

(2011) 12 MAD CK 0297
In the Madras High Court
Case No : Petition No. 20072 of 2011

Srinivasan

APPELLANT

Vs

The Additional Director of Sugar, Chennai - 35 and K.
Bharathan Additional Director of Sugar/Additional Registrar of
Co-Operative Societies, Chennai - 35

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2012) 2 MLJ 378

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : C. Selvaraju, for Mr. T. Sellapandian, for the Appellant; P. Sanjai Gandhi, Additional Government Pleader, for the Respondent

Judgement

Honourable Mr. Justice N. Paul Vasanthakumar

1. The prayer in the writ petition is to quash the order dated 31.5.2007 passed by the respondent imposing the punishment of reversion from the post of Superintendent to Assistant for three years and confer all consequential benefits.

2. Both the respondents are one and the same person. While the first respondent is imp led in his official capacity, the second respondent is imp led in his personal capacity.

3. The case of the petitioner as could be seen from the affidavit filed in support of the writ petition are as follows:

(a) Petitioner has joined in the services of the respondent office as Junior Assistant on 27.8.1981, promoted as Assistant in the year 1988 and further promoted as Superintendent on 13.7.2001. On 27.4.2006 he was posted in the Cane section.

(b) By order dated 18.8.2006 petitioner was placed under suspension on the

ground that he behaved arrogantly with Junior Assistant when she wanted to close the attendance register on the forenoon of 31.7.2006 and the petitioner abused the Assistant Director Administration, who called the petitioner to enquire about the incident and also alleged that he arrogantly behaved with the Additional Director, the second respondent herein when he directed the petitioner to produce the file for discussion.

(c) Petitioner was issued with charge memo on 15.9.2006 for which he has submitted his explanation on 3.11.2006 and denied the allegations levelled against him. Petitioner submitted a representation before the Commissioner of Sugar stating that one S. Krishnamoorthy, Assistant Director has to be examined as a witness and therefore the said S. Krishnamoorthy may not be permitted to act as Enquiry Officer. The said request was rejected by the Commissioner of Sugars by his order dated 24.1.2007 and the said Krishnamoorthy conducted enquiry and submitted a report on 16.3.2007. Based on the enquiry report, the impugned order of punishment namely reversion order was passed on 31.5.2007.

(d) The said punishment order is challenged in this writ petition mainly on the ground that when the petitioner allegedly behaved arrogantly, the said S. Krishnamoorthy was available in the second respondent's office and therefore he should be examined as a witness and the said request was erroneously rejected and the said Krishnamoorthy, who is a witness to the occurrence, conducted enquiry and gave a finding against the petitioner and the same is in violation of the principles of natural justice. The objection raised having not been considered and the punishment is imposed only on the basis of the enquiry report submitted by the said S. Krishnamoorthy, who was present in the office of the second respondent, is unsustainable and the second respondent, who is impleaded by name is a party to the second charge, has passed the impugned order of punishment. Therefore the procedure adopted by the respondent by conducting enquiry not only by the said S. Krishnamoorthy, but also ordering punishment by the second respondent, who is the complainant, is illegal.

4. In the counter affidavit filed it is contended that the petitioner is having a remedy of filing appeal before the Commissioner of Sugars and without availing the said alternate remedy this writ petition is filed and the same is not maintainable. Based on the material evidence available disciplinary action was initiated and final order was passed considering of the gravity of the charge by following the procedures. The said S. Krishnamoorthy, S. Krishnamoorthy, Assistant Director conducted enquiry without any bias and sufficient opportunities were given to the petitioner. In para 19 of the Counter affidavit it is stated that the said K. Barathan, Additional Director of Sugar, Chennai-35, was connected to the occurrence of events in the chambers on 3.8.2006 and he being a Senior Officer, framed charges based on the written evidence and the said S. Krishnamoorthy was not at all present in the chambers on 3.8.2006 and therefore there is no illegality in appointing the said S. Krishnamoorthy as Enquiry Officer.

5. The learned Senior Counsel for the petitioner submitted that even according to the counter affidavit the second respondent is connected with the occurrence and therefore he cannot frame charges and pass any order based on the charges framed, as he will be biased and if the files are called for, the said fact will be revealed. The learned Senior Counsel further submitted that the petitioner will be satisfied if the impugned order is set aside and the matter is remitted to the present Officer to conduct fresh enquiry and pass final orders within a given time.

6. The learned Additional Government Pleader argued that the second respondent being the disciplinary authority, initiated disciplinary proceedings by issuing charge memo, appointed enquiry officer and also passed the final order and the petitioner having committed misconduct, though serious in nature a lenient punishment of reversion for three years from the post of Superintendent to Assistant was ordered and there is no illegality in the said order.

7. I have considered the rival submissions made by the learned Senior Counsel for the petitioner as well as learned Additional Government Pleader.

8. The learned Additional Government Pleader produced the files relating to the case. On perusal of the file it comes to light that the second respondent, who was the Additional Director of Sugar, sent a representation on 3.8.2006 to the Commissioner of Sugar stating that on 3.8.2006 at 3.30 p.m. when he was discussing about an issue with the Chief Cane Development Officer and Entomologist, Cane Bio Control Research Lab, Chengalpattu, explaining the Additional Director of Sugar regarding Additional Agricultural Session held on 3.8.2006, he as Additional Director of Sugar, wanted the tour programme file from Cane section sponsored by M/s. IFFCO Limited and asked the petitioner, who was Superintendent of Cane Section to bring that file. The petitioner dodged, disobeyed and argued with the Additional Director of Sugars in front of CCDO and Entomologist, MBRC, which is sheer insubordination of disobedience of orders of the superiors. The second respondent as Additional Director recommended for initiating action. Based on the said allegation, the petitioner was suspended by order dated 9.11.2006 and charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

9. S. Krishnamurthy, Assistant Director was appointed as Enquiry Officer. The petitioner denied the charges and also opposed the appointment of the said Enquiry Officer. The said objection was overruled by the Commissioner of Sugars and the Enquiry Officer proceeded with the enquiry and submitted the enquiry report before the second respondent, who gave complaint and initiated proceedings. The impugned order of reversion was also passed by the second respondent. Thus, it is beyond doubt that initiation of proceedings was made by the second respondent, who was the then Additional Director, who suspended the petitioner, appointed the Enquiry Officer and also passed the final order in the disciplinary proceeding. It is also the specific case of the petitioner that the said S. Krishnamoorthy, who conducted the enquiry, is to be examined as witness during the enquiry and the said request was rejected. Thus, violation of

principles of natural justice and bias in the proceedings is clearly established.

10. The question of bias in the disciplinary proceedings was considered by the Honourable Supreme Court in the following decisions:

(a) *Manak Lal Vs. Dr. Prem Chand*, Constitution of Tribunal to go into the allegation against an advocate, of which one member of the Tribunal appeared as a counsel for the opponent was found illegal by the Supreme Court. The attempt made by the Bar Council to justify the appointment of the said member of the Tribunal was not accepted by the Honourable Supreme Court. In paragraph 6 the Supreme Court held thus,

6..... We are not impressed with this argument. If it is true that in judicial or quasi-judicial proceedings justice must not only be done but must appear to be done to the litigating public, it is equally true that when a lawyer is charged for professional misconduct and is given the privilege of being tried by a tribunal of the Bar Council, the enquiry before the tribunal must leave no room for a reasonable apprehension in the mind of the lawyer that the tribunal may have been even indirectly influenced by any bias in the mind of any of the members of the tribunal. In the present case, we have no hesitation in assuming that when Shri Chhangani agreed to work as the Chairman of the tribunal he did not remember that he had appeared against the appellant's clients in the criminal proceedings under S.145. We are told that Shri Chhangani is a senior member of the Bar and was once Advocate General of the High Court of Rajasthan. Besides he had not appeared in the case at all stages but had appeared only once as a senior counsel to argue the matter. It is, therefore, not at all unlikely that Shri Chhangani had no personal contact with the client, Dr. Prem Chand and may not have been aware of the fact that, in the case from which the present proceedings arose, he had appeared at any stage for Dr. Prem Chand. We are, however inclined to hold that this fact does not in any way affect the legal argument urged before us by Shri Daphtary. It is not Shri Daphtary's case that Shri Chhangani actually had a bias against the appellant and that the said bias was responsible for the final report made against the appellant. Indeed it is unnecessary for Shri Daphtary to advance such an argument. If Shri Chhangani was disqualified from working as a member of the tribunal by reason of the fact that he had appeared for Dr. Prem Chand in the criminal proceedings under S.145 in question, then it would not be necessary for Shri Daphtary to prove that any prejudice in fact had been caused or that Shri Chhangani improperly influenced the final decision of the tribunal. Actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not necessary in order that the appellant should effectively raise the argument that the tribunal was not properly constituted.

(b) *Ranjit Thakur Vs. Union of India (UOI) and Others*, - In paragraphs 6 and 7 the Supreme Court held that the test of real likelihood of bias is not actual bias, but whether a reasonable person would have thought that bias was likely due to the participation of the respondent in deciding the matter. The Supreme Court

following the Judgment of the Privy Council reported in AIR 1945 PC 38 (Vassiliades v. Vassiliades) held that "A Judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non iudice" ".

(c) In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, Higher Secondary School) the principle of "Nemo debet esse iudex in propria causa" (no man shall be a Judge in his own cause) was considered and in paragraph 10 it is held thus,

One of the cardinal principles of natural justice is *nemo debet esse iudex 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 Deptt., Madras Vs. Munuswamy Mudaliar and Another, that a predisposition 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 inquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the inquiry then left the inquiry, gave evidence against the employee and thereafter resumed to complete the inquiry 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.

(d) In Bihar State Mineral Dev. Corpn. and Another Vs. Encon Builders (I) Pvt. Ltd., it is held that if the principle of bias is proved viz., the jurisdiction of the arbitrator is challenged and is proved the entire action is a nullity. In paragraph 32 it is held as follows:

32. It will bear repetition to state that the action of the second appellant itself was in question and, thus, indisputably, he could not have adjudicated thereupon in terms of the principle that nobody can be a judge of his own cause.

(e) In State of Uttaranchal and Others Vs. Kharak Singh, the Supreme Court held that a witness should not be the Enquiry Officer. In the said case the Divisional Forest Officer, who inspected the area and found the illicit felling of trees, instead being a witness was appointed as Enquiry Officer, which was found fault with by the High Court. The said order of the High Court was challenged before the Supreme Court and the said order was affirmed by the Supreme Court in appeal.

(f) A Division Bench of this Court in the decision reported in 1996 WLR 669 (V. Sankaran v. Joint Director of School (Secondary) Education) held that participation of the Headmaster, who also gave evidence as a witness in the School Committee while taking decision to punish was illegal. The Division Bench followed the earlier decision of the Division Bench reported in ILR 1995 (3) Mad 944 (The Group General Manager, Bharat Heavy Electricals Ltd., Thiruchirapalli and Others v. R. Henry Baskar) wherein the relevant portion reads thus,

Of course ,the Group General Manager was the Disciplinary Authority. But the charge against the respondent was that the respondent along with other workers tried to assault the Group General Manager. If that be so, the Group General Manager was in the position of a victim, who could be one of the witness and a complainant in the proceedings. As we have already pointed out, it is one of the principles of natural justice that no person shall be a Judge in his own cause. It is also not in dispute that the Chairman of the Company being the higher authority could have held the disciplinary proceedings.

11. Thus, it is well established principle of law that no one can be a Judge of his own case. The second respondent, being the complainant by sending a report before the Commissioner of Sugar as stated supra, appointing Enquiry Officer and passing final order of punishment, is violative of the principles of natural justice and fair play. Thus, the petitioner has made out a case warranting interference under Article 226 of the Constitution of India, even though petitioner is normally expected to file appeal against the order of punishment.

12. In that view of the matter, the impugned order is set aside. The second respondent is now retired and a new officer is holding the post. Petitioner is still in service. Hence there will be no difficulty in remanding the matter to appoint fresh Enquiry Officer and proceed further. Accordingly, the present Additional Director of Sugar is directed to appoint new Enquiry officer and petitioner is directed to co-operate for conducting enquiry. The appropriate authority is directed to pass final orders based on the enquiry to be conducted, within a period of six months from the date of receipt of copy of this order.

13. The writ petition is disposed of with the above directions. No costs.