

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HON'BLE MR. JUSTICE M. DURAISWAMY

W.P.No.1856 of 2004

C. Pandarasivan

... Petitioner

Vs.

1. TamilNadu Electricity Board,
Rep. By its Secretary,
Secretariat Branch,
800, Anna Salai,
Chennai - 600 002
2. The Chairman,
TamilNadu Electricity Board,
800, Anna Salai, Chennai - 600 002 .
3. The Superintending Engineer (Enquiry Officer)
Electricity Distribution Circle,
TNEB,
Tuticorin - 628 005.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent proceedings in (Permanent) BP (FB) No.40, dated 28.11.2003 confirming the order passed by the 2nd respondent in (Permanent) BP(Ch) No.184, dated 12.08.2003 and quash the same.

For Petitioner : Mr. Sundarnarayan

For Respondents : Mr. P.R. Dilip Kumar

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records of the 1st respondent dated 28.11.2003 confirming the order passed by the 2nd respondent dated 12.08.2003 and to quash the same.

2. It is the case of the petitioner that the order passed by the 2nd respondent, viz., The Chairman, TamilNadu Electricity Board was challenged by the petitioner before the Full Board and

the Full Board consisting of the Members, including the 2nd respondent, had passed the impugned order dated 28.11.2003. Further, it is the contention of the petitioner that when the order of the 2nd respondent is under challenge before the Full Board, the Chairman should have recused himself from hearing the appeal and he should not have heard the appeal filed by the petitioner as against his own order.

3. The learned counsel appearing for the petitioner, in support of his contention, relief upon a Judgment reported in 2002 (2) SCC 290 [Amar Nath Chowdhury v. Braithwaite and Co. Ltd and others], wherein the Hon'ble Supreme Court held as follows:-

" ... 6. One of the principles of natural justice is that no person shall be a judge in his own cause or the adjudicating authority must be impartial and must act without any kind of bias. The said rule against bias has its origin from the maxim known as *nemo debet esse judex in propria causa*, which is based on the principle that justice not only be done but should manifestly be seen to be done. This could be possible only when a Judge or an adjudicating authority decides the matter impartially and without carrying any kind of bias. Bias may be of different kinds and forms. It may be pecuniary, personal or there may be bias as to the subject-matter etc. In the present case, we are not concerned with any of the aforesaid forms of bias. What we are concerned with in the present case is whether an authority can sit in appeal against its own order passed in the capacity of disciplinary authority. In *Financial Commr. (Taxation) Punjab v. Harbhajan Singh* [(1996) 9 SCC 281] it was held that the Settlement Officer has no jurisdiction to sit over the order passed by him as an Appellate Authority. In the present case, the subject-matter of appeal before the Board was whether the order of removal passed by the disciplinary authority was in conformity with law. It is not disputed that Shri S. Krishnaswami, the then Chairman-cum-Managing Director of the Company acted as a disciplinary authority as well as an Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function is not permissible on account of established rule against bias. In a situation

where such a dual function is discharged by one and the same authority, unless permitted by an act of legislation or statutory provision, the same would be contrary to rule against bias. Where an authority earlier had taken a decision, he is disqualified to sit in appeal against his own decision, as he already prejudged the matter otherwise such an appeal would be termed an appeal from Caesar to Caesar and filing of an appeal would be an exercise in futility. In that view of the matter, in the present case, fair play demanded that Shri Krishnaswami, the then Chairman-cum-Managing Director of the Company ought not to have participated in the deliberations of the meeting of the Board when the Board heard and decided the appeal of the appellant.

7. Learned counsel appearing for the respondent, however, pressed into service the "doctrine of necessity" in support of his contention. He contended that the rule against bias is not available when, under the Regulations framed by the Company, the disciplinary authority who happened to be the Chairman-cum-Managing Director of the Company was required to preside over the meeting of the Board and, therefore, the then Chairman-cum-Managing Director of the Company was not disqualified to preside over and participate in the meeting of the Board which dismissed the appeal of the appellant. We find no merit in the argument. Rule 3(d) of the Company's Conduct, Discipline and Appeal Rules (in short "CDAR") defines "Board" in the following terms:

"Board means the proprietors of the Company and includes, in relation to exercise of powers, any committee of the Board/management or any officer of the Company to whom the Board delegates any of its powers."

4. The ratio laid down by the Hon'ble Supreme Court in the Judgment relied upon by the learned counsel appearing for the petitioner squarely applies to the facts of the present case.

5. When the original order was passed by the 2nd respondent, he cannot be the Appellate Authority for the

order passed by him. In the case on hand, when the 2nd respondent, the Chairman of the Tamil Nadu Electricity Board, had passed the original order, he cannot sit on appeal over his own order. But, the 2nd respondent has also decided the appeal sitting as Appellate Authority. On this ground alone, the impugned order dated 28.11.2003 is liable to be set aside. Further, it is brought to the notice of this Court that now a different Officer is holding the post of Chairman-cum-Managing Director, TANGEDCO and therefore, there is no impediment for the present Chairman to hear the appeal as a Member of the Full Board.

6. In such circumstances, the impugned order dated 28.11.2003 passed by the 1st respondent is set aside and the matter is remitted back to the 1st respondent for fresh consideration. The 1st respondent shall decide the appeal filed by the petitioner on merits and in accordance with law as expeditiously as possible.

With these observations, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
TamilNadu Electricity Board,
Secretariat Branch,
800, Anna Salai, Chennai - 600 002
2. The Chairman,
TamilNadu Electricity Board,
800, Anna Salai, Chennai - 600 002.
3. The Superintending Engineer (Enquiry Officer)
Electricity Distribution Circle,
TNEB, Tuticorin - 628 005.

+1 cc to M/s.Sundar Narayan,Advocate Sr.No. 95477

+1 cc to M/s.P.R.Dilipkumar,Advocate Sr.No. 96698

AKM/16.12.19/4P-6C /

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