confers upon the High Court a power of supervision over all judicial matters decided by any Court or Tribunal within the State. In -- In Re: Annamalai Mudaliar, (L), Ramaswamy J. has discussed the scope and applicability of Art. 227 of the Constitution in dealing with an award passed by the Deputy Registrar of Co-operative Societies, Thiruvannamalai, Recently in -- Waryam Singh and Another Vs. Amarnath and Another, (M), the Supreme Court had to consider the powers of the High Court under Art. 227. Following those decisions, I hold that this is an eminently fit and appropriate case in which the power of superintendence should be exercised by this Court and the election petition transferred to another Deputy Registrar for disposal.

(10) The learned Advocate for the respondent insisted that I should direct the petitioner to examine the Deputy Registrar as a witness on his behalf. The learned Counsel for the petitioner stated that his client had no objection to examine him and that the suggestion that the application was only a device to delay the proceedings was not correct. In my opinion, the proper course appears to be to direct the examination of the Deputy Registrar as a Court witness and not as a witness on behalf of the petitioner or the respondent.

(11) In the result, I set aside the order of the Deputy Registrar and direct A. R. G. No. 70/53-54 to be transferred to the file of any other Deputy Registrar and that the election petition should be heard and disposed of as expeditiously as possible. I also direct that each party should bear his own costs, in the circumstances of the case.

(12) Order accordingly.