
(1996) 04 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Special Appeal No. 204 of 1996

The State of Rajasthan and Others

APPELLANT

Vs

Swaroop Ram

RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 32

Citation : (1996) 2 RLW 51 : (1996) 2 WLC 624 : (1996) 1 WLN 259

Hon'ble Judges : M.G. Mukherji, Acting C.J.; A.S. Godara, J

Bench : Division Bench

Judgement

M.G. Mukherji, Actg. C.J.

1. This special appeal is directed against a judgment and order dated November 14, 1994 passed by a learned Single Judge of our Court in S.B. Civil Writ Petition No. 2344/90.

2. The writ petitioner-respondent Swaroop Ram filed a writ application impugning show cause notices dated 31.5.1990 and 1.6.1990 issued by the Joint Registrar, Cooperative Societies, Jodhpur Division, Jodhpur contending inter-alia that the said Joint Registrar had no authority to issue such show cause notices. The show cause notices were issued by the Joint Registrar in exercise of the powers conferred upon him u/s 32(1) of the Rajasthan Cooperative Societies Act, 1965. According to the provisions of the said Act, if in the opinion of the Registrar, any resolution passed at the meeting of any Cooperative Society or Committee thereof, was opposed to the objects of the Society or was prejudicial to the interest of the Society, the Registrar, after giving the Cooperative Society an opportunity of being heard, by passing an order in writing could rescind the resolution in whole or in part specifying the reasons therefore. In the instant case, the notices referred to were issued by the Joint Registrar, Cooperative Societies, Jodhpur as a delegated authority of the Registrar calling upon Jodhpur Central Cooperative Bank, Jodhpur through its Managing Director to show cause as to why the resolutions passed by the Bank in its meeting held on 26.5.1990

and 27.5.1990 should not be rescinded being prejudicial to the interests of the Society.

3. The writ application was contested by the present appellants the State of Rajasthan, the Registrar, Cooperative Societies Department, Jaipur and the Joint Registrar, Cooperative Societies Department, Jodhpur Division, Jodhpur contending inter- alia that the show cause notices issued were well within the jurisdiction and competence of the Joint Registrar and the writ application as otherwise was not maintainable.

4. The learned Single Judge, who heard out the writ application, by his judgment and order dated November 14, 1994 held inter-alia that the Joint Registrar was entitled to form an opinion so as to issue a notice u/s 32 of the Rajasthan Cooperative Societies Act, 1965 for rescinding the resolutions impugned dated 26.5.90 and 27.5.90 and further held that the writ application preferred against the show cause notices was rather pre-mature, inasmuch as, only show Cause notices were issued to the writ petitioner-respondent. The learned Single Judge held that the Cooperative Bank through its existing Board of Directors was liable to show cause in pursuance of the notices impugned as issued by the Joint Registrar, Cooperative Societies, Jodhpur Division, Jodhpur, but the controversy would ultimately be sent for adjudication to the Registrar, Cooperative Societies, Rajasthan, Jaipur, who would decide the dispute in between the parties after affording reasonable opportunity of being heard, keeping in view the observations made in the writ Court. It was observed inter-alia by the learned Single Judge that since the Joint Registrar, Cooperative Societies, Jodhpur Division, Jodhpur was one of the nominated Directors of the Bank, it would therefore not be proper in the interests of justice that he should take a final decision in the matter.

5. The contention of the appellant inter-alia is that the direction as passed by the learned Single Judge that the Registrar of the Cooperative Societies at Jaipur would adjudicate upon the dispute and it would not be proper for the Joint Registrar, Cooperative Societies at Jodhpur to hear out and adjudicate upon the shown cause notices as issued on the Central Cooperative Bank was uncalled for and improper. According to the provisions of Section 3 of the Rajasthan Cooperative Societies Act, 1965, the State Government was competent to appoint other persons to assist the Registrar, Cooperative Societies Under Sub-section (2) of Section 3 of the said Act, the Government could confer all or any of the powers of the Registrar under the Act upon any person and the Sate of Rajasthan in exercise of the powers conferred by Sect ion 3 read with Section 47 of the said Act had already issued a notification bearing no. F. 4 (7) COOP./J-65 dated 8.2.1975, whereby the State Government has appointed Officers prescribed in column (1) of the Schedule to assist the Registrar and conferred upon such appointed Officers the powers of the Registrar specified in column (2) of the Schedule. The relevant portion of the Schedule was placed on record for the perusal of this Court, which reads as under:

"Schedule" Officers Powers 1. Jt. Registrar, Cooperative All powers of the Registrar Societies under the Act, not being powers under Sections 124 & 128 of the Act. 2. Dy. Registrar Cooperative All powers of the Registrar Societies at Headquarters/ within their respective Zones/ Districts jurisdiction under the Act, not being powers - (1) In so far as they relate to the matters and affairs of Apex Societies, and (ii) Under Sections 124 and 128 of the Act. It was, therefore, contended that the Joint Registrar, Cooperative Societies was empowered to exercise the powers conferred u/s 32 of the Rajasthan Cooperative Societies Act, 1965. The State of Rajasthan is divided in various zones and in each zone a Joint Registrar has been posted, who is authorised to exercise the jurisdiction in the entire zone and he has been given the powers to assist the Registrar, Cooperative Societies. The Jodhpur Central Cooperative Bank, Jodhpur being situated in the Jodhpur zone came within the jurisdiction of the Joint Registrar, Cooperative Societies, Jodhpur and the matter could only be heard by the Joint Registrar, Cooperative Societies, Jodhpur since he was the competent authority to exercise the powers conferred by Section 32 of the Rajasthan Cooperative Societies Act, 1965. Just because he was a nominated Member of the Bank by virtue of his office, he cannot be divested of the powers conferred upon him by the Statute. It was contended inter-alia that the learned Single Judge has misread the entire Scheme of exercise of powers by the Joint Registrar in his zone and held that in such an eventuality, he would become a Judge in his own cause. It was further contended that the Joint Registrar, Cooperative Societies, Jodhpur Division, Jodhpur was a nominated Director of the Bank as a persona designata, but in-fact, he was only art ex-officio Director of the Bank. While exercising powers u/s 32 of the Rajasthan Cooperative Societies Act, 1965, he was free to take a decision in the matter conforming to the provisions of the said Act He being a nominated Director of the Bank did not make any difference and, as such, he could not be precluded from exercising the powers conferred on him by the Statute. A fortiori, the Joint Registrar, Cooperative Societies, Jodhpur Division, Jodhpur has not participated in the meetings of the Society (Bank) held on 26.5.1990 and 27.5.1990. He was merely an ex-officio Director of the Bank and thus did not by his own action transform himself as a Judge in his own cause in the purported dispute.

6. It was further contended that the learned Single Judge erred in directing inter-alia that the Society through its Board of Directors should be afforded an opportunity of being heard. The Society, as per the Bye-laws, is represented through the Managing Director and, therefore, the show cause notices were rightly issued upon the Managing Director of the Bank. It was not necessary for the society to be always represented by the Board of Directors, inasmuch as, at the present the moment, elected Board of Directors was not functioning since the Board stood dissolved and an Administrator has been appointed by the State Government in exercise of the powers conferred by Section 36(1)(b) of the Cooperative Societies Act, 1965 and this aspect of the matter has not been looked into by the learned Single Judge at all.

7. It was further contended that while the learned Single Judge held the writ application impugning the show cause notices as pre-mature, he was reasonably expected to dismiss the writ application as not maintainable the same having not disclosed any cause of action. There was thus no occasion for going into the merits of the case or to pass any directions upon the State authorities while disposing of a premature and non-maintainable cause.

8. Mr. Lodha, learned advocate appearing for the appellants cited before us the decision in *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*, for the proposition that if an Officer was involved as a Member of the Committee to prepare a Scheme of load transport and to get it published in his capacity as a Secretary of the Department, he could not be said to be so biased, as to disqualify him from hearing objections preferred against the Scheme itself and it would not be a case where he would be acting as a Judge in his own cause. He might have participated in the policy decision of the Government and then he might exercise the powers of hearing objections against the Scheme as framed by the Government and in considering merits of the Scheme. It was held in this case distinguishing the judgment of the Calcutta High Court in *East India Electric Supply and Traction Co. Ltd. v. S.C. Dutta* (1955) 59 Cal WN 162 and *Dosa Satyanarayanamurthy etc. Vs. The Andhra Pradesh State Road Transport Corporation*, that any decision arrived at by the Sub-Committee was not final or irrevocable and it was only a policy decision. Since the sub-Committee was only meant for advising the State Government as to how to implement the policy of nationalisation, that would not either expressly or by necessary implication involve a pre-determination of the issue. The officer as the inay be m *East India Electric Supply and Traction Co. Ltd. v. S.C. Dutta* (Ibid) or the Minister concerned in *D. Satyanarayanamurthy v. A. P. State Road Transport Corporation* (Ibid) could not be said to have any such bias as disqualified then from hearing objections to the Scheme. In the facts of the present case, however, the principle as propounded in *T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others*, is not in its very terms applicable.

9. The following decisions were also cited by Mr. Lodha 1. *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, , 2. *Dosa Satyanarayanamurthy etc. Vs. The Andhra Pradesh State Road Transport Corporation*, 3. *Yadunath Singh and Ors. v. The Regional Transport Authority, Jaipur Region-II Jaipur and Ors.* 1992 (3) WLC (Raj.) 232 , 4. *Chandra Bhan and Others Vs. The State of Rajasthan and Others*,

10. In *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, it was observed by the Supreme Court inter-alia that Section 68-D of the Motor Vehicles Act undoubtedly imposes a duty on the State Government to act Judicially in considering the objections and in approving or modifying the Scheme proposed by the transport undertaking. It is also true that the Government on whom the duty to decide the dispute rests is substantially a party to the dispute but the Government or the authority to whom the power is delegated acts judicially in

approving or modifying the Scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the Officer of the Government, who is invested with the powers to hear objections to the Scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government.

11. In *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, the Supreme Court held that the very fact that the Minister concerned presided over the Sub-Committee constituted to implement the Scheme of nationalisation of bus services by itself was not sufficient to establish that he was actuated by personal bias so as to disqualify him from hearing objections under Chapter-IV.

12. In *Yadunath Singh and Ors. v. The Regional Transport Authority, Jaipur Region-II, Jaipur and Ors.* 1992 (3) WLC (Raj) 232 (Ibid), it was also held that the Secretary hearing objections as regards the question of approval of the Scheme of nationalisation of motor vehicle route was functioning in administrative capacity, first in giving approval and, thereafter, hearing objections against the Scheme in his quasi-judicial capacity and he should not be taken to be guilty of bias in the absence of any specific evidence to the contrary, simply because of a Scheme earlier approved by his Department and the decision is not liable to be called in question, merely because the Secretary was a limb of the Government. It was reiterated in the Judgment that the administrative and quasi-judicial capacities should not be linked up and the decision was not liable to be called in question merely because the Secretary was a limb of the Government.

13. In *Chandra Bhan and Others Vs. The State of Rajasthan and Others*, relying on the decision in *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, , the learned Judges of the Division Bench of this Court held that mere fact that under the Act the State Government itself is authorised to resolve any conflict between the operators and the State Transport Undertaking does not involve any dereliction of the principles of natural justice, so as to justify the contention that the Government has been made a Judge in its own cause. The observations of the Supreme Court in *Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation*, were quoted with approval in order to hold that the entire control over the Road Transport Undertaking rested in the Government and the Chief Secretary was its Chairman. Even though it was argued that the Government itself was a Judge in its own cause and that therefore its decision was actuated by legal bias, the Supreme Court pointed out the distinction between the official bias of the authority which is inherent in the statutory duty imposed on it and personal bias of the said authority in favour of or against any of the parties. It was observed by the Supreme Court that the provisions of the Motor Vehicles Act did not sanction any dereliction of the principles of natural justice, for the Act visualised in case of conflict between the

state undertaking and the operators of private buses that the State Government should sit in judgment and resolve the conflict and the learned Judges of the Division Bench of this Court observed that the decisions of the Supreme Court really did conclude the matter.

14. Mr. P.P. Chaudhary, learned advocate appearing for the respondent cited before us the decision in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, It was reiterated in this case that in matter of administrative enquiry, there was also the question of application of principles of natural justice since the aim of both the quasi judicial as well as the administrative enquiries is to arrive at a just decision. These rules should apply to both and what particular rule will apply in a given case will depend upon various factors. Often times it is not easy to draw the line that demarcated administrative enquiries from quasi-judicial enquiries. Whenever a complaint is made before a Court that some principles of natural justice have been contravened, the Court has to decide whether the observance of that rule was necessary for a Just decision on the facts of the case and in this context, the decision in *Suresh Koshy George Vs. University of Kerala and Others*, was followed. *A.K. Kraipak's* case (supra) was of course a case where one of the Board was himself a candidate for selection and though he had not taken part in the deliberations of the Board at the time of his own selection, he had taken part through-out while making selections of other candidates including his rival candidates and there was conflict between his own interests and on duty of such Member and there was a reasonable likelihood of bias. It was, therefore, held that the selection list prepared by such a Board was vitiated by likelihood of bias and the final recommendations made by the Selection Committee on its basis must also be vitiated.

15. In *G. Sarana Vs. University of Lucknow and Others*, , it was held that the principles of natural justice which were meant to prevent miscarriage of justice are also applicable to domestic enquiries and administrative proceedings and one of the fundamental principles of natural justice is that in case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias, by which is meant an operative prejudice, whether conscious or unconscious, towards one side or the other in the dispute. The real question is not whether a Member of an administrative Board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. Following the reiteration of the principles of Administrative Law by Griffith and Street, it was observed in the area vise that the bias may be one on the subject matter. A mere general interest in the general object to be pursued would not disqualify, said Field, J., holding that a Magistrate who subscribed to the Royal Society for the prevention of cruelty to animals was not thereby disabled from "trying a charge brought by that body in respect of cruelty to a horse. There must be some direct

connection with the litigation. If there is such prejudice on the subject matter that the Court has reached some fixed and unalterable conclusions, not founded on reason or undertaking, so that there is not a fair hearing, that is bias of which the Courts will take account, as where a justice announced his intention of convicting anyone coming before him on a charge of supplying liquor after the permitted hours. The second type of a bias may be one of a pecuniary interest, however, slight which will disqualify, even though it is not proved that the decision is in any way affected. The third type of bias is a personal bias. A Judge may be a or business associate of a party, or he may be personally hostile as a result of events happening either before or during the course of a trial. Whether there is a real likelihood of bias is to be tested and in this context of things the House of Lords has approved a dictum of Lord Hewart that "Justice should not only be done, but should manifestly and undoubtedly be seen to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice" De Smith in *Judicial Review of Administrative Action* at page 225 of his Treatise has stated that the case law on the point is thin, but on principle it would seem that where a report or determination lacking final effect may nevertheless have a seriously judicial effect on the legally protected interests of individuals, the person making the report or preliminary decision must not be affected by interest or likelihood of bias. In *Dr. G. Saran v. University of Lucknow* (Ibid), it was thus established that what has to be seen in a case where there is an allegation of bias in respect of the person holding the administrative enquiry, which is of quasi-judicial nature, is whether there was a reasonable ground for believing that he was likely to have been biased. In other words, whether there was substantial possibility of bias animating the mind of the person against the other party.

16. In *J. Mohapatra and Co. and Another Vs. State of Orissa and Another*, it was held that where there was a selection by the State Government on the recommendations of a Committee constituted by it and - where an authority being a Member of the Committee submitted books for selection where he was himself interested such person should not be a Member of the Committee. In this context, the guidelines for adoption by the State Government were laid down.

17. In *Ashok Kumar Yadav and Others Vs. State of Haryana and Others*, it was observed that it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias, it is "in accordance with natural justice and common-sense that the Justice likely to be so biased should be incapacitated from sitting". The question is not whether the Judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable is not that the decision is actually tainted with bias, but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done. It is also important to note that this rule is not confined to cases where judicial power

stricto sense is exercised and it is also appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. The strict-standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, since it is vital to the maintenance of the rule of law in a welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. It is in this context it was urged rightly so that if the selfsame Joint Registrar, who was a Member of the Board and who himself called upon the Cooperative Society not to take any decision and the very fact of taking decision was the subject matter of the show cause notices, should not hear out the adjudication pursuant to the show cause notices and there was nothing wrong on the part of the learned Single Judge to have directed in such an eventuality that the Registrar of the Cooperative Societies at Jaipur should take up the hearing of the case himself and that the Joint Registrar, Cooperative Societies at Jodhpur should not take up the hearing of the cause.

18. In *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, it was held that where the consideration of the report by the Council was involved in the absence of express or implied statutory intendment to the contrary, the Member of such a Committee would be disqualified from participating in the deliberations of the Council when it proceeds to consider the report in order to find whether the Member is guilty of misconduct. In this context, the principle that justice must not only be done but must also appear to be done was followed. The nature of the function discharged by the Council in rendering its finding was held to be quasi-judicial. In that context, the observations of the Hon^{ble} Supreme Court in *Manak Lal Vs. Dr. Prem Chand*, were quoted with approval, where it was said "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.

19. In the facts of the present case, the particular Joint Registrar was a member of the Board and he was likely to participate in the proceedings of the Cooperative Society (Bank), but he did not participate in the said proceedings and on the other hand, he directed the Cooperative Society not to take any decision which was taken contrary to his directives and it is in that context he issued show cause notices. If the self-same Officer is still there, it would indeed not be appropriate for him to hold enquiry pursuant to the show cause notices. But, in case the self-same Officer, who has issued the impugned show cause notices, is not there at the present moment, there will be nothing wrong on the part of the present Joint Registrar taking the decision by way of adjudicatory process within the meaning of Section 32 of the Rajasthan Cooperative Societies Act, 1965, pursuant to the impugned show cause notices. To that extent,

however, the judgment of the learned Single Judge stands modified.

20. We are given to understand further that the Officer is no more there. The Cooperative Society is also functioning under the Management of an Administrator and the Board does not exist any more. In that view of the things, if that Officer is not there and some other Officer is functioning as Joint Registrar, he can continue the proceedings pursuant to stage of the reply to the show cause notices as given by the Cooperative Society. The Cooperative Society now represented by the Administrator would really be involved in giving answer to the show cause notices, if necessary. Otherwise, answer to the show cause notices already given by the Managing Director would suffice and the proceedings are to be brought to a finality by the Joint Registrar. In case however, it is found that the Joint Registrar, who issued the impugned show cause notices "is still there, the matter should in the fitness of things be adjudicated upon u/s 32 of the Rajasthan Cooperative Societies Act, 1965 by the Registrar of the Cooperative Societies at Jaipur, as directed by the learned Single Judge.

21. The special appeal stands disposed of accordingly and the judgment and order of the learned Single Judge stands modified to the extent as indicated above.