

(1993) 05 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal No. 2860 of 1993 (arising out of S.L.P. No. 3476 of 1991)

Rattan Lal Sharma

APPELLANT

Vs

Managing Committee, Dr. Hari Ram (Co-education) Higher
Secondary School and others

RESPONDENT

Date of Decision : 14-05-1993

Acts Referred:

Punjab Aided Schools (Security of Service) Act, 1969 — Section 3(2)

Citation : AIR 1993 SC 2155 : (1993) 3 JT 487 : (1993) LabIC 1808 : (1993) 2 LLJ 549 : (1993) 2 SCALE 924 : (1993) 4 SCC 10 : (1993) 3 SCR 863 : (1993) 2 UPLBEC 1460

Hon'ble Judges : M. N. Venkatachaliah, C.J.;G.N. Ray, J

Bench : Division Bench

Final Decision : Allowed

Judgement

G.N. Ray, J.—Special leave granted. Heard learned Counsels for the parties.

2. On the application for special leave to appeal notice was issued by this Court on the respondents indicating therein that the said application for special leave to appeal will be disposed of finally at the notice stage itself on the short question as to why the disciplinary proceedings and the order passed therein should not be set aside and a fresh enquiry should be ordered on the ground that one of the participants of the enquiry committee was biased. Such notice was served on the respondents and the respondent Nos. 1 and 4 have entered appearance through a learned Counsel and also filed counter affidavit to the special leave petition.

3. The appellant was appointed as Principal of Dr. Hari Ram (Co-education) Higher Secondary School, Datarpur in Tehsil of Dasuya in the District of Hoshiarpur. He was placed under suspension by the Managing Committee of the said School and charge sheet containing 12 charges was issued to the appellant. Charge No. 12 was to the following effect: "the following amounts are reported to have been used by you and are unaccounted for:-A. sum of Rs. 129.37 on account of amalgamated fund for the month of December, 1969 given to you by

Shri Maru Ram teacher incharge amalgamated fund."

4. The school authorities appointed an enquiry committee consisting of three members of which the said Shri Maru Ram was one of the members. It is an admitted position that the said Shri Maru Ram appeared as a witness in support of charge No. 12 on behalf of administration in the said enquiry proceedings. The appellant raised an objection for inclusion of the said Shri Maru Ram in the enquiry committee but the said objection of the appellant was overruled by the Enquiry Committee inter alia on the ground that-

similarly your objection to the appointment of Shri Maru Ram in the enquiry committee is ill-conceived, unfounded, unjustified and invalid because Shri Maru Ram is as good a member of the Managing Committee as any one else and as such as member is entitled to act on any sub committee formed by the Managing Committee and even perhaps more in this case because to give you a fair trial, it was necessary to have a teachers union's representative on the Enquiry Committee. Shri Maru Ram represented the Union of the staff of the school and is thus your own representative as such.

There is no dispute to the fact that the said Shri Maru Ram himself deposed in the enquiry proceedings in support of Charge No. 12 against the appellant and he also participated as one of the members of the Enquiry Committee. The Enquiry Committee found the appellant guilty on some of the charges including the said Charge No. 12. The Managing Committee proposed to dismiss the appellant from service. It is not disputed that the disciplinary proceeding against the petitioner is to be carried out in accordance with the provisions of the Punjab Aided (Schools Security of Service) Act, 1969. Sub-Section (2) of Section 3 of the said Act is set out hereunder:

No order of dismissal or removal or reduction in rank of an employee shall take effect unless it has been confirmed by the Deputy Commissioner who may refuse to do so, if in his opinion, the provisions of Sub-section (1) have not been complied with.

5. In view of such provision in the aforesaid Act, the report of the Managing Committee and the proposal for dismissal of the appellant from service were sent for confirmation by the Deputy Commissioner. The appellant being informed of the decision of the Managing Committee to dismiss him from service subject to the confirmation by the Deputy Commissioner, Hoshiarpur, made an application to the President of the Managing Committee for the inspection of the stipend register and the office file of the case on December 29, 1970 so that he could make a proper representation to the Deputy Commissioner of Hoshiarpur. The Managing Committee, however, did not give inspection to the appellant of the said records but the original application made by the appellant to the President of the Managing Committee was not entertained but then and there returned with the remarks "under what rules do you wish to see the file please.

Sd/- R.D.Sharma 29.12.1970.

The appellant thereafter submitted his representation to the Deputy Commissioner against the proposed order of dismissal of the appellant and it was urged by the appellant that the Managing Committee acted in a prejudicial manner and had been trying to urge his dismissal on unfounded grounds. By Order dated March 18, 1971, the Deputy Commissioner rejected the representation of the appellant. The appellant thereafter preferred an appeal against the order of confirmation by the Deputy Commissioner under Sub-section (5) of Section 3 of the said Act to the Commissioner, Jullundur Division but such appeal was also dismissed by the Commissioner on December 3, 1973. The appellant thereafter moved a Writ Petition in the High Court of Punjab and Haryana being Civil Writ Petition No. 1121 of 1974 inter alia praying for quashing the enquiry report and the orders passed by the Managing Committee, Deputy Commissioner, Hoshiarpur and the Commissioner, Jullundur Division. The Managing Committee contested the said Writ Petition by entering appearance through Paras Ram, Local Manager-cum-Vice President of the Managing Committee and the counter affidavit was also filed to the Writ Petition. The Managing Committee disputed the contention of the appellant that the enquiry committee was biased, partial and inimical towards the appellant and Shri Maru Ram, a member of the staff with whom the appellant was not on good terms and who was the root cause of the trouble became the member of the enquiry committee and after his inclusion the enquiry was summed up in a slipshod manner. In the counter affidavit it was contended on behalf of the Managing Committee that in the Managing Committee members of the staff are required to be taken. Two members from teaching staff were taken on the Managing Committee and the appellant-Principal was one of the members and the other member was the said Sri Maru Ram. As the appellant himself was the accused, the only member who could be taken in the enquiry committee was the other representative of the teachers union, Sri Maru Ram. It was further stated that the appellant had raised objection before the Committee against his inclusion in the enquiry committee but such objection was not entertained, and it was stated that the enquiry committee was neither partial nor inimical towards the appellant and the enquiry committee was comprised of three members including the President Sri B.B. Kashyap and the said Sri Maru Ram, teachers representative in the Managing Committee. In the counter affidavit, it was further stated that the appellant had applied for inspection of the stipend register but such demand of inspection was made after the appellant was dismissed. Even then, the inspection was not denied and the appellant had been asked to indicate under what rules he could see the file. At this stage, it may be indicated that when the appellant had asked for inspection, there was no question of the appellant being dismissed because under the said Act the proposed order of dismissal cannot take effect until such proposal is confirmed by the Deputy Commissioner. The appellant asked for inspection of the register to make effective representation before the Deputy Commissioner. But such inspection was not given and the application itself was returned then and there apparently on the ground of absence of any specific rule for such inspection.

6. A Single Bench of the Punjab and Haryana High Court allowed the Writ Petition on the ground that the departmental proceeding was vitiated for the flagrant violation of the principle of natural justice. The learned Judge indicated that Charge No. 12 was sought to be proved by Shri Maru Ram himself who appeared as a witness before the enquiry committee although he was one of the members of the enquiry committee. Since one of the members of the Managing Committee acted both as a Judge and as a witness to prove one of the charges against the appellant despite the objections made by the appellant against the inclusion of such member in the Committee, the entire enquiry proceeding was vitiated. The learned Judge further held that the contention of the respondents that the bias of Sri Maru Ram, even if any, should be restricted only to charge No. 12 and as such the order of dismissal also on the basis of other charges should not be set aside, could not be accepted. The learned Judge was of the view that since Shri Maru Ram conducted the enquiry with bias, the said bias continued and percolated to the entire proceeding and such bias therefore should not be restricted to charge No. 12 only. The learned Judge also rejected the contention of the respondents that as the appellant did not raise the plea of bias on the part of Sri Maru Ram before the Deputy Commissioner or the Commissioner specifically, the appellant should not be allowed to raise the question of bias. The learned Judge held *inter alia* that it was evident from the enquiry proceeding and the report of the enquiry committee that the said Shri Maru Ram was a member of the enquiry committee and had also deposed as a witness in the enquiry proceeding. Since such report was required to be considered by the Deputy Commissioner for the purpose of affirming the proposed order of dismissal, the said fact of bias and prejudice was required to be considered and the appellant was not debarred from raising such vital plea of bias in the Writ proceeding. The learned Judge was of the view that in the facts and circumstances of the case, the decision of the Managing Committee and the orders passed by the Deputy Commissioner and the Commissioner on the basis of an illegal and biased enquiry against the petitioner could not be sustained. The learned Judge therefore, allowed the said petition, set aside proposed order of dismissal and the order of confirmation passed by the Deputy Commissioner and the appellate order passed by the Commissioner and directed the Deputy Commissioner to decide the reference made by the Managing Committee for confirmation of the proposed order of dismissal passed by the Deputy Commissioner in the light of the observations made in the judgment.

7. The Managing Committee being aggrieved by the said decision of the learned Single Judge of the Punjab and Haryana High Court preferred an appeal before a Division Bench of Punjab and Haryana High Court being L.P.A. No. 1427 of 1982. The Division Bench, however, held that it had not been brought on record as to what objection was taken and in what form against Sri Maru Ram who was a member of the enquiry committee. The Division Bench, however, noted the order passed by the Managing Committee rejecting the objection of inclusion of Sri Maru Ram in the Managing Committee by quoting the order passed by the

enquiry committee. The Division Bench was of the view that the plea of bias could be waived and if the appellant felt that the enquiry proceeding was vitiated by the reason of bias because of inclusion of Shri Maru Ram, he could have raised specific plea of bias before the Deputy Commissioner and Commissioner. Since such specific plea was not raised before the Deputy Commissioner and Commissioner, the appellant should not be allowed to raise such contention in the Writ Petition. The Division Bench also held that the plea of bias of Shri Maru Ram as indicated in the Writ Petition was also very vague. The Division Bench further held that the Deputy Commissioner gave opportunity to the appellant to meet certain charges and he was not influenced by Charge No. 12 only in respect of which the said Shri Maru Ram appeared as witness. As it appeared from the order that the Deputy Commissioner was impressed with some other charges for which the order of dismissal could be confirmed, no interference was called for against the impugned order. The Division Bench, therefore, allowed the appeal and dismissed the Writ Petition.

8. As aforesaid, the appeal is directed against the said impugned judgment of the Division Bench in L.P.A No. 1427 of 1982 dismissing the Writ Petition. In terms of the notice issued on the special leave application the short question as to why the enquiry and the order passed therein should not be set aside and a fresh enquiry should not be ordered on the ground that one of the participants of the Committee was biased, is required to be considered in this appeal.

9. In Administrative Law, Rules of natural justice are foundational and fundamental concepts and law is now well settled that the principles of natural justice are part of the legal and judicial procedures. On the question whether the principles of natural justice are also applicable to the administrative bodies, formerly, the law courts in England and India had taken a different view. It was held in *Franklin v. Minister of Town and Country Planning* 1947 (2) AH ER 289 that the duty imposed on the minister was merely administrative and not being judicial or quasi-judicial, the principle of natural justice as applicable to the judicial or quasi judicial authorities was not applicable and the only question which was required to be considered was whether the Minister had complied with the direction or not. Such view was also taken by the Indian courts and reference may be made to the decision of this Court in *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, . It was held that the compulsion of hearing before passing the order implied in the maxim '*audi alteram partem*' applied only to judicial or quasi-judicial proceedings. Later on, the law courts in England and also in India including this Court have specifically held that the principle of natural justice is applicable also in administrative proceedings. In the case of *Breen v. Amalgamated Engineering Union* 1971 (1) All ER 1148 Lord Morris observed:

We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice Many

testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed." It may be indicated herein that the aforesaid observation was quoted with approval by this Court in the decision in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , this Court also accepted the application of the principle of natural justice in the order which is administrative in character. It was observed by Shah, J.:

It is true that the order is administrative in character, but even an administrative order which involve civil consequences-must be made consistently with the rules of natural justice.

Similar view was also taken in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and the observation of Justice Hegde may be referred to:

Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative enquiries.

There are number of decisions where application of principle of natural justice in the decision making process of the administrative body having civil consequence has been upheld by this Court but it is not necessary to refer to all such decisions. Prof Wade in his *Administrative Law* (1988) at page 503, has very aptly observed that the principles of natural justice are applicable to almost the whole range of administrative powers.

10. Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameter of natural justice. In *Russel v. Duke of Norfolk* 1949 (1) All ER 109 Tucker, L.J. observed:

There are, in my view, no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.

It has been observed by this Court in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, that:

The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.

Similar view was also expressed in A.K. Kraipak's_ case (ibid). this Court observed:

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

Prof. Wade in his Administrative Law has succinctly summarised the principle of natural justice to the following effect:

It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; not as to their scope and extent. Everything depends on the subject matter, the application for principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

One of the cardinal principles of natural justice is: 'Nemo debet esse judex in propria causa' (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in Secretary to Government Transport Department v. Manuswamy 1980 (Suppl) SCC 651 that a pre-disposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in The State of Uttar Pradesh Vs. Mohammad Nooh, . In the said case, a departmental enquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the enquiry then left the enquiry, gave evidence against the employee and thereafter resumed to complete the enquiry and passed the order of dismissal. this Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.

11. In the instant case, Charge No. 12 states that a particular sum on account of amalgamated fund for the month of." December was given to the appellant by Shri Mam Ram who was teacher incharge of the amalgamated fund. In the enquiry committee comprising of the three members, the said Shri Maru Ram was taken as one of the members and the himself deposed to establish the said

Charge No. 12 and thereafter again joined the enquiry committee and submitted a report holding the appellant guilty of some of the charges including the said Charge No. 12. Shri Maru Ram was interested in establishing the said charge. From the charge itself, it is apparent that he had a pre-depositor to decide against the appellant. It is really unfortunate that although the appellant raised an objection before the enquiry committee by clearly indicating that the said Shri Maru Ram was inimical towards him and he should not be a member in the enquiry committee, such objection was rejected on a very flimsy ground, namely, that since the said Sri Maru Ram was one of the members of the Managing Committee and was the representative of the teachers in the Managing Committee it was necessary to include him in the enquiry committee. It is quite apparent that the enquiry committee could have been constituted with other members of the Managing Committee and the rules of the enquiry are not such that Shri Maru Ram being teacher's representative was required to be included in the said enquiry committee so that the doctrine of necessity may be attracted. If a person has a pecuniary interest, such interest, even if very small, disqualifies such person. For appreciating a case of personal bias or bias to the subject matter the test is whether there was real likelihood of a bias even though such bias has not in fact taken place. De Smith in his *Judicial Review of Administrative Action*, (1980) at page 262 has observed that a real likelihood of bias means at least substantial possibility of bias. In *R. v. Sunderland Justices* 1924 (1) KB 357 373 it has been held that the Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In *v. Sussex Justices* (1924 (1) KB 256 (259) it has been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In *Halsbury Laws of England*, (4th Edn.) Vol.2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The same principle has also been accepted by this Court in *Manak Lal Vs. Dr. Prem Chand*, . 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.

12. In the facts of the case, there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the enquiry committee, namely, the said Shri Maru Ram but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge and thereafter proceeded with the enquiry proceeding as a member of the enquiry committee to uphold the correctness of his deposition as a Judge. The learned Single Judge considering the aforesaid facts came to the finding that the participation of Shri Maru Ram as a member of the enquiry committee has vitiated the enquiry proceeding because of flagrant violation of

the principles of natural justice. Unfortunately, the Division Bench set aside such judgment of the learned Single Judge and dismissed the Writ Petition improperly, to say the least, on a technical ground that plea of bias of Shri Maru Ram and his acting as a Judge of his own case by being a member of the enquiry committee was not specifically taken before the Deputy Commissioner and also before the appellate authority, namely, the Commissioner by the appellant and as such the said plea should not be allowed to be raised in writ proceedings, more so, when the case of prejudice on account of bias could be waived by the person suffering such prejudice. Generally, a point not raised before the tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course or must as indicated by this Court in *A.M. Allison Vs. B.L. Sen*, particularly when the plea sought to be raised for the first time in a Writ proceeding requires investigation of facts. But if the plea though not specifically raised before the subordinate tribunals or the administrative and quasi-judicial bodies, is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the list involved. The aforesaid view has been taken by this Court in a number of decisions and a reference may be made to the decisions in *A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd.*, , *The Cantonment Board, Ambala Vs. Pyarelal*, . In our view, the learned Single Judge has very rightly held that the Deputy Commissioner was under an obligation to consider the correctness and propriety of the decision of the Managing Committee based on the report of the enquiry committee which since made available to him, showed on the face of it that Shri Maru Ram was included and retained in the inquiry committee despite objection of the appellant and the said Shri Maru Ram became a witness against the appellant to prove one of the charges. It is really unfortunate to prove that the Division Bench set aside the decision of the learned Single Bench by taking recourse to technicalities that the plea of bias on account of inclusion of Shri Maru Ram in the enquiry committee and his giving evidence on behalf of the department had not been specifically taken by the appellant before the Deputy Commissioner and the Commissioner. The Division Bench has also proceeded on the footing that as even apart from Charge No. 12, the Deputy Commissioner has also considered the other charges on consideration of which along with Charge No. 12, the proposed order of dismissal was made, no prejudice has been caused to the appellant. Such view, to say the least, cannot be accepted in the facts and circumstances of the case. The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee had percolated throughout the enquiry proceeding thereby vitiating the principles of natural justice and the findings made by the enquiry committee

was the product of a biased and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on the decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner. The observation of S.R. Das, C.J. in Mohd Nooh's case (ibid) may be referred to in this connection:

Where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex-facie was a nullity for reasons aforementioned.

13. We have, therefore, no hesitation in allowing the appeal by setting aside the impugned judgment of the Division Bench of Punjab and Haryana High Court and the order of dismissal of the appellant passed by the Managing Committee of the School confirmed by the Deputy Commissioner and affirmed in appeal by the Commissioner. This decision, however, will not preclude the Managing Committee, however, from proceeding afresh with the departmental proceedings from the stage of issuance of charge sheet. It is, however, made clear that if a fresh enquiry proceeding is initiated it should be ensured that the enquiry committee is not composed with any of the members of the previous enquiry committee and such proceeding should be completed within a period of four months from today. In the special facts of the case and in a view of the financial difficulties pleaded by the respondent, we do not think that it will be proper to compel the management to pay full back wages. The school authorities and other concerned authorities are directed to pay one fourth of the salary to the appellant from the date of dismissal till today and thereafter go on paying the salary with such increments which the appellant would have been entitled to in the absence of initiation of the departmental proceeding. Considering the facts of the case, we allow this appeal with costs against the appearing respondents.