

(2005) 09 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4851 of 2003

V.P. Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Constitution of India, 1950 — Article 316

National Hydroelectric Power Corporation Conduct, Discipline and Appeal Rules — Rule 37.2

Citation : (2006) 142 PLR 101

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : P.C. Chaudhary, for the Appellant; Lokesh Sinhal, for the Respondent

Final Decision : Allowed

Judgement

S.S Nijjar, J.—"No man shall be a judge in his own cause", is a principle or law cherished by most of the legal systems, which are governed by the Rule of Law. The principle applies not only in cases where the judge is directly involved. It would apply with equal vigour where the judge has an interest in the outcome of the case. Interest of the judge is also not confined only to legal or pecuniary interest. It would apply also where the judge is likely to be biased. It was said by Bowen L.J. in the case of Leeson v. General Council of Medical Education, etc. (1889)43 Ch.D. 366 that "Judge like Caesar's wife, should be above suspicion". It is to avoid such suspicion that the Courts have developed some cautionary principles which are popularly referred to as Rules of Natural Justice. The rule that likelihood of bias would disqualify a Judge was summed up by Lord Campbell C.J. in the case of Dimes v. Grand Junction Canal (1852)3 H.L.C 759 as follows:

No one can suppose that Lord Cottenham could be in the remotest degree, influenced by the interest that he had in this concern; but it is of the last importance that the maxim that no man is to be a judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party,

but applies to a cause in which he has an interest. Since I have had the honour to be Chief Justice of the Court of Queen's Bench, we have again and again set aside proceedings in inferior tribunals because an individual, who had an interest in a cause, took part in the decision. And it will have a most salutary influence on these tribunals when it is known that this high court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that this decree was on that account a decree not according to law, and was set aside. This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest but to avoid the appearance of labouring under such an influence.

2. The rule was reiterated by Lord Cave L.C. in the case of *Frame United Breweries Co. v. Bath Justices* (1926) A.C. 586 as follows;-

If there is on principle which forms an integral part of the English law, it is that every member of a body engaged in a judicial proceeding must be held to act judicially; and it has been held over and over again that, if a member of such a body is subject to a bias, whether financial or other, in favour of or against either party to the dispute or is in such a position that a bias must be assumed he ought not to take part in the decision or even to sit upon the tribunal.

3. This rule is very strictly applied more as a matter of policy than the actuality of the bias affecting the Judge. It has been set down by Lush J in the case of *Serjeant v. Dale* (1877)2 Q.B.D. 558 in the following terms:

The law in laying down this strict rule, has regard, not so much perhaps to the motives which might be supposed to bias the judges, as to the susceptibilities of the litigant parties. One important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security.

4. The aforesaid statement of policy was confirmed by Lord Esher M.R. in the case of *Eekersley v. Mersey Docks & Harbour Board* (1894)2 Q.B. 667 as follows:

the doctrine which is applied to judges, not merely of the Superior Courts, but to all judges, that, not only must they be not biased, but that, even though it be demonstrated that they would not be biased, they ought not to act as judges in a matter where the circumstances are such that people not necessarily reasonable people, but many people would suspect them of being biased.

5. It is on the basis of the above principles, that we have to examine the grievance of the petitioner.

6. The petitioner has been working with the respondent-Corporation since 1964. Earlier, he was working on the post of Assistant Executive Engineer. Since 29.5.1980, he has joined the respondent-Corporation as Assistant Manager. He was promoted on the post of Deputy Manager on 31.8.1984. He was further promoted to the post of Manager on 1.1.1996. The petitioner was charge sheeted

for having submitted false TTA bills in the amount of Rs. 19,560/- while posted at LOK TAK Project on 13.6.1995. He was also charge sheeted for having submitted another TTA bill in the sum of Rs. 1545/- on 31.7.1996. After holding the departmental enquiry the punishing authority passed the order dated 4.3.1999 whereby the petitioner was removed from service. This order was passed by the Chairman-cum-Managing Director (for short "CMD") being the disciplinary authority of the petitioner. The petitioner submitted an appeal against the aforesaid order. The appeal has been dismissed again by the same Officer, in the capacity of being "the appellant authority". Thereafter, the petitioner submitted a review petition which was placed for hearing before the Board of Directors. Here again the CMD was the Chairman of the Board. He conducted the meeting of the Board as Chairman. The re-view petition was also dismissed on 31.7.1999. The order was communicated to the petitioner vide letter dated 25.10.1999. The petitioner has challenged the aforesaid orders on various grounds. The respondents have filed the written statement.

7. We have heard the learned Counsel for the parties at length. It is not disputed before us that the order of the punishment (Annexure P-7) and the order in appeal (Annexure P-9) have been passed by the same Officer, firstly, acting as disciplinary authority and thereafter acting as the appellant authority. It is also not disputed that the same officer was also the Chairman of the Board of Directors who had attended the meeting in which the review petition filed by the petitioner was rejected (Annexure P-16). It appears that the aforesaid action has been taken by the respondents in view of the statutory rules which govern service conditions of the employees of the Corporation. Under the N.H.P.C. Conduct, Discipline and Appeal Rules which came into force with effect from 14.5.1979, the disciplinary authority and the appellant authority in the case of manager is CMD. The review has to be decided by the Board of Directors. Since under the Rules CMD is the Chairman of the Board of Directors, he participates in all its proceedings. Learned Counsel for the respondents, therefore, argues that even the order passed in the review proceedings cannot be quashed on the ground that CMD had chaired the meeting as he had participated in the meeting on the basis of rules which govern the service conditions of the employees of the Corporation. The learned Counsel has invoked the doctrine of necessity.

8. We are unable to accept the submissions made by the learned Counsel for the respondents. It is settled proposition of law that no person or Judge can sit in appeal over his own order. He ought not to have decided the appeal submitted by the petitioner. Similarly, even if the CMD is to normally preside over the meeting of the Board of Directors, he ought not to have participated in the proceedings when the review petition was being considered against the orders passed by him in his capacity as the disciplinary/appellate authority.

9. This practice has been approved by the Supreme Court on a number of occasions. In the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , it was observed as under:-

15. It is unfortunate that Naqishbund was appointed as one of the members of the selection Board. It is true that ordinarily, the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances, it was improper to have included Naqishbund as a member of the Selection Board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the section board must have had its own impact on the decision of the selection board. Further admittedly, he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board, there was a conflict between his interest and duty. Under those circumstances, it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally, he was also interested in safeguarding his position while preparing the list of selected candidates.

10. In the case of *Jaswant Singh Nerwal v. State of Punjab and Ors.* 1991(2) S.L.R. 124 the Supreme Court reiterated the same principle, as follows:-

We heard learned Counsel for the respective parties on every aspect of the case at great length. The High) Court was goaded to issue the above direction regulating selection between Bansal and other unsuccessful candidates, as also the consequence thereof, on applying the decision of this Court in *A.K. Kraipak and Ors. etc. v. Union of India and Ors.* 1970(1) S.C.C. 457 to neutralise Bansal's father Shri J.R. Bansal being a member of the Public Service Commission. And even though he had not participated in the deliberation of the Commission when Banal had been interviewed, his brooding presence was held negatively to have influenced the selection and the possible ouster of a possibly successful candidate. Kraipak's case was one where one of the persons, who sat as a member of the selection board, was himself, one of the persons to be considered for selection. He participated in the deliberations of the selection board when the claims of his rivals were considered. He participated in the decisions relating to the preference in seniority. He participated at every stage in the deliberations of the selection board where there was conflict between his

interest and duty. In such set of facts this Court unhesitatingly came to the conclusion that there was a reasonable likelihood of bias and therefore, the principles of natural justice had got violated. But this Court in *Javid Rasool Bhat and Others Vs. State of Jammu and Kashmir and Others*, did not vitiate the selection of a candidate to admission in a medical college on the ground of presence in the selection board of the father of one of the candidates. In this case, the Principle of Medical College, Srinagar whose daughter was a candidate to the Medical College informed the Selection Committee at the very outset about this fact and told that he would not have anything to do with a written test and would not be present when his daughter would be interviewed. The other members of the Selection Committee and the member concerned was in accord with the generally accepted and well known procedure adopted by the Public Service Commission every where in the country, as it was not unusual for candidates related to members of the Service Commission and Selection Committees to seek employment. In such a situation the practice generally in vogue is for the member concerned to excuse himself when the particular candidate is interviewed and such a selection is beyond challenge, unless, of course, mala fide. See this Court's decision in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, also.

4. Then we have the momentous decision of this Court in *Ashok Kumar Yadav and Ors. etc. etc. v. State of Haryana and Ors. etc.* 1985 (Supp) S.C.C. 657 which without whittling down the salutary principle evolved in *Kraipak's* case (supra) has put the Public Service Commissions, being creatures of the Constitution, at a higher pedestal. At pages 686-87, it was ruled as follows:

But the situation here is a little different because the selection of candidates to the Haryana Civil Service (Executive) and allied services is being made not by any Selection Committee constituted for that purpose but it is being done by the Haryana Public Service Commission which is a Commission set up under Article 316 of the Constitution. It is a commission which consists of a Chairman and a specified number of members and is a Constitutional Authority. We do not think that the principle which requires that a member of a Selection Committee whose close relative is appearing for selection should decline to become a member of the selection committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need be applied in case of a Constitutional Authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission were to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two or more members of a Public Service Commission are holding a viva voce examination they are functioning not as individual but as the Public Service Commission. Of course, we must make it clear that when a close relative of a member of a Public Service Commission is appearing for interview,

such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him.

In this case CMD has issued the order of punishment. He has also decided the appeal. In these circumstances there would be a latent if not a patent tendency to uphold the earlier decision. This general attitude has been noticed by the Supreme Court. In the case of K.I. Shephard and Others Vs. Union of India (UOI) and Others, , has clearly observed that "...it is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose....". These observations have been reiterated by the Supreme Court in the case of H.L. Trehan and Others Vs. Union of India (UOI) and Others, . Murari Mohan Dutt, J. observed as follows:

...In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity...

11. In our opinion, the practical application of the aforesaid observations have been fully demonstrated in the present case. The CMD passed the order of punishment; upheld it in appeal" the Board of Directors of which he was the Chairman, dismissed the application for review.

12. We may quote the relevant paragraphs of the order passed by the CMD, acting as the appellate authority:

4.0 After careful examination of the said appeal, the undersigned finds that said Shri Gupta has not brought forward any new evidence or material facts which could warrant the reconsideration of the Disciplinary Authority's order issued vide order No. NH/VIG/6-166/218 dated 4.3.1999.

5.0 Now therefore, in exercise of the power conferred under Rule 37.2 of N.H.P.C. Conduct Disciplinary and Appeal Rules, the undersigned being the Appellate Authority, hereby confirms the penalty of removal from service imposed upon said Shri V.P. Gupta by the Disciplinary Authority vide order No. HVIG/6-166/218 dated 4.3.1999. The said penalty shall not be disqualification for future employment.

13. From the above, it is apparent that the petitioner has been denied the right of appeal. The CMD has treated the appeal as review of his earlier order. This is against the well settled principle of law that the hearing of the appeal is continuation of the original proceedings. It is not confined to examination of any new evidence or material facts which would warrant reconsideration of the original order, as observed by the CMD.

14. We are further of the opinion that to permit the CMD to act as the

Disciplinary Authority and the Appellate Authority would be contrary to the basic principle of natural justice that justice must not only be done, but must manifestly be seen to be done. In *Regina v. Thames Magistrates' Court, Ex. Parte Polemis* (1974) 1 W.L.R. 1371 Lord Widgery C.J. has observed that "it is again absolutely basic to our system that justice must not only be done, but must manifestly be seen to be done". Again in the case of *R. v. Sussex Justices* (1924) 1 K.B. 256 it was observed by Lord Hewart C.J. that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done." This principle has been approved by the Supreme Court in the case of *S.L. Kapoor Vs. Jagmohan and Others*, in paragraph 24 of the judgment.

15. In view of the aforesaid observations of the Supreme Court, clearly the orders (Annexures P-9 and P-16) are liable to be quashed.

16. Learned Counsel for respondents No. 2 and 3, however, submits that in case the matter is now remanded back to the Appellate Authority, under the Rules, the appeal will have to be again considered by the CMD.

17. Having considered the aforesaid submission we are of the opinion that the aforesaid practical difficulty can be avoided by applying the principle laid down in the cases of *Frame United Breweries Co., Serjeant v. Dale; Eckersley v. Mersey Docks & Harbour Board; A.K. Kraipak; and Jaswant Singh Narwal* (supra). The matter can be remanded back to the Board of Directors so that the appeal and the review petition of the petitioner can be considered by the Board of Directors, in the absence of the CMD in case the same Officer Yogendera Prasad is still holding the post of CMD.

18. We, therefore, allow the writ petition and quash the orders (Annexures P-9 and P-16) passed by the Appellate Authority and the Board of Directors. The matter is remanded back to the Board of Directors to take a decision on the appeal and the review petition submitted by the petitioner, after giving an opportunity of hearing to the petitioner and by passing a well speaking order. Necessary orders be passed within a period of two months of the receipt of a certified copy of this order.