



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3823 OF 2024

(Agricultural Produce Marketing Committee, Khamgaon vs. State of Maharashtra and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. U.J.Deshpande, Advocate for petitioner.
Mr. A.S.Fulzele, Addl.G.P. for respondent Nos.1 to 3.
Mr. A.P.Tathod, Advocate for intervenor.

CORAM : AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.

DATE : JANUARY 23, 2025

1) Civil Application No.1813/2024, is for intervention of one Ramkrushna Shriram Bharsakale, who claims to be the complainant in respect of some of the allegations for which the enquiry was constituted against the petitioner. He therefore, being an interested person, the Civil Application is allowed.

2) The applicant be added as intervenor. The same be done forthwith. Mr.Tathod, learned Counsel waives for intervenor.

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3) Heard finally at the stage of admission. The petition questions the enquiry report dated 08/05/2024 submitted by respondent No.4 to the respondent No.2 in pursuance to an order in this regard dated 29/12/2023.

4) Mr.Deshpande learned Counsel for the petitioner submits that the very appointment of respondent No.4, for making an enquiry against the petitioner is vitiated by bias, for the reason that part of the allegations regarding the enquiry are

based upon the First Information Report No.0442/2023 dated 12/08/2023 (pg.81) which has been lodged by respondent No.4 himself against the petitioner. This being the case, it is his contention that a prima facie case of bias is made out on account of neither the appointment of respondent No.4, nor the report prepared by respondent No.4 can be sustained.

5) Mr.Fulzele, learned Additional Government Pleader for respondent Nos.1 to 3, submits that though the contents of the FIR formed part of the enquiry to be made by the respondent No.4 against the petitioner, however, those were not the only allegations and there were other issues also which were subject matter of the enquiry on account of which, it cannot be said that the enquiry stands vitiated by bias. Similar is the contention of Mr.Tathod for the intervenor.

6) The question of bias is a question which has to be considered in the light of the perceived notion of the person who alleges bias. In ***Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant 2001 (1) SCC 182*** while considering a plea of bias this is what has been held :

*"24. The concept of 'Bias' however has had a steady refinement with the changing structure of the society; Modernisation of the society, with the passage of time, has its due impact on the concept of Bias as well. Three decades ago this Court in **S.Parthasarathi v. State of Andhra Pradesh, 1974(3) SCC 459**, proceeded on the footing of real likelihood of 'bias' and there was in fact a total unanimity on this score between the English and the Indian Courts.*

Mathew, J. in Parthasarathi's case observed :

"16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows

*from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which a reasonable man would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (see per Lord Denning, H.R in **Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others, etc., (1968) 3 WLR 694 at 707**). We should not, however, be understood to deny that the Court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings."*

Lord Thankerton however in **Franklin v. Minister of Town and Country Planning, (1948) AC 87**, had this to state :

"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 for 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."

28. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained. If on the other hand, the allegation pertaining to bias is rather fanciful and otherwise to avoid a particular court, tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case (supra)."

7) In the instant matter, it is not in dispute that the respondent No.4, who is the Enquiry Officer, is the complainant, in FIR No.0442/2023 dated 12/08/2023, the allegations in which

are also one of the subject matter of enquiry which was conducted by respondent No.4, which has resulted in submission of report dated 08/05/2024. Though it may be true that there may be other issues, we have also been directed to be enquired and are the subject matter of the report, the perception of bias on the above count cannot be segregated on this count, and appear to be well founded.

8) We therefore, find that a reasonable apprehension of bias has been demonstrated on record on account of which neither the appointment of respondent No.4 as Enquiry Officer, nor the report dated 08/05/2024 can be sustained. Accordingly, those are hereby quashed and set aside and the petition is allowed in those terms.

9) Needless to say that this does not prevent respondent Nos.1 to 3 from appointing another Enquiry Officer to conduct an enquiry against the petitioner in respect of the allegations made against him which were the subject matter of report dated 08/05/2024.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)