

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11426 OF 2015**

Suresh Ramchandra Palande,
Adult, Occupation Agriculturist, residing at &
post: Mukhai, Taluka Shirur, District Pune.

...Petitioner

Versus

1. The Government of Maharashtra, Through the Secretary (Water Resources Management), Water Resources Department, Madam Cama Road, Mantralaya, Mumbai – 400 032
2. The Executive Director, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
3. The Chief Engineer (Specified Project) Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
4. The Chief Engineer, Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
5. Municipal Commissioner, Pune Municipal Corporation, Near Mangla Theatre, Shivajinagar, Pune 411 005
6. Municipal Corporation, Pimpri Chinchwad Municipal Corporation, Mumbai-Pune Road, Pimpri, Pune 411 018.

7. Municipal Commissioner, Solapur
Municipal Corporation, Indrabhavan,
Ambedkar Chowk, Railway Lines, Solapur
413 001
 8. The Collector, Pune, Vidhan Bhavan, Pune
411 001
 9. The Collector, Solapur, Main Building,
Siddheshwar Peth, Solapur 413 003.
 10. Shri Bharat Tukaram Bhalke, Member of
Legislative Assembly, Pandharpur, District
Solapur 413 304.
 11. Siddeshwar Dadasaheb Varade, Through
Adv. Mahadev Choudhary, Agra Building,
Room No. 9, 1st Floor, 121 M.G. Road,
Fort, Mumbai 400 023.
 12. Maharashtra Water Resources Regulatory
Authority (MWRDA), 9th Floor, Centre-1,
World Trade Centre, Cuffe Parade,
Mumbai 400 005.
 13. Shri Baburao Pacharne, Age 61 years, Occ.
Agriculture, residing at Tardobachi wadi,
Taluka Shirur, District Pune.
 14. Suresh Namdeo Gore,
Chakan Ambethan Road, District Pune ...Respondents
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WITH
WRIT PETITION NO. 11152 OF 2015

Ravindra Rajaram Kandhare ...Petitioner
Adult, Occupation Chairman of Panchayat
Samitee Mulshi Taluka, residing at & post

Mulshi, Taluka Mulshi, District Pune

Versus

1. The Government of Maharashtra, Through the Secretary (Water Resources Management), Water Resources Department, Madam Cama Road, Mantralaya, Mumbai – 400 032
2. The Executive Director, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
3. The Chief Engineer (Specified Project) Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
4. The Chief Engineer, Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
5. Municipal Commissioner, Pune Municipal Corporation, Near Mangla Theatre, Shivajinagar, Pune 411 005
6. Municipal Corporation, Pimpri Chinchwad Municipal Corporation, Mumbai-Pune Road, Pimpri, Pune 411 018.
7. Municipal Commissioner, Solapur Municipal Corporation, Indrabhavan, Ambedkar Chowk, Railway Lines, Solapur 413 001
8. The Collector, Pune, Vidhan Bhavan, New Building, Bund Garden, Pune 411 001
9. The Collector, Solapur, Main Building, Siddheshwar Peth, Solapur 413 003.

10. Shri Bharat Tukaram Bhalke, Member of Legislative Assembly, Pandharpur, District Solapur 413 304.
 11. Siddeshwar Dadasaheb Varade, Through Adv. Mahadev Choudhary, Agra Building, Room No. 9, 1st Floor, 121 M.G. Road, Fort, Mumbai 400 023.
 12. Maharashtra Water Resources Regulatory Authority (MWRDA), 9th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai 400 005.
 13. The Executive Director, Tata Power Company, Khopoli, District Raigad. ...Respondents
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WITH
WRIT PETITION NO. 11165 OF 2015

Suresh Gore,
Adult, Occupation: Member of Legislative Assembly, r/at & Post Khed, Taluka Khed, District Pune. ...Petitioner

Versus

1. The Government of Maharashtra, Through the Secretary (Water Resources Management), Water Resources Department, Madam Cama Road, Mantralaya, Mumbai – 400 032
2. The Executive Director, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011

3. The Chief Engineer (Specified Project)
Water Resources Department, Sinchan
Bhavan, Barne Road, Mangalwar Peth,
Pune 411 011
 4. The Chief Engineer, Water Resources
Department, Sinchan Bhavan, Barne Road,
Mangalwar Peth, Pune 411 011
 5. Municipal Commissioner, Pune Municipal
Corporation, Near Mangla Theatre,
Shivajinagar, Pune 411 005
 6. Municipal Corporation, Pimpri Chinchwad
Municipal Corporation, Mumbai-Pune
Road, Pimpri, Pune 411 018.
 7. Municipal Commissioner, Solapur
Municipal Corporation, Indrabhavan,
Ambedkar Chowk, Railway Lines, Solapur
413 001
 8. The Collector, Pune, Vidhan Bhavan, New
Building, Bund Garden, Pune 411 001
 9. The Collector, Solapur, Main Building,
Siddheshwar Peth, Solapur 413 003.
 10. Shri Bharat Tukaram Bhalke, Member of
Legislative Assembly, Pandharpur, District
Solapur 413 304.
 11. Siddeshwar Dadasaheb Varade, Through
Adv. Mahadev Choudhary, Agra Building,
Room No. 9, 1st Floor, 121 M.G. Road,
Fort, Mumbai 400 023.
 12. Maharashtra Water Resources Regulatory
Authority (MWRDA), 9th Floor, Centre-1,
World Trade Centre, Cuffe Parade,
Mumbai 400 005.
- ...Respondents.

WITH
WRIT PETITION NO. 11555 OF 2015

Ashok Raosaheb Pawar,
Age : 52 years, Occupation: Agriculturist,
R/at Wadgaon Rasai, Taluka Shirur, Dist.: Pune ...Petitioner

Versus

1. The Government of Maharashtra, Through the Secretary (Water Resources Management), Water Resources Department, Madam Cama Road, Mantralaya, Mumbai – 400 032
2. The Executive Director, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
3. The Chief Engineer (Specified Project) Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
4. The Chief Engineer, Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
5. Municipal Commissioner, Pune Municipal Corporation, Near Mangla Theatre, Shivajinagar, Pune 411 005
6. Municipal Corporation, Pimpri Chinchwad Municipal Corporation, Mumbai-Pune Road, Pimpri, Pune 411 018.

7. Municipal Commissioner, Solapur
Municipal Corporation, Indrabhavan,
Ambedkar Chowk, Railway Lines, Solapur
413 001
 8. The Collector, Pune, Vidhan Bhavan, New
Building, Bund Garden, Pune 411 001
 9. The Collector, Solapur, Main Building,
Siddheshwar Peth, Solapur 413 003.
 10. Shri Bharat Tukaram Bhalke, Member of
Legislative Assembly, Pandharpur, District
Solapur 413 304.
 11. Siddheshwar Dadasaheb Varade, Through
Adv. Mahadev Choudhary, Agra Building,
Room No. 9, 1st Floor, 121 M.G. Road,
Fort, Mumbai 400 023.
 12. Maharashtra Water Resources Regulatory
Authority (MWRDA), 9th Floor, Centre-1,
World Trade Centre, Cuffe Parade,
Mumbai 400 005.
 13. Suresh Namdeo Gore,
Chakan Ambethan Road, District Pune
 14. Suresh Ramchandra Palande,
Age: Adult, Occu.: Advocate, R/at & Post
Mukhai, Taluka Shirur, Dist.: Pune. ...Respondents
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WITH
WRIT PETITION NO. 11721 OF 2015

Bharat Tukaram Bhalke,
Adult, Occupation: Member of Legislative

Assembly, Residing at Pandharpur,
District: Solapur.

...Petitioner

Versus

1. The Government of Maharashtra, Through the Secretary (Water Resources Management), Water Resources Department, Madam Cama Road, Mantralaya, Mumbai – 400 032
2. The Executive Director, Maharashtra Krishna Valley Development Corporation, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
3. The Chief Engineer (Specified Project) Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
4. The Chief Engineer, Water Resources Department, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune 411 011
5. Municipal Commissioner, Pune Municipal Corporation, Near Mangla Theatre, Shivajinagar, Pune 411 005
6. Municipal Corporation, Pimpri Chinchwad Municipal Corporation, Mumbai-Pune Road, Pimpri, Pune 411 018.
7. Municipal Commissioner, Solapur Municipal Corporation, Indrabhavan, Ambedkar Chowk, Railway Lines, Solapur 413 001
8. The Collector, Pune, Vidhan Bhavan, New Building, Bund Garden, Pune 411 001
9. The Collector, Solapur, Main Building,

Solapur.

10. Maharashtra Water Resources Regulatory Authority (MWRDA), 9th Floor, Centre-1, World Trade Centre, Cuffe Parade, Mumbai 400 005.
11. The Divisional Commissioner, Pune Division, Pune having Office at Council Hall, Pune.
12. Shri Suresh Gore, Member of Legislative Assembly, Residing and Post Khed, Taluka Khed, Dist.: Pune.
13. The Superintendent of Police, Pune Rural having office at Pune. ...Respondents

Mr. P.K. Dhakephalkar, Senior Advocate, with Mr. S.R. Nargolkar, i/b Deven Jagdeo, for the Petitioner in WP/11426/2015.
 Mrs. Shakuntala Santosh Wadekar, for the Petitioner in WP/11152/2015 & 11165/2015.
 Mr. Tejas D. Deshmukh, i/b Mr. Samrat K. Shinde, for the Petitioner in WP/11555/2015.
 Mr. R.S. Apte, Senior Advocate, i/b Mr. Sarang Satish Aradhye, for the Petitioner in WP/11721/2015.
 Mr. A.B. Vagyani, GP, with Mrs. M.P. Thakur, AGP, for Respondent No. 1 in all the Petitions.
 Mr. D.D. Shinde, for Respondent No. 2 (Krishna Valley) in all Petitions.
 Mr. Abhijit Purushottam Kulkarni, for Respondent No. 5 (Pune Municipal Corporation).
 Mr. Mahadeo Anantrao Chaudhari, with Ms. Kanchan Tajani Pawar, for Respondent No. 11 in all the Petitions.
 Ms. Swati Sawant, with Mr. Rajesh Wanzare, i/b S.K. Legal Associates for Respondent No. 12.
 Mr. P.K. Dhakephalkar, Senior Advocate with Mr. H.N. Vakil & Mr. Rushil Mathu, i/b M/s. Mulla & Mulla & CBC, for Respondent No. 13 in WP/11152/2015.
 Mr. N.V. Walawalkar, Senior Advocate, with Mr. Swapnil Mhatre, for Respondent No. 13 in WP/11426/2015.

CORAM: A. S. OKA & G.S. PATEL, JJ.
DATED: 3rd December 2015

ORAL JUDGMENT: (Per A.S. Oka, J.)

1. Considering the extreme urgency involved in these Petitions, the same are forthwith taken up for final disposal. Rule. The learned counsel representing the concerned Respondents waive service. In these Petitions, except Writ Petition No. 11721 of 2015, an exception has been taken to the order dated 26th October 2015 passed by the Maharashtra Water Resources Regulatory Authority (for short, “the Regulatory Authority”). The Regulatory Authority has been established under Section 3 of the Maharashtra Water Resources Regulatory Authority Act, 2005 (for short, “the said Act of 2005”). In some of the Petitions, the challenge is also to the order passed by the Regulatory Authority on Petitions seeking review of the order dated 26th October 2015.

2. The proceedings before the Regulatory Authority were initiated on the basis of applications made by one Mr. Bharat Tukaram Bhalke (the 10th Respondent in Writ Petition No. 11426 of 2015) and one Mr. Siddheshwar Dadasaheb Varade (the 11th Respondent in the same Writ Petition). The application made by Mr. Bhalke was numbered as Case No. 5 of 2015 and the application made by Mr. Varade was numbered as Case No. 6 of 2015. In his application, Mr. Bhalke set out the situation in the Ujjani Reservoir Command in Solapur District.. He stated that the poor monsoon in the area had led to a drought and that there was (and is) no drinking water available for farmers and livestock. He

sought directions from the Regulatory Authority for the equitable distribution of water from dams upstream of the Ujjani Reservoir. He also sought a direction for release of water from the Ujjani Reservoir into the Ujjani Left and Right Bank Canals.

3. Mr. Siddheshwar Varade filed Public Interest Litigation No. 144 of 2015. An order was made in the said Public Interest Litigation on 16th September 2015 by a Division Bench of this Court. The application made by Mr. Varade was on the basis of the said order. The prayer in the said application made by Mr. Varade was for release of water from the Ujjani Dam to the Ujjani Left Bank Canal and the Ujjani Right Bank Canal. Various directions were issued by the Regulatory Authority in the impugned order dated 26th October 2015.

4. The Chairperson of the Regulatory Authority is one Mr. Buddhiraja. In the present case, the impugned order was passed by two other members, namely, Ms. Chitkala Zutshi and Mr. S. V. Sodal. Ms. Chitkala Zutshi is a Member (Expert in the field of Water Resource Economy) and Mr. S. V. Sodal is a Member (Expert in the field of Water Resources Engineering). In paragraph 6 of the said order, directions were issued for achieving an equitable distribution of water as per Section 11(c) of the said Act. On the basis of observations made in the impugned order, a decision was taken to release the water from the upstream dams for the benefit of the Ujjani Reservoir. Considering the main ground of challenge which is canvassed before this Court, we are not today

referring to the details of the directions issued by the Regulatory Authority under the impugned order.

5. The Petitioner in Writ Petition No. 11426 of 2014 remained present before the Regulatory Authority when the Case No. 5 of 2015 and Case No. 6 of 2015 were posted before the Regulatory Authority and prayed for intervention. The application for intervention made by him was not entertained by the Regulatory Authority. The said Petitioner applied for a review of the order dated 26th October 2015. The Review Petition was placed before the Regulatory Authority on 17th November 2015 when one Mr. Suresh Namdeo Gore (the 14th Respondent in Writ Petition No. 11426 of 2015) raised an objection that Mr. Sodal, a member of the Regulatory Authority, was himself a potential beneficiary of the water that might come to be released from the Ujjani Dam. Mr. Sodal was said to personally hold sizeable lands downstream of the Ujjani Dam, and, in addition, his family members were said to hold other lands similarly situated. The Roznama of the hearing conducted on 17th November 2015 maintained by the Regulatory Authority records that after the said objection was raised by Mr. Gore, Mr. S. V. Sodal recused himself from the review matter.

6. By an order dated 18th November 2015, the Review Application filed by the Petitioner in Writ Petition No. 11426 of 2015 was disposed of by the Regulatory Authority by observing that the matter was sub-judice before this Court. The Regulatory Authority recorded that it had decided not to hear the Review Applications in order to observe judicial discipline and judicial

propriety. In Writ Petition No.11426 of 2015, the challenge is to the orders dated 26th October 2015 and 18th November 2015.

7. Writ Petition No. 11152 of 2015 is filed by Mr. Ravindra Rajaram Kandhare. Apart from incorporating a challenge to the said impugned order dated 26th October 2015, there is also a challenge to the order dated 18th November 2015 passed by the Regulatory Authority on the application for review made by the said Petitioner by which the Regulatory Authority declined to entertain the Review Petition. Similar challenges are made in Writ Petition No. 11165 of 2015 filed by Mr. Suresh Gore and in Writ Petition No. 11555 of 2015 filed by Mr. Ashok Pawar. Writ Petition No. 11721 of 2015 is filed by Shri Bharat Bhalke seeking a Writ of Mandamus enjoining the Respondents to forthwith implement the order dated 26th October 2015.

8. The main submission canvassed across the bar by the learned counsel representing the Petitioners is that Mr. S. V. Sodal, the Member (Engineering) of the Regulatory Authority, had a direct and proximate pecuniary interest in the subject matter of controversy before the Regulatory Authority. It is contended that if the water from upstream dams is released for the benefit of Ujjani Dam, as Mr. S. V. Sodal holds substantial agriculturals land in the benefited zone of Ujjani Dam, he is a direct beneficiary. Moreover, it was contended that the order dated 17th November 2015 passed by the Regulatory Authority in the Review Petitions specifically records that Mr. S. V. Sodal expressed a desire to recuse himself from the Review Petitions. When the Review Petitions were placed

for hearing on 17th November 2015, Mr. S. V. Sodal recused himself and the Review Petitions were heard by the Chairman and the Member (Economy). We must also note here that when these Petitions were heard yesterday, Mr. S. V. Sodal was personally present. Clauses 1 to 3 of the order dated 2nd December 2015 passed by this Court read thus:

"1. In the morning session, Shri S.V.Sodal, the Member (Engineering) of the respondent No.12 in Writ Petition No.11426 of 2015 who was personally present in the Court made a statement through his learned counsel that he will immediately tender resignation from the post of Member (Engineering) of the respondent No.12 the Maharashtra Water Resources Regulatory Authority. The said statement was accepted as undertaking. The said statement was made as Shri Sodal accepted before the Court that his agricultural land will be benefited by the impugned order dated 26th October 2015. To enable him to file an affidavit to that effect, the petition was kept back till 4.15 p.m today. When the matter was called out at 4.15 p.m, he tendered an unaffirmed but signed affidavit. Clause (2) of the affidavit reads thus:

"2. I say that I will take appropriate action for relinquishing from the post of Member (Engineering) after consulting Senior Advocate and as per provision in MWRRA Act, 2005. Time may be given for the same as per convenience of Hon'ble Court or whatever Hon'ble Court deem fit

and proper."

2. After we pointed out to him that the statement made in paragraph 2 of the affidavit will amount to gross contempt of this Court, he stated that tomorrow he will tender resignation from the post of Member (Engineering). He stated that he will immediately file an affidavit to that effect.

At 5.15 p.m., the learned counsel representing the respondent No.12 tenders affidavit cum undertaking of Shri S.P.Sodal, the Member (Engineering). The undertaking in terms of paragraph 2 is accepted. The affidavit is marked as 'A2' for identification. Place this petition along with connected petitions at 12.30 p.m tomorrow 3rd December 2015."

9. Hence, Mr. S. V. Sodal accepted before this Court that his agricultural lands will be benefited by the implementation of impugned order dated 26th October 2015. Thus, it becomes an admitted position that Mr. S. V. Sodal had a direct and proximate pecuniary interest in the subject matter of controversy in Case Nos. 5 of 2015 and 6 of 2015, which were decided by the impugned order dated 26th October 2015.

10. In view of this admitted position, the submission of the learned counsel representing the Petitioners in the first four Petitions is that the impugned order dated 26th October 2015 is vitiated as Mr. S. V. Sodal could not have heard either of the two cases. The learned senior counsel representing the 10th Respondent in Writ Petition No. 11426 of 2015 (Mr. Bharat Tukaram Bhalke)

urged that the objection regarding bias ought to have been raised before the Regulatory Authority when Case Nos. 5 of 2015 and 6 of 2015 were heard. He urged that the objection regarding bias can always be waived and in the facts of the case, it was in fact waived. In support of his contention, he relied upon a decision of the Apex Court in the case of *Manak Lal v Dr. Prem Chand Singhvi & Ors.*¹ He also placed reliance on a decision of a Division Bench of this Court in case of *Advani Builders Private Limited & Anr. v. Slum Rehabilitation Authority & Ors.*² The second contention of the learned senior counsel appearing for the 10th Respondent is that the objection regarding personal bias cannot be entertained in this Petition since the doctrine of necessity will immediately come into play. He relied upon a decision of the Apex Court in the case of *State of Uttar Pradesh v. Sheo Shanker Lal Srivastava & Ors.*³ in support of this contention. He submitted that on the date on which the cases were placed before the Regulatory Authority, except Ms. Zutshi and Mr. Sodal, there was no one who could have heard the cases and, therefore, the doctrine of necessity automatically operates. His submission is that when the doctrine of necessity is applicable, there is no requirement of the compliance with the principles of natural justice.

11. The learned counsel representing Respondent No. 11 (Mr. Siddeshwar Dadasaheb Varade) invited our attention to the orders passed in Public Interest Litigation No. 144 of 2015 by a Division Bench of this Court. Though he stated that his prayer in Case No. 6

¹ AIR 1957 SCC 425

² 2013 (7) Bom. C.R. 660

³ (2006) 3 SCC 276

of 2015 was not granted under the impugned order dated 26th October 2015, his prayer was granted by virtue of the subsequent order passed by the Division Bench of this Court on 27th October 2015 in Public Interest Litigation No. 144 of 2015. He, therefore, urged that no interference is called for in Writ Jurisdiction.

12. Mr. Vagyani, learned Government Pleader invited our attention to the provisions of Section 10 of the said Act. He also invited our attention to the Maharashtra Water Resources Regulatory Authority (Conduct of Business) Regulations, 2013 (for short “the said Regulations”). He urged that in view of the Regulation 10, out of the three members of the Regulatory Authority, any two members can validly conduct the proceedings of the Regulatory Authority and can adjudicate upon various issues as contemplated under Sections 11 and 12 of the said Act of 2005. He invited our attention to the various provisions of the said Act. He contended that as a result of the resignation, Mr. S. V. Sodal, Member (Engineering) will not be available, but the Regulatory Authority can invoke powers of sub-Section 9 of Section 8 and may appoint some experts in the field of Water Resources Engineering as consultants. He submitted that the consultants so appointed can assist the Regulatory Authority.

13. The learned senior counsel representing the 10th Respondent urged that the situation created by the water scarcity in Solapur District is precarious and, therefore, this Court should not interfere with the impugned order. The learned counsel appearing for the Regulatory Authority, on instructions of the Secretary to the

Regulatory Authority, states that if this Court is inclined to remand the matter for reconsideration, an endeavour shall be made by the Regulatory Authority to pass the final order within a period of eight to ten days from 14th December 2015.

14. We have given anxious consideration to all these submissions. As recorded earlier, it is an accepted position that Mr. S. V. Sodal had a direct and proximate pecuniary interest in the subject matter of Case No. 5 of 2015 and Case No. 6 of 2015, which were decided by the impugned order. Therefore, it is necessary to deal with the submission made by the learned senior counsel representing the 10th Respondent. He relied upon paragraph 8 of the decision of the Apex Court in the case of *Manak Lal* (*supra*) which reads thus:

“8. The next question which falls to be considered is whether it was open to the appellant to take this objection for the first time before the High Court. In other words, has he or has he not waived his objection to the presence of Shri Chhangani in the tribunal? Shri Daphtary does not seriously contest the position that the objection could have been effectively waived. The alleged bias in a member of the tribunal does not render the proceedings invalid if it is shown that the objection against the presence of the member in question had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of his right to challenge the presence of the member in the tribunal. It is true that waiver cannot always and in

every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts and was aware of his right to take the objection in question. As Sir John Romilly, M.R. Has observed in *Vyvyan v. Vyvyan* (1861) 30 Beav 65 at p. 74: 54 E.R. 813 at p.817 (E) waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights and that being so, he neglects to enforce them, or chooses one benefit instead of another, either but not both, of which he might claim. "If, in the present case, it appears that the appellant knew all the facts about the alleged disability of Shri Chhangani and was also aware that he could effectively request the learned Chief Justice to nominate some other member instead of Shri Chhangani and yet did not adopt that course, it may well be that he deliberately took a chance to obtain a report in his favour from the tribunal and when he came to know that the report had gone against him he thought better of his rights and raised this point before the High Court for the first time. In other words, though the point of law raised by Shri Daphtary against the competence of the tribunal be sound it is still necessary for us to consider whether the appellant was precluded from raising this point before the High Court by waiver or acquiescence."

(Emphasis added)

15. We must also note what is observed by the Apex Court in paragraph 9 of the same decision. The Apex Court has noted that

the High Court found that there was no substance in the allegations about the pecuniary interest of a Member of the Tribunal against whom allegations of bias were made. The Apex Court specifically observed that the High Court found that the allegations of pecuniary bias against the Member of the Tribunal were wholly unfounded and substance was found only in the allegations of personal bias.

16. We must also note the law laid down by the Apex Court in paragraph 4 of the said decision in the case of *Manak Lal* (*supra*). The relevant portion of the said paragraph reads thus:

“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 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. As Viscount Cave, L.C. Has observed in *Frome United Breweries Co. v. Bath Justices* [(1926) AC 586, 590] “This rule has been asserted, not only in the case of Courts of Justice and other judicial Tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as Judges of the rights

of others." In dealing with cases of bias attributed to members constituting Tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a Judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle", says Halsbury, "*nemo debet esse judex in causa propria* precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein" [Halsbury's Laws of England, Vol 21, p. 535, para 952] . In our opinion, there is and can be on doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all Tribunals and bodies which are given jurisdiction to determine judicially the rights of parties.

(Emphasis added)

17. At this stage, a reference will have to be also made to the well known decision of the Apex Court in case of *J. Mohapatra & Co., & Anr. v. State of Orissa & Anr.*⁴ In paragraph 9 of the said

⁴ (1984) 4 SCC 103

decision, the Apex Court has quoted with approval the position of law which has been stated in *Halsbury's Laws of England, Fourth Edition, Volume 1, para 68*. Paragraph 9 of the said decision of the Apex Court reads thus:

"9. It is, however, unnecessary to go further into this controversy for the real question in this appeal is of far greater importance. That is the question of bias on the part of some of the members of the Assessment Sub-Committee. This question has been answered against the appellants and forms the subject-matter of the third and fourth grounds on which the High Court rested its decision. *Nemo judex in causa sua*, that is, no man shall be a judge in his own cause, is a principle firmly established in law. Justice should not only be done but should manifestly be seen to be done. It is on this principle that the proceedings in courts of law are open to the public except in those cases where for special reason the law requires or authorizes a hearing in camera. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. This principle applies not only to judicial proceedings but also to quasi-judicial and administrative proceedings. The position in law has been succinctly stated in *Halsbury's Laws of England, Fourth Edition, Volume 1, para 68*, as follows:

Disqualification for financial interest.-
There is a presumption that any direct financial interest, however small, in the matter in dispute disqualifies a person from adjudicating. Membership of a company, association or other organisation which is financially interested may operate as a bar

to adjudicating, as may a bare liability to costs where the decision itself will involve no pecuniary loss."

(Emphasis added)

18. Thus, what is held by the Apex Court in the aforesaid decisions is that the presence of direct pecuniary interest irrespective of its extent operates as a complete disqualification to adjudicate a dispute. The complete disqualification operates irrespective of the fact that the pecuniary interest may be very small. In such a case, the issue of waiver of objection regarding bias will not arise at all as the presence of pecuniary bias prevents the Judge from taking up the case in which he has pecuniary interest. Therefore, any direct financial interest operates as a complete bar which prohibits a person exercising even quasi judicial powers from participating in the process of adjudication. Hence, the plea of waiver is not available in such cases. As stated earlier, this is a case where the pecuniary and proximate interest in the subject matter of the case is admitted by Shri Sodal. There is in our view a distinction to be drawn between a personal bias, one that may be waived, and a pecuniary bias which stands on a wholly different footing. In the first place, to be invoked waiver requires that a disclosure be made of the possibly conflicting interest. It is when that interest is made known that a party can waive it. But this can only apply in the case of a personal bias such a relationship or a friendship. A pecuniary bias stands on another footing altogether. On the principles enunciated in *Mohapatra's case*, a direct, proximate and existing pecuniary bias can never be waived. It is to be noted that in *Mohapatra's case*, the Apex Court held that the

existence of a pecuniary interest was a disqualification and that this disqualification did not depend on the amount of the pecuniary interest. The Apex Court also rejected the invocation of the doctrine of necessity in such a case by holding that nothing prevented the government in that case from reconstituting the committee in question.

19. There is one more reason as to why the plea of waiver is not available in this case. The Apex Court had an occasion to consider the same in the case of *State of Punjab v. Davinder Pal Singh Bhullar & Ors.*⁵ In paragraph 94, the Apex Court held thus:

"94. Mr. K.N. Balgopal, learned Senior Counsel appearing for the respondents has submitted that the issue of bias must be agitated by a party concerned at the earliest and it is not permissible to raise it at such a belated stage. The legal proposition in this regard is clear that if a person has an opportunity to raise objections and if he fails to do so, it would amount to waiver on his part. However, such a person can raise objections only if he is impleaded as a party-respondent in the case and has an opportunity to raise an objection on the ground of bias. In the instant case, neither the State of Punjab nor Mr. S.S. Saini have been impleaded as the respondents. Thus, the question of waiver on the ground of bias by either of them does not arise."

(Emphasis added)

⁵ 2011(14) SCC 770

20. Coming back to the facts of the case in hand, the Petitioner in Writ Petition No. 11426 of 2015 was not a party to the original proceedings before the Regulatory Authority. His application for intervention was not entertained by the Regulatory Authority. Therefore, there was no opportunity available to him to raise an objection of personal bias. Therefore, as far as the Petitioner in Writ Petition No. 11426 of 2010 is concerned, the plea of waiver is not available at all. Moreover, it is not the case made out that when he applied for intervention, he was aware about the bias. We must note that when the Review Petitions were placed before the Regulatory Authority on 17th November 2015, a specific objection was raised by one of the Review Petitioners, which was accepted by Mr. S. V. Sodal, and he recorded his wish to recuse himself. Therefore, the argument based on waiver deserves to be outright rejected.

21. The second argument canvassed before the Court is that principles of natural justice would not apply when there is a necessity. The said submission is based on the decision of the Apex Court in the case of *State of Uttar Pradesh v. v. Sheo Shanker Lal Srivastava & Ors.* (*supra*). Paragraph 16 of the said decision deals with doctrine of necessity.

“16. Referring to the doctrine of necessity, Sir William Wade in his *Administrative Law* stated:

‘But there are many cases where no substitution is possible, since no one else is empowered to act. Natural justice then has to give way to necessity; for otherwise there is no means of deciding and them

machinery of justice or administration will break down.'

It was further stated:

'In administrative cases the same exigency may arise. Where the statute empowers a particular minister or official to act, he will usually be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested. Transfer of responsibility is, indeed, a recognised type of ultra vires. In one case it was unsuccessfully argued that the only minister competent to confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply for a local Act of Parliament."

(Emphasis added)

22. In the present case, the specific stand of the State Government is that two members out of the three could have validly conducted the proceedings of the Regulatory Authority. We may note here that though the Chairperson was not a part of the adjudicatory process while passing the impugned order dated 26th October 2015, when the Review Petitions were heard, he was very much a part of the adjudicatory process. The submission of the learned Government Pleader is supported by the said Regulations and in particular clause 3 of Regulation 9 which lays down that the quorum of meetings of the Regulatory Authority shall be two-thirds of the full strength of the Authority (the Chairperson and two members). Therefore, even if Mr. S. V. Sodal had recused himself, the cases could have been heard by the Chairperson and the other

member of the Regulatory Authority. Therefore, the doctrine of necessity sought to be invoked will not apply in the present case.

23. There is one more serious aspect of the case, which must be noted. In paragraph 6 of its decision in the case of *Narinder Singh Arora v. State (Government of NCT of Delhi) & Ors.*⁶, the Apex Court held thus:

“6. It is well-settled law that a person who tries a cause should be able to deal with the matter placed before him objectively, fairly and impartially. No one can act in a judicial capacity if his previous conduct gives ground for believing that he cannot act with an open mind or impartially. The broad principle evolved by this Court is that a person, trying a cause, must not only act fairly but must be able to act above suspicion of unfairness and bias.”

24. In the well known decision of the Apex Court in the case of *A. K. Kripak v. Union of India*⁷ in paragraph 15, the Apex court held thus:

“15. It is unfortunate that Naquishbund 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

⁶ (2012) 1 SCC 561

⁷ 1969 (2) SCC 262

the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Naquishbund 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 selection 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 this 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.”

25. The Apex Court reiterated that the real question is not whether there was a bias. The test laid down by Apex Court is to see whether there is any reasonable likelihood of bias. We may also make an useful reference to the decision of the Apex Court in the case of *Ranjit Thakur v. Union of India*⁸ and in particular paragraphs 16 and 17 thereof. Paragraphs 16 and 17 read thus:

“16. 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’

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. 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.”

(Emphasis added)

Coming back to the case in hand, Mr. S. V. Sodal candidly accepted before this Court that his agricultural lands would have been benefited on the implementation of the impugned order dated 26th October 2015. In fact, he stated that he holds 12 Acres of agricultural land, which will directly benefit from the impugned

⁸ 1987 (4) SCC 611

order dated 26th October 2015. Therefore, in our view, it was not even necessary for any of the party to the proceedings to raise an objection of personal or pecuniary bias. In fact, Mr. S. V. Sodal should, on his own, have recused himself when the Case No. 5 of 2015 and Case No. 6 of 2015 were placed before the Regulatory Authority.

26. Therefore, there is no option but to hold that the impugned order dated 26th October 2015 is completely vitiated.

27. In the circumstances, the impugned order will have to be set aside. Consequently the orders passed on the Review Petitions will also have to be set aside.

28. As the impugned order dated 26th October 2015 is being set aside, nothing will survive in Writ Petition No. 11721 of 2015.

29. Considering the serious issue involved and considering that a large number of citizens will be affected by the process of adjudication conducted by the Regulatory Authority, we hope and trust that the Regulatory Authority will decide the issue expeditiously as assured by the learned counsel appearing for the Regulatory Authority. We accept the statement made by the learned Government Pleader to the effect that sub-section 9 of Section 8 will be invoked by the Regulatory Authority by taking assistance of experts in the field. Hence, we pass the following order:

- (a) The impugned order dated 26th October 2015 in Case Nos. 5 and 6 of 2015 passed by the Regulatory Authority is quashed and set aside and both the cases are remanded for fresh adjudication of the Regulatory Authority in terms of this Judgment and Order;
- (b) In view of the statement made by the learned counsel for the Regulatory authority, we direct the parties to the Petition to remain present before the Regulatory authority on 14th December 2015 at 11.00 a.m.;
- (c) We make it clear that all the parties which were before the Regulatory Authority when the impugned order was passed as well as the Petitioners in these Petitions / the parties who sought intervention and who sought review of the order shall be given an opportunity of being heard by the Regulatory Authority;
- (d) We accept the assurance made by the learned counsel appearing for the Regulatory Authority that an endeavour shall be made to decide the cases within a period of eight to ten days from 14th December 2015.;
- (e) All contentions of the parties based on the merits of the controversy, are expressly kept open;

- (f) It is obvious that the Regulatory Authority will pass a fresh order on its own merits uninfluenced by the findings recorded in the impugned order;
- (g) Rule issued in Writ Petition Nos. 11426/15 Writ Petition No. 11152/15, Writ Petition No. 11165/15 and Petition No. 11555/15, except Writ Petition No. 11721 of 2015 is hereby made partly absolute on the above terms;
- (h) Writ Petition No. 11721 of 2015 stands disposed of as the same does not survive;
- (i) The Regulatory Authority and all concerned to act on an authenticated copy of the operative part of this order.

(G. S. PATEL, J.)

(A. S. OKA, J.)