

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16948 of 2007

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Vijay Kumar son of Sri Rajendra Prasad, resident of Mohalla-Shastri Nagar,
Goraiya Tola, Ward No. 2, P.S. Dumra in the district of Sitamarhi, presently
working as the Nazir, Civil Court, Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar
2. The High Court of Judicature at Patna through its Registrar General
3. The Registrar (Administration), Patna High Court, Patna
4. The District & Sessions Judge, Sitamarhi
5. The Judge In-Charge (Administration), Civil Court, Sitamarhi

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ajit Singh,
Mr. V.R.V. Singh
Mr. Mrityunjay Kumar

For the State : Mr. Indeshwari Prasad
For the High Court : Mr. Bindhyachal Singh
Ms. Smriti Singh

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 16-08-2018

The petitioner by way of the present writ petition has prayed for quashing of the order dated 04.11.2006, issued by the learned District and Sessions Judge, Sitamarhi, whereby and where under the petitioner has been dismissed from service. The petitioner has further prayed for quashing the appellate order, as communicated to the petitioner vide letter dated 29.11.2007. The petitioner has lastly prayed for the consequential relief by way of reinstatement in service with back wages.

The brief facts of the case are that the petitioner was selected and



appointed as a Clerk in the district of Sitamarhi on 01st of July, 1981 by the respondent no. 3 whereafter he had joined on 04.08.1981 and had been discharging his duties with utmost satisfaction of all concerned. The petitioner was promoted to the post of *Saristedar* in the senior selection grade with effect from 28.09.2004 and was posted as Nazir in the Civil Court at Sitamarhi. Thereafter, the petitioner had joined the said post on 06.10.2004. The petitioner was suddenly suspended vide order dated 15.02.2005 and a disciplinary proceeding was initiated against the petitioner herein and charges were framed vide orders dated 22.02.2005. The allegations levelled against the petitioner primarily centered around the charge that he was getting illegal benefits from the encroachers, hence he was not removing them since the said occupants of settled spaces had in their possession areas bigger than settled to them in the Civil Court premises for carrying on different commercial activities and when the District and Sessions Judge had asked the petitioner to remove the encroachment within two days, the encroachment was not removed and the petitioner had filed a leave application but the District and Sessions Judge had rejected the same whereupon the petitioner along with the Judge-in-Charge had gone to the residence of the District and Sessions Judge for permitting him to leave by reconsidering his prayer for leave but the District and Sessions Judge had refused the prayer of



the petitioner for leave whereafter the petitioner is said to have addressed a letter directly to the District and Sessions Judge on 14.02.2005 alleging therein that the District and Sessions Judge had exhibited uncharitable behaviour and treatment resulting in him becoming mentally ill as a result whereof he was not in a position to discharge his duties normally and had thus sought his transfer. At this juncture it might be relevant to state here that the entire allegation levelled against the petitioner is mostly on the basis of the personal knowledge of the then District and Sessions Judge, Sitamarhi who had also issued the letter by which disciplinary proceedings had been initiated against the petitioner as also had issued the memo of charges. The enquiry was conducted by the Enquiry Officer whereafter the Enquiry Officer had submitted his enquiry report dated 20.05.2005 finding the charges to have been proved as against the petitioner herein. A second show cause notice was then issued upon a direction by the District and Sessions Judge, Sitamarhi vide letter dated 02.08.2005. The petitioner had filed his reply to the second show cause notice where after the District and Sessions Judge, Sitamarhi by an order dated 04.11.2006 passed the final order in the on going departmental proceeding initiated against the petitioner herein and dismissed the petitioner from the services of the Civil Courts, Sitamarhi with immediate effect. In fact in the said



order dated 04.11.2006, the said District and Sessions Judge, Sitamarhi has made a note that he was proceeding to join as the Judge of the High Court. The petitioner had then filed an appeal, however, the petitioner was informed by a letter dated 29.11.2007 issued by the Judge-in-Charge (Admin.), Sitamarhi that the appeal of the petitioner has been rejected.

The learned counsel for the petitioner has raised a short point for consideration to the effect that in the present case the District and Sessions Judge, Sitamarhi, who had passed the order of punishment of dismissal of the petitioner from services, was/is the complainant as well on the basis of which the entire disciplinary proceeding has been initiated, hence the entire proceeding is vitiated inasmuch as the person/disciplinary authority cannot be judge of his own cause. The learned counsel for the petitioner has relied on judgments rendered by Hon'ble Apex Court reported in *A.I.R. 1959 SC 308 (Gullapalli Nageswara Rao & Ors. vs. Andhra Pradesh State Road Transport Corporation & Anr.)* and the one reported in *(1984) 4 SCC 103 (Mohapatra & Co. & Anr. vs. State of Orissa & Anr.)*. The learned counsel for the petitioner has also argued that the venom, ill motive and bias on the part of the then District and Sessions Judge, Sitamarhi, who had passed the punishment order of dismissal, was such that he ensured dismissal of the petitioner on the same day he



was leaving for joining as a High Court Judge. Thus the submission of the learned counsel is that bias and mala fide is writ large on the records. Hence, on this ground alone the order of punishment of dismissal is fit to be set aside.

Per contra, the learned counsel for the respondents has submitted that there may be cases where the doctrine of necessity is required to be invoked and the necessity of adhering to the principles of natural justice has to be waived and the present case is such a case.

I have heard the learned counsel for the parties and perused the materials on record. Admittedly, the District and Sessions Judge, Sitamarhi, who had passed the order of punishment of dismissal of the petitioner from his services is also the complainant and most of the charges, levelled against the petitioner, pertains to the misbehaviour/altercation of the petitioner with the said District and Sessions Judge. Before coming to a finding and before concluding the present case, it would be relevant to refer to certain judgments rendered by the Hon'ble Apex Court on the subject matter in question. The first judgment is the one reported in *AIR 1959 SC 308 (Gullapalli Nageswara Rao & Ors. vs. Andhra Pradesh State Road Transport Corporation & Anr.)*, paragraphs no. 18 & 30 whereof are reproduced herein below:

“18. On the aforesaid facts, the first contention raised is that the State Government in approving the scheme was discharging a quasi-judicial act and therefore the Government should have given



a personal hearing to the objectors instead of entrusting that duty to its Secretary. Secondly, it is stated that a judicial hearing implies that the same -person hears and gives the decision. But in this case the hearing is given by the Secretary and the decision by the Chief Minister. Thirdly, it is contended on the same hypothesis, that even if the hearing given by the Secretary be deemed to be a hearing given by the State Government, the hearing is vitiated by the fact that the Secretary who gave the hearing is the Secretary in charge of the Transport Department. The Transport Department, it is stated, in effect was made the judge of its own cause, and this offends one of the fundamental principles of judicial procedure. Lastly, it was pointed out that though the enquiry was posted for hearing on December 26, 1957, even before the enquiry was commenced, the Chief Secretary to the Government gave an interview to the 'Deccan Chronicle' and the 'I Golconda Patrika' to the effect that the Government had already taken a decision to nationalize the road transport in Krishna District and some routes had been chosen, including the Guntur-Vijayawada route, thereby indicating that the Government has prejudged the case before holding the enquiry. The learned Attorney General counters the said argument by stating that the State Government strictly followed the procedure prescribed under [s. 68-C](#) of the Act, that the said Government, being an impersonal body, (gave the hearing through the machinery prescribed by law, that the said Government was discharging only an administrative act and not a judicial act in the matter of approving the scheme, that even if it did perform a judicial act, the Home Secretary in charge of Transport Department had only collected the material and the final orders were made only by the Chief Minister and that the Secretary's press interview was nothing more than a mere indication of the factum of the proposed scheme."

*"30. With this background we shall proceed to consider the validity of the three alleged deviations of the State Government from the fundamental judicial procedure. In the present case, the officer who received the objections of the parties and heard them personally or through their representatives, was the Secretary of the Transport Department. Under the 'Madras Government Business Rules and Secretariat Instructions' made by the Governor under [Art. 166](#) of the Constitution, the Secretary of a department is its head. One of the parties to the dispute before the State Government was the Transport Department functioning as a statutory authority under the Act. The head of that department received the objections, heard the parties, recorded the entire proceedings and presumably discussed the matter with the Chief Minister before the latter approved the scheme. Though the formal orders were made by the Chief Minister, in effect and substance, the enquiry was conducted and personal hearing was given by one of the parties to the dispute itself. It is one of the fundamental principles of judicial procedure that the person or persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter. In *Ranger v. Great**



Western Ry. Co.(1) Lord Cranworth, L.C., says:

'A judge ought to be, and is supposed to be, indifferent between the parties. He has, or is supposed to have, no bias inducing him to lean to the one side rather than to the other In ordinary cases it is just ground of exception to a judge that he is not indifferent, and the fact that he is himself a party, or interested as a party, affords the strongest proof that he cannot be indifferent.'

In Rex v. Sussex Justices Ex Parte McCarthy (2) Lord Hewart, C. J., observed:

" It is said, and, no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspects as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done, but upon what might appear to be done."

This was followed in Rex v. Essex Justices Ex Parte Perkins(1).In Franklin's Case (2), though on a construction of the provisions of that Act under consideration in that case it was held that the Minister was not acting judicially in discharging his duties, his Lordship accepted the aforesaid principle and expressed his view on the doctrine of 'bias' thus, at page 103:

"My Lords, I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."

The aforesaid decisions accept the fundamental principle of natural justice that in the case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not, even formally, take part in the proceedings though in fact he does not influence the mind of the person, who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The hearing given



by the Secretary, Transport Department, certainly offends the said principle of natural justice and the proceeding and the hearing given, in violation of that principle, are bad.”

The other decision is the one rendered by the Hon’ble Apex Court, reported in (1984) 4 SCC 103 (*J. Mohapatra & Co. & Anr. vs. State of Orissa & Anr.*), paragraph nos. 9, 10, 11, 12 and 15 whereof are reproduced herein below:-

“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 I, 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 organization 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."

“10. In the case of [A.K. Kraipak and others v. Union of India and Others](#), (1) a list of State Forest Officers prepared by the Selection Board for appointment to posts in the senior and junior scales in the Indian Forest Service was set aside by this Court on the ground that the officiating Chief Conservator of forests, whose name was placed at the top of the list, was a member of the Selection Board even though he was not present at the time his name was considered for selection and even though the Selection Board was a recommendatory body and the list prepared by it was to be considered first by the Home Ministry and then by the Union Public Service Commission by whom the final recommendations were to be made. The Court held that the rule that no man should



be a judge in his own cause was a principle of natural justice and applied equally to the exercise of quasi-judicial as well as administrative powers.”

“11. It hardly requires any argument to show that a person who has written a book which is submitted for selection, either by himself or by his publisher, interested in the matter of selection. Authors get their books published by publishers or may themselves publish them. In either case, they stand to benefit financially. In the first case, by getting royalty from publishers and in the second case, by making profits on the sale of books if the amount realized exceeds the cost of publication, or if the sales are not to that extent, by reducing the cost incurred in the publication of the book. The Appellants have filed statements showing the financial benefit which accrued to those members of the Assessment Sub-Committee whose books were selected. To give one instance from these statements, in the case of a member of the Assessment Sub-Committee who was a Government official and whose books were selected, books of the aggregate value of Rs. 4,000 were purchased in the year 1980, of the aggregate value of Rs. 6,500 in the year 1981, and of the aggregate value of Rs. 72,500 in the year 1982. It was contended in the counter affidavit filed on behalf of the Respondents that the amount of royalty received by these member-authors was not much. This fact is immaterial. The amount of royalty depends on the agreement between the author and the publisher as also upon the sale price of the book. The fact, however, remains that by the books being selected and purchased for distribution to school and college libraries the sales of those books had gone up and correspondingly the royalty received by the author-members also went up and such author-members thus received financial benefit. It is no answer to say that an author-member is only one of the members of the Assessment Sub-Committee and that the ultimate decision rests with the State Government which may reject any book out of the list of approved books. A similar argument was rejected by this Court in Kraipak's case. The State Government would normally be guided by the list approved by the Assessment Sub-Committee. Further, to say that such author-member is only one of the members of the Assessment Sub-Committee is to overlook the fact that the author-member can subtly influence the minds of the other members against selecting books by other authors in preference to his own. It can also be that books by some of the other members may also have been submitted for selection and there can be between them a quid pro quo or, in other words, you see that my book is selected and in return I will do the same for you. In either case, when a book of an author-member comes up for consideration, the other members would feel themselves embarrassed in frankly discussing its merits. Such author-member may also be a person holding a high official position whom the other members may not want to displease. It can be that the other members may not be influenced by the fact that the book which they are considering for approval was written by one of their members. Whether they were so influenced or not is,



however, a matter impossible to determine. It is not, therefore, the actual bias in favour of the author-member that is material but the possibility of such bias. All these considerations require that an author-member should not be a member of any such committee or sub-committee."

*"12. There is, however, an exception to the above rule that no men shall be a judge in his own cause, namely, the doctrine of necessity. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or administration would break down. Thus, in *The Judges v. Attorney-General for Saskatchewan*,⁽¹⁾ the Judges of the Court of Appeal were held competent to decide the question whether Judges of the Court of Appeal, of the Court of King's Bench and of the District Courts of the Province of Saskatchewan were subject to taxation under the *Income-tax Act, 1932*, of Saskatchewan on the ground that they were bound to act *exnecessitate*. The doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters. The High Court, however, wrongly applied this doctrine to the author-members of the Assessment Sub-Committee. It is true, the members of this Sub-Committee were appointed by a Government Resolution and some of them were appointed by virtue of the official position they were holding, such as, the Secretary, Education Department of the Government of Orissa, and the Director, Higher Education, etc. There was, however, nothing to prevent those whose books were submitted for selection from pointing out this fact to the State Government so that it could amend its Resolution by appointing a substitute or substitutes, as the case may be. There was equally nothing to prevent such non-official author-members from resigning from the committee on the ground of their interest in the matter."*

*"15. We are unable to accept either of the above two submissions. Several books would come up for consideration before the committee, one or more of them by one of the members and the other or others by some of the other members. Mere non-participation in the discussion by the member concerned or even his withdrawing from the deliberations of the committee while his or her book or books are being considered is not sufficient because the evil of *quid pro quo* cannot be eliminated by this. Members deliberating would bear in mind that the turn for selecting their books would also come and the concerned member who had not participated or had withdrawn would not then be favourably inclined to select their books."*



From a bare reading of the law laid down by the Hon'ble Apex Court, it is amply well defined that justice should not only be done but should manifestly be seen to be done and justice can never be seen to be done if a man acts as a Judge of his own cause or is himself interested in its outcome. In the present case the District and Sessions Judge, Sitamarhi who is both the complainant and the disciplinary authority passing the order of punishment, was definitely interested in the outcome of the departmental proceeding, and therefore, he ensured that the petitioner was dismissed from service, as such he has acted as a Judge of his own cause. A bare perusal of the order of punishment passed by the District and Sessions Judge, Sitamarhi on 04.11.2006 smacks of bias and mala fide, and therefore, has vitiated the order of punishment dated 04.11.2006. As far as the issue of doctrine of necessity, raised by the respondents is concerned, the present case is not a case wherein no other District and Sessions Judge was available to conduct the disciplinary proceedings and pass the final order, qua the petitioner herein. Hence, the said doctrine of necessity cannot be invoked in the present case. Therefore, I am of the opinion that the present writ petition is fit to be allowed on the aforesaid short ground, as raised by the learned counsel for the petitioner and discussed hereinabove in the preceding paragraphs. Thus the order of punishment dated 04.11.2006 is set aside. Since the order of punishment dated 04.11.2006 has been set aside, consequently the



appellate order is bound to fall and is, accordingly, quashed.

It is needless to state that quashing of order of punishment of dismissal dated 04.11.2006 shall not preclude the respondents from concluding disciplinary proceedings in accordance with law.

The writ petition is allowed.

(Mohit Kumar Shah, J)

S.Sb/-

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