

(1962) 06 BOM CK 0014

In the Bombay High Court

Case No : Special Civil Application No's. 1451 and 1598 of 1961

Umanath Gopalkrishna Puthli

APPELLANT

Vs

The Shamrao Vithal Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 29-06-1962

Acts Referred:

Bombay Co-operative Societies Act, 1925 — Section 54

Citation : (1962) 64 BOMLR 700

Hon'ble Judges : H.K. Chainani, C.J;K.K. Desai, J

Bench : Division Bench

Judgement

H.K. Chainani, C.J.—Respondent No. 1 in Special Civil Application No. 1451, hereinafter referred to as the Bank, is Shamrao Vithal Co-operative Bank Ltd. This Bank carries on banking business in Bombay. The petitioner is a member of this Bank. He was formerly its Director and also served for some time as Vice-Chairman of the Bank. Certain disputes between the petitioner and the Bank were referred for decision to the Registrar's Nominee u/s 54 of the Bombay Co-operative Societies Act. The Nominee made his award on March 27, 1961, by which he determined the liability of the petitioner and awarded a certain amount to the Bank. Against the order made by the Nominee, both the petitioner and the Bank appealed to the Maharashtra Cooperative Tribunal. At the time when the appeals came up for hearing, the Tribunal consisted of the President Mr. B.D. Nadkarni and another member Mr. S.A. Pande. Mr. Nadkarni holds one share in the Bank of the value of Rs. 25, but of which the paid-up value is Rs. 18. This fact does not appear to have been disclosed to the parties at the time when the appeals were heard. After hearing the appeals the Tribunal set aside the award made by the Registrar's Nominee. It directed the petitioner to pay about Rs. 67,000 to the Bank. The appeal filed by the petitioner himself was dismissed. Thereafter the petitioner filed this special civil application. The Bank has also filed another special civil application No. 1598, in which the Bank has claimed certain additional amounts not awarded by the Tribunal.

2. Amongst the several grounds taken by the petitioner in his petition there was one ground mentioned in para. 22(C) of his petition, in which the petitioner alleged that Mr. Nadkarni was a member of the Bank and that he had, therefore, such interest in the subject-matter of the dispute as disqualified him from hearing the appeals filed by the petitioner and the Bank. We considered it necessary to call for a report from Mr. Nadkarni. He has submitted a report, in which he has admitted that he is a member of the Bank and that he holds one share in the Bank. He has also stated that apart from holding one share he has had no dealings with the Bank since 1939. Mr. Nadkarni has also stated in his report that before the appeals were actually taken up, he had mentioned to his colleague the fact of his being a member. It appears that at the time when the appeals were heard, the Co-operative Tribunal consisted of the president and one other member. Under Regulation 24 of the Bombay Cooperative Tribunal Regulation, the Bench must consist of not less than two members. From Mr. Nadkarni's report it therefore appears that he decided to hear the appeals, as no other Bench could at that time be formed for hearing them.

3. The question, which we have to consider, therefore, is whether Mr. Nadkarni could hear the appeals in spite of the fact that he was a shareholder of the Bank. It is now well-settled that no man can be a Judge in his own cause. This applies to a cause, in which he has an interest. It has, therefore, been held that any pecuniary interest, however small, in the matter in dispute, disqualifies a person from acting as a Judge, unless the disability is removed by statute; see Halsbury's Laws of England, Third Edition, Volume 11, page 67, and *Rameshwar Bhartia Vs. The State of Assam*, . Various cases have been cited before us. It is not necessary to refer to all of them, as the principle appears to be well-settled that unless the objection is waived, a Judge cannot hear a matter, to which a company is a party, if he is a shareholder of that company. In *Dimes v. Proprietors of the Grand Junction Canal* (1852) 3 H.L. 759, an incorporated public company filed a bill in equity against a landlord in a matter largely involving the interests of the company. The Lord Chancellor had an interest as a shareholder in the company to the amount of several thousand pounds, a fact which was unknown to the defendant in the suit. The cause was heard before the Vice-Chancellor, who granted the relief sought by the company. The Lord Chancellor, on appeal, affirmed the order of the Vice-Chancellor. It was held that the Lord Chancellor was disqualified, on the ground of interest from sitting as Judge in the cause, and that his decree was therefore voidable, and must consequently be reversed. Some criticism of this decision is to be found in the discussion, which took place at the opening of the case in *London and North-Western Railway Company v. Lindsay* (1858) 3 M R 99. But no authority has been cited before us in which any contrary view has been taken. On the other hand, Mr. Gupte, who appears on behalf of the petitioner, has drawn our attention, to several cases, in which the House of Lords decision in *Dimes* case has been followed. In *Beg. v. Storks* (1857) 29 L.T.R. 107 upon an appeal by a water company against an assessment to a poor-rate, the presiding Judge (the deputy-recorder) reduced

the rate and gave costs to the appellants. It afterwards appeared that the deputy-recorder was at the time of the trial of the appeal the registered shareholder of five shares in the company, though he was at the time under a contract to dispose of them, and believed he had no beneficial interest whatsoever in the company. It was held that he was an interested party and was incompetent to try the appeal.

4. Similar view has been taken by the Supreme Court. In *Manak Lal Vs. Dr. Prem Chand*, it was 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 the test is not whether in fact a bias has affected the judgement; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of a tribunal might have operated against him in the final decision of the tribunal.

It was further observed, that pecuniary interest, however small it may be in the subject-matter of the proceedings, would wholly disqualify a member from acting as a Judge. In the same case the Supreme Court has held that the objection to the constitution of the Tribunal can be waived.

5. In the present case, Mr. Nadkarni has admitted that he held one share in the Bank. He had, therefore, some pecuniary interest, though very small, in the subject-matter of the proceedings, for the Bank was claiming a very large amount from the petitioner. He was, therefore, disqualified from hearing the appeals, unless it can be shown that the petitioner had knowledge of Mr. Nadkarni's interest in the Bank and had still not objected to the constitution of the Tribunal. Mr. Nadkarni has stated in his report that he had disclosed this fact to his colleague Mr. Pande. But he has not stated that this fact had also been brought to the notice of the parties. The petitioner has stated in his petition that he discovered this fact after the Tribunal had disposed of the appeals. There is nothing definite to indicate that the petitioner was aware of Mr. Nadkarni's being a shareholder of the Bank at the time when the appeals were heard. Consequently it cannot be said that the petitioner had waived his objection, to the constitution of the Tribunal.

6. From Mr. Nadkarni's report it appears that no other Bench could then have been formed to hear the appeals, for the Tribunal consisted of only one other member, apart from Mr. Nadkarni. The proper course in the circumstances, therefore, would have been for Mr. Nadkarni to disclose to the parties that he owned one share in the Bank. He could then have proceeded with the appeals, if the parties had not objected to his hearing them. Otherwise he should have moved Government to make additional appointments to the Tribunal, at least for the purpose of hearing these two appeals.

7. Although we have not heard Mr. Gupte on the point, we are sure that Mr. Nadkarni dealt with the matter impartially and that he did not allow his small interest in the Bank to influence his decision in any way. That, however, will not make any difference, for, as pointed out by the Supreme Court in *Manak Lal v. Dr. Prem Chand*, the test is not whether in fact the bias has affected the judgment, but whether there would be a reasonable apprehension in the mind of a party to the cause that the Tribunal might have acted with bias.

8. We must, therefore, hold that Mr. Nadkarni was not qualified to hear the appeals. The order made by the Co-operative Tribunal must, therefore, be set aside.

9. We set aside the order and remand the appeals to the Tribunal. The appeals must be heard by some member or members of the Co-operative Tribunal other than those who had heard them previously. If necessary, the President of the Tribunal should move Government to appoint additional member or members of the Tribunal for the purpose of hearing these appeals. No order as to costs.

10. As the order made by the Tribunal has been set aside, the rule issued in the special civil application filed by the Bank will be discharged. No order as to costs.