



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

W.P (MD) No. 14281 of 2017

and

M.P (MD) No. 11187 of 2017

The Reethapuram Primary Agricultural
Co-operative Credit Society Limited Y-239,
Reethapuram,
Kalkulam Taluk,
Kanyakumari District.

Represented by its President.

... Petitioner

vs.

1. The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanyakumari District.

2. The Co-operative Sub Registrar / Field Officer
Tukalay, Kanyakumari District.

3. Mrs. Kasimani,
The Co-operative Sub Registrar / Field Officer
Tukalay, Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned report of the second respondent dated 20.07.2016 and the consequential impugned proceedings of the first respondent in Na.Ka.No.907 of 2017 Sa Pa dated 16.06.2017 and quash the same as illegal.

For petitioner

: Mr.M.Jerin Mathew

For M.E.Ilango

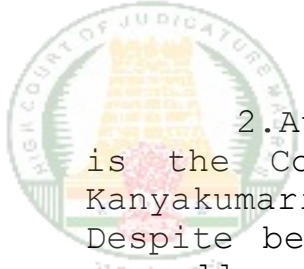
For Respondents

: Mr.R.Karthikeyan

Additional Government Pleader

O R D E R

The Petitioner is the President of the Primary Agricultural Co-operative Credit Society Limited Y.239, situated at Reethapuram in Kalkulam Taluk, Kanyakumari District. The said society is governed by the provisions of the Tamil Nadu Co-operative Societies Act, 1983 (herein referred to as 'the Act'). While so, the society had become defunct and was not functioning for more than a decade. On 05.05.2013, the petitioner was elected as President, since then, he has been managing the affairs of the society diligently with all his ability to the satisfaction of his superior officers. Only due to his growing popularity among the members of the society as well as the public, the rival party attempted to wreck vengeance and victimise him by taking away the Presidentship from the said society in a clandestine manner.



2. At one point of time, the 3rd respondent/Mrs. Kasimani, who is the Co-operative Sub Registrar/ Field Officer of Tukulay, Kanyakumari District, gave a complaint against the petitioner. Despite being the defacto complainant, the 3rd respondent herself was allowed to conduct enquiry and submit a report. Accordingly, the 3rd respondent with the closed mind and biased attitude submitted the impugned enquiry report dated 20.07.2016 under Section 82 of the Act in an unfair manner. The respondents 1 and 2 instead of getting an independent enquiry report in respect of the complaint given by the 3rd respondent with regard to omissions and the commissions in the society, wrongly received the biased enquiry report from the defacto complainant/3rd respondent and on that basis, now the respondents 1 and 2 are proceeding further to remove the petitioner by disqualifying him under Section 36 of the Act. If the respondents 1 and 2 are allowed to take action on the basis of the biased report submitted by the 3rd respondent as an enquiry officer, huge prejudice would be caused to the petitioner and also to the Co-operative Society. When the petitioner is facing disqualification and consequential removal under Section 36 of the Act on the basis of the biased report submitted by the enquiry officer who was also the defacto complainant, it is pleaded, the petitioner is justified in approaching this Court to interfere with the further action going to be taken on the basis of the biased report submitted by the 3rd respondent.

3. It is at this stage, the learned Additional Government Pleader appearing for the respondents 1 and 2 on instructions received from the respondents 1 and 2, submitted that the 3rd respondent had given a complaint against the petitioner and the elected Members of the petitioner's society. Subsequently, the 3rd respondent herself was appointed as an enquiry officer to inspect and investigate into affairs of the petitioner's society which should not have been done. Finally, the 3rd respondent also submitted the enquiry report under Section 82 of the Act, therefore, the respondents 1 and 2 are now prepared to appoint a fresh enquiry officer and thereupon if they are satisfied, further action will be taken in the manner known to law.

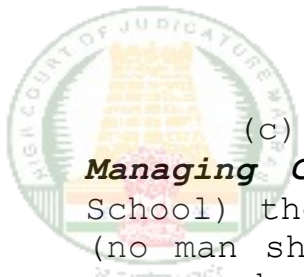
4. It is a well settled legal position that no man can be a Judge of his own cause. The question of bias in the disciplinary proceedings was considered by the Honourable Supreme Court in the following decisions:-

(a) **AIR 1957 SC 425 (Manak Lal v. Dr. Prem Chand Singhvi)** - Constitution of Tribunal to go into the allegation against an advocate, of which one member of the Tribunal appeared as a counsel for the opponent was found illegal by the Supreme Court. The attempt made by the Bar Council to justify the appointment of ~~one of the members of the Tribunal~~ of the Tribunal was not accepted by the Honourable Supreme Court. In paragraph 6 the Supreme Court held thus,



"6. We are not impressed with this argument. If it is true that in judicial or quasi-judicial proceedings justice must not only be done but must appear to be done to the litigating public, it is equally true that when a lawyer is charged for professional misconduct and is given the privilege of being tried by a tribunal of the Bar Council, the enquiry before the tribunal must leave no room for a reasonable apprehension in the mind of the lawyer that the tribunal may have been even indirectly influenced by any bias in the mind of any of the members of the tribunal. In the present case, we have no hesitation in assuming that when Shri Chhangani agreed to work as the Chairman of the tribunal he did not remember that he had appeared against the appellant's clients in the criminal proceedings under S.145. We are told that Shri Chhangani is a senior member of the Bar and was once Advocate General of the High Court of Rajasthan. Besides he had not appeared in the case at all stages but had appeared only once as a senior counsel to argue the matter. It is, therefore, not at all unlikely that Shri Chhangani had no personal contact with the client, Dr.Prem Chand and may not have been aware of the fact that, in the case from which the present proceedings arose, he had appeared at any stage for Dr.Prem Chand. We are, however inclined to hold that this fact does not in any way affect the legal argument urged before us by Shri Daphtary. It is not Shri Daphtary's case that Shri Chhangani actually had a bias against the appellant and that the said bias was responsible for the final report made against the appellant. Indeed it is unnecessary for Shri Daphtary to advance such an argument. If Shri Chhangani was disqualified from working as a member of the tribunal by reason of the fact that he had appeared for Dr.Prem Chand in the criminal proceedings under S.145 in question, then it would not be necessary for Shri Daphtary to prove that any prejudice in fact had been caused or that Shri Chhangani improperly influenced the final decision of the tribunal. Actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not necessary in order that the appellant should effectively raise the argument that the tribunal was not properly constituted."

(b) In **AIR 1987 SC 2386 (Ranjit Thakur v. Union of India)** at paragraphs 6 and 7, the Supreme Court held that the test of real likelihood of bias is not actual bias, but whether a reasonable person would have thought that bias was likely due to the participation of the respondent in deciding the matter. The Supreme Court following the Judgment of the Privy Council reported in AIR 1945 PC 38 (Vassiliades v. Vassiliades) held that 'A Judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non iudice" '.



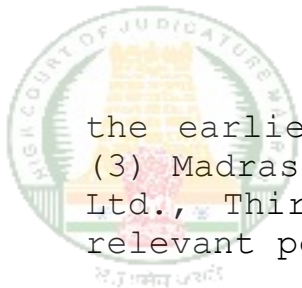
(c) In **AIR 1993 SC 2155 : (1993) 4 SCC 10 (R.L.Sharma v. Managing Committee, Dr.Hari Ram (Co-education) Higher Secondary School)** the principle of 'Nemo debet esse judex in propria causa' (no man shall be a Judge in his own cause) was considered and in paragraph 10 it is held thus, "One of the cardinal principles of natural justice is nemo debet esse judex in propria causa (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in **Secretary to Government, Transport Department v. Munuswamy Mudaliar (1988 (Suppl) SCC 651 : AIR 1988 SC 2232)** that a predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in **State of U.P. v. Mohd. Nooh (1958 SCR 595 : AIR 1958 SC 86)**. In the said case, a departmental inquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the inquiry then left the inquiry, gave evidence against the employee and thereafter resumed to complete the inquiry and passed the order of dismissal. This Court quashed the order of dismissal by holding inter alia that the rules of natural justice were grievously violated."

(d) In **(2003) 7 SCC 418 (Bihar State Mineral Development Corporation v. Encon Builders (I) (P) Ltd.)** it is held that if the principle of bias is proved viz., the jurisdiction of the arbitrator is challenged and is proved the entire action is a nullity. In paragraph 32 it is held as follows:

"32. It will bear repetition to state that the action of the second appellant itself was in question and, thus, indisputably, he could not have adjudicated thereupon in terms of the principle that nobody can be a judge of his own cause."

(e) In **(2008) 8 SCC 236 (State of Uttaranchal v. Kharak Singh)** the Supreme Court held that a witness should not be the Enquiry Officer. In the said case the Divisional Forest Officer, who inspected the area and found the illicit felling of trees, instead being a witness was appointed as Enquiry Officer, which was found fault with by the High Court. The said order of the High Court was challenged before the Supreme Court and the said order was affirmed by the Supreme Court in appeal.

(f) A Division Bench of this Court in the decision reported in **1996 WLR 669 (V. Sankaran v. Joint Director of School (Secondary) Education)** held that participation of the Headmaster, who also gave evidence as a witness in the School Committee while taking decision to punish was illegal. The Division Bench followed



the earlier decision of the Division Bench reported in ILR 1995 (3) Madras 944 (The Group General Manager, Bharat Heavy Electricals Ltd., Thiruchirapalli and Others v. R. Henry Baskar) wherein the relevant portion reads thus,

"Of course, the Group General Manager was the Disciplinary Authority. But the charge against the respondent was that the respondent along with other workers tried to assault the Group General Manager. If that be so, the Group General Manager was in the position of a victim, who could be one of the witness and a complainant in the proceedings. As we have already pointed out, it is one of the principles of natural justice that no person shall be a Judge in his own cause. It is also not in dispute that the Chairman of the Company being the higher authority could have held the disciplinary proceedings."

5. No man can be a Judge in his own cause, therefore, the 3rd respondent who has given a complaint against the petitioner cannot be appointed as an enquiry officer against the petitioner, hence, the impugned orders are hereby set aside and the 1st respondent is hereby directed to appoint any enquiry officer other than the 3rd respondent, if so advised, and proceed further in the manner known to law.

With the above direction, this Writ Petition stands allowed and the impugned proceedings are set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Registrar of Co-operative Societies,
Nagercoil,
Kanyakumari District.
2. The Co-operative Sub Registrar / Field Officer
Tukalay, Kanyakumari District.

+1cc to Mr. M. E. Ilango, Advocate Sr. No. 72490

NBI

VB/MR/KKR/SAR4/13/11/2017/5P/4C

W.P (MD) No. 14281 of 2017

11.08.2017