
(2002) 11 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition No. 278 of 1988

Shamrao Narayan Wankhede

APPELLANT

Vs

Municipal Council and Others

RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 MhLj 814

Hon'ble Judges : R.G. Deshpande, J;A.P. Shah, J

Bench : Division Bench

Advocate : K.S. Deshpande, for the Appellant; A.M. Gordey, for the Respondent

Judgement

A.P. Shah, J.—The petitioner was appointed as a Sanitary Inspector cum Food Inspector in the office of the 1st respondent Municipal Council Saoner with effect from 5th January, 1959. He was placed under suspension by the Standing Committee of the respondent No. 1 on 17th January, 1976 and a charge-sheet containing 10 charges was issued to him. The Standing Committee constituted an Enquiry Committee consisting of Shri M.B. Baswar, President of the Municipal Council, Shri Jageshwar Gupata, Vice President of the Municipal Council, Shri Bhalchandra Patil, Shri Murlidhar Pure and Shri Sadashio Gaidhane. The petitioner raised objection for inclusion of Shri Jageshwar Gupta and Shri M. B. Baswar in the Enquiry Committee on the ground that they were biased against the petitioner, but the said objection of the petitioner was not accepted by the Committee. In the course of enquiry one of the members of the committee Shri Bhalchandra Patil entered the witness box and gave evidence against the petitioner. The Enquiry Committee found the petitioner guilty of the charges levelled against him. The Standing Committee acting upon the report made by the enquiry committee by order dated 1st February, 1977 ordered the petitioner's removal from service. The, petitioner preferred an appeal before the Municipal Council, Saoner which rejected his appeal. The petitioner thereafter proceeded to file an appeal before the respondent No. 2 Regional Director of

Municipal Administration and Additional Commissioner, Nagpur. This was also rejected on the ground that no second appeal was provided under the Maharashtra Municipalities Act, 1965. The petitioner challenged the order of respondent No. 2 before this Court in Special Civil Application No. 554 of 1979 which came to be disposed of by the Division Bench on 2nd April, 1987 holding that the appeal before the Council was not maintainable inasmuch as removal was by the Standing Committee and it was wrongly entertained. The Bench held that the appeal before the Regional Director was really the first appeal and accordingly quashed the order of the Regional Director dated 2nd August, 1977 and directed him to decide the appeal on merits. During the hearing of appeal before the respondent No. 2, Municipal Council failed to produce the records of the enquiry despite called upon to do so. Respondent No. 2, however, proceeded to hear the appeal and held that enquiry did not violate the principles of natural justice. He further held that since in absence of evidence on record, it was not possible to find whether the petitioner was guilty of charges the case should be remanded to respondent No. 1 for conducting further enquiry in case old record has been lost or destroyed. The petitioner then filed Writ Petition No. 1762 of 1987. In pursuance of notice the Municipal Council appeared and the learned Counsel appearing for the Municipal Council made a statement that the lost record of the enquiry had now been traced and the Municipal Council was in a position to produce the same before respondent No. 2. This Court vide order dated 4th September, 1987 quashed the order of respondent No. 2 and directed the respondent No. 2 to decide the appeal afresh in accordance with law. The respondent No. 2, after hearing both the parties, dismissed the appeal on 5th October, 1987. Aggrieved by the order of respondent No. 2 the petitioner has moved the present writ petition under Article 226 seeking to quash the order of the Standing Committee as also respondent No. 2 and further seeking reinstatement with back wages.

2. Shri Deshpande, the learned Counsel appearing for the petitioner, strenuously contended that enquiry proceedings were vitiated by bias on the part of Shri Baswar and Shri Jageshwar Gupta who participated in and dominated the proceedings. He contended that the petitioner had instituted criminal cases under the Prevention of Food Adulteration Act, 1954 against Shri Jageshwar Gupta and the said Jageshwar Gupta had also filed cases against the petitioner in civil court at Saoner as well as in this Court and those cases were pending at the relevant time. Insofar as Shri Baswar is concerned, the learned Counsel submitted that a criminal case for misappropriation of 40 bags of cement was initiated against Baswar at the instance of the petitioner and in order to wreak vengeance on the petitioner, Baswar managed to get issued false chargesheet against the petitioner. The learned Counsel further submitted that the member of the enquiry committee Shri Bhalchandra Patil became a witness against the petitioner to prove one of the charges and deposed against the petitioner during the course of enquiry. The Counsel urged that these illegalities committed in conducting the departmental proceedings has left an stamp of infirmity on the decision of the

Standing Committee, since affirmed by the Regional Director.

3. In the return filed on behalf of the Municipal Council, it was stated that Shri Jageshwar Gupta was not the member of the Enquiry Committee and Shri Bhalchandra Patil was not examined during the course of the enquiry. Shri Gordey, learned Counsel for the respondent No. 1, however, fairly conceded that Shri Jageshwar Gupta was the member of the enquiry committee. He also conceded that Shri Bhalchandra Patil had given evidence in the enquiry proceedings. However, the learned Counsel urged that there was no prejudice caused to the petitioner in any manner. He submitted that out of 15 meetings of the Enquiry Committee, Shri Patil attended only 5 meetings. Shri Patil also did not participate in the meeting of the Standing Committee. Moreover he voted in favour of the petitioner in meeting of the Municipal Council which was convened to consider the petitioner's appeal. Insofar as the allegation of bias on the part of the then President Shri Baswar and the then Vice President Shri Jageshwar Gupta, it was contended by the learned Counsel, that in the said meeting conducted by the Council to hear the appeal filed by the petitioner, the petitioner had made a statement before the House that he had no complaint against both President and the Vice President and he further stated that he should be excused for the mistakes committed by him. Therefore, according to the learned Counsel, there is no substance in the allegation that the President and Vice President were biased against the petitioner.

4. In Administrative Law, rules of natural justice are foundational and fundamental concept and it 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, the Supreme Court in the State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, held that "even an administrative order which involves civil consequences must be consistent with the rules of natural justice." Similar view was also taken in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . One of the cardinal Principles of natural justice is: "Nemo debet esse judex in propria cause" (No man shall be a judge in his own cause). It has been held by the Supreme Court in Secretary to Government, Transport Deptt., Madras Vs. Munuswamy Mudaliar and Another, , 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.

5. In Manak Lal Vs. Dr. Prem Chand, , the Supreme Court observed:

"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 then 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."

6. In *State of U.P. v. Mohammad Nooh* AIR 1958 SC 86, a departmental enquiry was held against the employee. One of 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. The Supreme Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated.

7. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Court held that it is the essence of a judgment that it is made after due observance of the judicial process; that the Court or Tribunal passing it observes at least the minimal requirements of natural justice is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "Coram non iudice." As to the test of the likelihood of bias the Court observed that the proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "am I biased?"; but to look at the mind of the party before him.

8. Shri Gordey, however, submitted that automatic disqualification theory rule has been diluted to a great extent. He submitted that it is not sufficient to establish that there was reasonable apprehension of bias but the proper test would be that there was real danger of bias. He relied on the observations of the Supreme Court in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.* (2001) 1 SCC 182 which reads as under :

"35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom - in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement of availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in *Locabail* case."

9. In the instant case, the petitioner had objected to the presence of Shri Baswar and Shri Jageshwar Gupta in the enquiry committee. It is not disputed before us that the petitioner had instituted criminal cases under the Prevention of Food Adulteration Act, 1954 against Shri Jageshwar Gupta. It is also not disputed that Shri Jageshwar Gupta had also filed cases against petitioner in the civil court at Saoner as well as in this Court. The petitioner has categorically averred in the petition that the proceedings were started against Shri Baswar in Criminal Case

No. 276 of 1978 at his behest. In the return filed on behalf of the Municipal Council there is no denial of this averment. Although the petitioner raised an objection before the enquiry committee by clearly indicating that the said Shri Baswar and Shri Jageshwar Gupta were inimical towards him and they should not be members in the enquiry committee such objection was turned down by the enquiry committee. It is quite apparent that the enquiry committee could have been constituted with other members of the Standing Committee or the Council and the rules of enquiry were not such that Shri Baswar and Shri Jageshwar Gupta were required to be included in the said enquiry so that doctrine of necessity may be attracted. For appreciating the case of personal bias or bias to the subject matter, the test is whether there was a real likelihood of bias even though such bias has not in fact taken place. As held in *Maneklal v. Premchand* (supra), the test is not whether in fact, a bias has affected judgment; the test always is and must be whether a litigant could reasonably apprehend that 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 was said that justice must not only be done but also appears to be done.

10. Next, there cannot be any doubt that Shri Bhalchandra Patil had committed a serious impropriety when he entered the witness box and deposed against the petitioner. Shri Gordey, however, tried to contend that there is nothing adverse in the deposition of Shri Bhalchandra Patil against the petitioner and thus no prejudice was caused to the petitioner. The contention is without any merit. To quote the words of Bose J. in *Mohd. Nook's* case, "it hardly matters whether this was done in good faith or whether the truth lay that way because the spectacle of a Judge hopping on and off the Bench to act first as Judge, then as witness, then as Judge again to determine whether he should believe himself in preference to another witness, is startling to say the least. It would doubtless delight the hearts of a Gilbert and Sullivan Comic Operate audience but will hardly inspire public confidence in the fairness and impartiality of departmental trials and certainly not in the mind of the respondent." Bose J. referred to the observation of Lord Atkinson in *From United Breweries Co. v. Bath Justice* 1926 AC 586 600 that "It could not possibly have been intended by this statute to authorise a practice which would, I think, be inconsistent with the proper administration of justice, namely, that a licencing justice, one of the members of the compensation authority, should, on a given occasion descend from the Bench, give his evidence on oath, and then return to his place upon the Bench to give a decision possibly based on his own evidence."

11. Shri Deshpande relying on the decision of the Supreme Court in *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, , submitted that the members of the enquiry committee ought not to have participated in the proceedings of the Standing Committee. He submitted that the employee whose conduct has been the subject matter of enquiry by the enquiry committee ending in conclusion adverse to him can legitimately entertain an apprehension that the President or Vice President of the Council and other members of the enquiry

committee would maintain the opinion expressed by them in their report and would press for acceptance of the report by the Standing Committee. Therefore, according to Shri Deshpande it was improper on the part of the members of the enquiry committee to participate in the proceedings of the Standing Committee. Shri Gordey, however, contended that the Standing Committee consists of 7 members out of which 5 were the members of the Enquiry Committee. He submitted that having regard to the provisions relating to quorum of the meeting doctrine of necessity would come into play. It is not necessary to express any opinion on this aspect as in our view, the departmental enquiry was completely vitiated having regard to the presence of Shri Baswar and Shri Jageshwar Gupta in the committee and also having regard to the fact that another member of the committee had deposed against the petitioner. We have, therefore, no hesitation in holding that the enquiry conducted against the petitioner is in complete violation of the principles of natural justice and accordingly we set aside the order dated 1st February, 1977 passed by the Standing Committee directing removal of the petitioner as well order dated 5th October, 1987 passed by the Regional Director. The petitioner has already reached the age of superannuation on 30th October, 1993 and, therefore, it is not possible to grant relief of reinstatement. In the facts and circumstances of the case and in view of the financial difficulties pleaded by the respondent Municipal Council, we do not think that it would be proper to compel the Municipal Council to pay full backwages. We direct the Municipal Council to pay to the petitioner 1/4th of the salary of the petitioner from 1st February, 1977 till 30th October, 1993 and further release all the retiral benefits including pension as if he had been superannuated on 30th October, 1993. Retiral benefits to be released within four months and backwages within six months.

Rule is made absolute accordingly. No order as to costs.