

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 217

Case No. : C. W. P.No. 11208 of 2014

Date of Decision : March 20, 2015

Sajjan Singh Petitioner

Vs.

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. M. S. Bedi, Advocate
for the petitioner.

Mr. Sushant Maini, DAG, Punjab.

Mr. R. K. Sharma, Advocate
for respondent no. 6.

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DEEPAK SIBAL, J. :

While the petitioner was serving as a Secretary in the Himtana Multipurpose Cooperative Society Ltd., Himtana, Tehsil Malerkotla, District Sangrur (hereinafter referred to as – the Society), he was served a charge-sheet for acts of omission and commission on his part. His reply to

the same, having been considered to be unsatisfactory, he was subjected to an inquiry. The inquiry was conducted by three Members of the Managing Committee of the Society namely Asgar Khan, Mehar Singh and Harmail Singh. As per the inquiry report dated 15.06.2009, the petitioner was found guilty of the charges levelled against him. The above inquiry report was then put up for consideration by the Managing Committee of the Society, which, vide Resolution dated 22.10.2009, accepted the same and ordered termination of the services of the petitioner. Aggrieved by the above referred Resolution dated 22.10.2009, the petitioner appealed against the same, but the appeal was considered and rejected vide order dated 10.03.2011 by the Deputy Registrar, Cooperative Societies, Ludhiana. This order was challenged by the petitioner through a revision petition before the Joint Registrar, Cooperative Societies, Patiala Division, Patiala under Rule 15 (ii) of the Punjab State Cooperative Agricultural Service Rules, 1997. Vide order dated 11.11.2011, this revision petition was also dismissed, which gave a cause of action to the petitioner to file a petition under Section 69 of the Punjab Cooperative Societies Act, 1961, before the Government. This petition was also considered and rejected vide order dated 28.02.2013. It is against the above referred orders, terminating the services of the petitioner, as also orders upholding his termination, as referred to above, which have been challenged by the petitioner through the present writ petition.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

The undisputed facts, which have emerged from the record of the case and the arguments addressed by the learned counsels at the bar, are that three Members of the Managing Committee named above had inquired into the charges levelled against the petitioner and on the basis of such inquiry, had submitted an inquiry report, which had found the petitioner guilty of the charges levelled against him. This inquiry report was then considered by the punishing authority i.e. the Managing Committee of the respondent Society. The Managing Committee of the respondent Society comprised of nine Members and on the relevant day, when the inquiry report in the case of the petitioner was taken up for consideration, eight out of nine Members were present. Three of the eight Members present were the same persons, who had conducted the inquiry against the petitioner. Out of the eight Members so present, four Members were inclined not to accept the inquiry report and the remaining four Members (out of which three were those, who were authors of the inquiry report) predictably were inclined to accept the inquiry report and on the basis thereof, proposed to terminate the services of the petitioner. As the balance hung evenly between the eight Members so present with four Members wanting to accept the inquiry report and the other four Members wanting to reject the same, the Resolution was passed in favour of the acceptance of the inquiry report only when the

President of the Managing Committee, while exercising his casting vote, voted in favour of the view that the inquiry report should be accepted.

Once it is admitted that the three Members of the Managing Committee, who were the authors of the inquiry report, had taken part in the proceedings of the Managing Committee, wherein the inquiry report authored by them was to be considered, I have no hesitation in my mind that the Resolution so passed, as a result of such proceedings, was suffering from the taint of bias, especially when the above Resolution was passed only after the President had exercised his casting vote as there was a division of opinion of equal number of Members; for and against the motion. The facts of the present case are glaring example of real and substantial bias. It is settled law that no person can be a judge in his own cause and the facts given above clearly show that the above principle has been grossly violated.

The above view taken by me finds support from a judgment of the Apex Court in the case of **Cantonment Executive Officer and another vs. Vijay D. Wani and others** reported as **2008 (4) RSJ 582**, wherein the Apex Court, in a similar situation, has held as under :-

“5. *The question of a bias is always the question of fact. The courts has to be vigilant while applying the Principles of bias as it primarily depends on the facts of*

each case. The court should only act on real bias not merely on likelihood of bias. In the present case, so far as the members of the committee who conducted a disciplinary inquiry was also the members of the Cantonment Board where the report was to be considered, decided and whether to accept it or not & finding the respondent (herein) guilty or not. The very fact that these three persons who conducted inquiry were also the members of the Board and that Board was to take a decision in the matter whether the report submitted by the Enquiry Committee should be accepted or not. Therefore, the participation of these three members in the committee is given a real apprehension in the mind of the respondent that he will not get a fair justice in the matter because of the three members who submitted the report would be interested to see that their report should be accepted. This bias in this case cannot be

said to be unreal it is very much real and substantial one that the respondent is not likely to get a fair deal by such disciplinary committee. [Emphasis supplied by me]

6. In this connection a reference may be made to the decision in the case of *Institute of Chartered Accountants of India (Supra)* in which a member, accused of misconduct is entitled to a hearing by the Council. In this case Enquiry Committee composed of the President and the Vice-President and three other members of the council who constituted as members of the disciplinary committee, was also members. Their Lordships held as under:

“Accordingly, the finding of the council holding the respondent members guilty of misconduct was vitiated by the participation of the members of the Disciplinary committee.”

This was on the basis of the Principle of apprehension of a bias. Their Lordships

observed in the case of Manek Lal v. Prem Chand reported in AIR 1957 SC 425 wherein it was observed :

“It is well settled that every member of a tribunal that is called upon to try issue 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.””

Similarly in the judicial review of the administrative action by Professor S.A. de Smith has also observed: "

“... a report will normally include a

statement of findings and recommendations, which may be controverted before the parent body; and in such a case, the participation of members of the sub-committee in the final decision may be of dubious validity. The problem is not merely one of strict law; it is also one of public policy."

*Similarly, in the case of **Pinochit Ugarta No.2**, reported in 1999 (1) All ER 577 (HL), it was observed that a judge is automatically disqualified from hearing a matter in which he has a pecuniary interest in the outcome as also when the decision would lead to promotion of a cause in which he is involved, together with one of the parties.*

*Similarly, in the case of **Amar Nath Chowdhury v. Braithwaite & Co. Ltd** reported in 2002 (2)SCC 290, it was observed that Managing Director dismissing an employee cannot sit in the Board of Directors to hear the employee's*

appeal. Doctrine of necessity was inapplicable as the Board could have delegated its appellate power to a committee.

Similarly in Sir Bloom-Cooper's Comment on "Bias in appeal", 2005 Public Law 225 in which he quotes at page 227 a very illuminating judgment of Judge Jerome Frank in the case of Rt.J.P. Linhan Inc., (138 F20 650) a brief excerpt from which reads:

"Democracy must, indeed, fail unless our courts try cases fairly, and there can be no fair trial before a judge lacking in impartiality and disinterestedness. If, however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will"

It was observed in the Ninth edition of Administrative Law by H.W.R. Wade & C.F. Forsyth that Twentieth-century

judges have generally enforced the rule against bias in administrative proceedings no less strictly than their predecessors as exemplified by the following cases:

“The mere presence of a non-member while a tribunal is deliberating is enough to invalidate the proceedings. Thus the proceedings of a Watch Committee, hearing an appeal by a police sergeant against his dismissal by his chief constable, were fatally flawed by the presence of the chief constable, whose mind was made up and who was in effect the respondent, during the committee's deliberations. For similar reasons the court quashed the decision of a disciplinary committee which had consulted privately with the chief fire officer who had reported a fireman for indiscipline.”

7. *Therefore, the ratio of all these cases is that a person cannot be a Judge in his own case. Once the disciplinary committee finds the incumbent guilty; they cannot sit in the judgment to punish the man*

on the basis of the opinion formed by them.
The objectivity is the hallmark of a judicial
system in our country. The very fact is that
the disciplinary committee who found the
respondent(herein) guilty participated in
decision making process for finding the
respondent(herein) guilty and to dismiss
him from service is bias which is apparent
& real. Consequently, the view taken by the
Division Bench of the High Court cannot be
faulted.” [Emphasis supplied by me]

In view of the above facts and the position of law, the impugned Resolution dated 22.10.2009 (Annexure P-2) and the consequent orders dated 10.03.2011 (Annexure P-3), 11.11.2011 (Annexure P-4) and 20.02.2013 (Annexure P-5), passed by Deputy Registrar Cooperative Societies, Joint Registrar Cooperative Societies and Special Secretary, Cooperation respectively, are quashed.

The matter is now remitted back to the Managing Committee of the Society to consider the inquiry report dated 15.06.2009 afresh and take a decision thereupon by passing a speaking order. It is directed that while considering the matter afresh, the three Members of the Managing Committee, who were authors of the inquiry report, shall not participate.

To balance the equities between the parties, it is directed that the petitioner shall be reinstated with the benefit of 50% back wages and continuity in service.

The writ petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

March 20, 2015

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