

(2016) 05 J&K CK 0006

Jammu & Kashmir High Court

Case No: Others Writ Petition (OWP) No. 681 of 2016.

Vijay Kumar Sharma and Others -
Petitioners @HASH Financial
Commissioner, Revenue and
Others

APPELLANT

Vs

RESPONDENT

Date of Decision: May 6, 2016

Acts Referred:

- Constitution of Jammu and Kashmir, 1956 - Section 103

Citation: (2016) AIRCC 3080 : (2016) 3 JKJ 751

Hon'ble Judges: Dhiraj Singh Thakur, J.

Bench: Single Bench

Advocate: Sanjay Sharma, Advocate, for the Petitioner; Vikram Sharma, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Dhiraj Singh Thakur, J. - The petitioner seeks a 'writ of certiorari for quashing the order dated 06.04.2016 passed by the Court of Financial

Commissioner (Rev.) J&K, Jammu whereby the application filed by the petitioners before the said court for transfer of appeal titled ""Vijay Kumar

& Ors. v. Kewal Krishan & Ors."" pending before the court of Divisional Commissioner, Jammu has been rejected.

2. The basis for seeking transfer, set up by the petitioners, before the court of Financial Commissioner (Rev.), Jammu was that the Divisional

Commissioner, Jammu before whom the appeal was pending was a batchmate of respondent No. 1-Rakesh Sharma (respondent No. 3 herein)

Based upon that fact the petitioners appear to have expressed their apprehension of bias, alleging that the Divisional Commissioner, Jammu was fixing weekly dates in the case and that he would not act fairly in deciding the case pending before him.

3. It appears that the learned Financial Commissioner (Rev.), Jammu sought a para wise reply from the Divisional Commissioner, Jammu, who did

admit the fact that respondent No. 1-Rakesh Sharma (respondent No. 3 herein) was his batchmate but denied the allegation that he was biased.

Nevertheless, the Divisional Commissioner, Jammu gave his 'no objection' to transfer the case from his court. Not only this, even the respondents

consented for the transfer of the appeal from the court of Divisional Commissioner, Jammu.

4. The Financial Commissioner (Rev.), Jammu however, after considering the issue rejected the application for transfer vide order dated 6.4.2016

on the ground that 'submissions regarding bias did not warrant acceptance'.

5. It is against this order that the present writ petition has been filed. The grounds taken before the Financial Commissioner (Rev.) Jammu have

been reiterated in the present writ petition as also during the course of hearing.

6. Heard learned counsel for the petitioners.

7. From out of the three judicially accepted principles of natural justice i.e., *nemo debet esse iudex propria causa*, *audi alteram partem* and the

third principle that all orders or decisions should be supported by reasons, the rule against bias or interest has its genesis in the first principle of

natural justice, which declares that no man shall be a judge in his own cause. The philosophy behind this maxim is that a Judge is supposed to be

independent, neutral and free from any bias towards any of the parties appearing before him with a view to enable him to decide matters

independently and objectively. The only exception to the rule (*supra*) being the doctrine of necessity.

8. Bias is defined as a pre-disposition to decide for or against one party without proper regard to the true merits of the dispute and may be

categorized as pecuniary bias, personal bias or official bias. While the least pecuniary interest in the subject-matter of litigation may disqualify a person from acting as a judge, the same may not be true where personal bias is alleged as is the case in the present petition.

9. In *Dr. G. Sarana v. University of Lucknow and Ors.* (1976) 2 SCC 585 : (AIR 1976 SC 2428), the court held that it was difficult to

prove the state of mind of a person to show that he was biased. What was important to see was whether there was reasonable ground for

believing that he was likely to have been biased.

10. In *Secretary to Government, Transport Deptt., Madras v. Munuswamy Mudaliar and Anr.*, 1988 (Supp) SCC 651 : AIR 1988 SC

2232, it was held that reasonable apprehension of bias in the mind of a reasonable man was necessary, but such reasonable apprehension must be

based on cogent materials.

11. In *International Airport Authority of India v. K.D. Bali and Anr.*, AIR 1988 SC 1099, the Apex Court in paragraph 6 held as under :

6. In the words of Lord O' Brien, LCJ there must be a real likelihood of bias. It is well settled that there must be a real likelihood of bias and not

mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest.

See in this connection *Gullapathi Nageswara Rao v. State of Andhra Pradesh* (1960) 1 SCR 580 : (AIR 1959 SC 1376) and *Mineral*

Development Ltd. v. State of Bihar (1960) 2 SCR 609 : (AIR 1960 SC 468). Recently, this court in a slightly different context in *Ranjit*

Thakur v. Union of India, AIR 1987 SC 2386 had occasion to consider the test of bias of the Judge. But there must be reasonableness of the

apprehension of bias in the mind of the party. The purity of administration requires that the party to the proceedings should not have apprehension

that the authority is biased and is likely to decide against the party. But we agree with the learned Judge of the High Court that it is equally true that

it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension

must be judged from a healthy, reasonable and average point of view and not on mere apprehension of any whimsical person. While on this point

we reiterate that learned counsel appearing for the petitioner in his submissions made a strong plea that his client was hurt and had apprehension because the arbitrator being the appointee of his client was not acceding to the request of his client which the petitioner considered to be reasonable. We have heard this submission with certain amount of discomfiture because it cannot be and we hope it should never be in a judicial or a quasi-judicial proceeding a party who is a party to the appointment could seek the removal of an appointed authority or arbitrator on the ground that appointee being his nominee had not acceded to his prayer about the conduct of the proceeding. It will be a sad day in the administration of justice if such be the state of law. Fortunately, it is not so. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision. It is the reasonableness and the apprehension of an average honest man that must be taken note of. In the aforesaid light, if the alleged grounds of apprehension of bias are examined, we find no substance in them. It may be mentioned that the arbitrator was appointed by the Chief Engineer of the petitioner, who is in the service of the petitioner.

12. With a view to support and buttress the allegation of likelihood of bias in the mind of Divisional Commissioner, Jammu in favour of private respondents and against the petitioners herein, it was incumbent upon the petitioners to show that the nature of relationship between the Divisional Commissioner, Jammu and the private respondents was in the nature of a personal relationship, which assertion is conspicuously missing in the present case.

13. While the private respondent No. 3 and the Presiding Officer may have been classmates in the Govt. Medical College, Jammu, yet that fact alone would not be sufficient to establish a relationship of a personal character, which could raise doubt or apprehension in the mind of a reasonable man regarding a pre-disposed inclination in favour of the said private respondent on that basis.

14. In *Utkal University v. Dr. Nrusingha Charan Sarangi & Ors.* (1999) 2 SCC 193 : (AIR 1999 SC 943), the Apex Court was dealing with a case where the selection had been challenged inter alia on the ground that one of the experts in the selection committee was a member of an

organization, which brought out a magazine of which the selected candidate was the editor while one of the members of the selection committee

was on the editorial board. What was stated by the Apex Court in paragraph 10 of the judgment (supra) is reproduced hereunder;

10. What is more, we fail to see how on account of one of the experts being a member of an Organization or being on the Editorial Board of a

magazine brought out by that Organization, he would necessarily be favourably inclined towards the Editor of that magazine. There is no allegation

of any personal relationship between the member of the Selection Committee and the candidate.....

.....It is not even alleged by the first respondent that he had any such personal interest in selection of the candidate who was selected.

The mere fact that the expert as well as one of the candidates were members of the same organisation and connected with the magazine brought

out by it would not be sufficient, in the facts and circumstances of the present case, to come to a conclusion that the selector had a specific

personal interest in the selection of that candidate. The experts, in the present case, are experts in Oriya language and are men of stature in their

field. The candidates who would be considered for selection by the Selection Committee would also be candidates who have some stature or

standing in Oriya language and literature, looking to the nature of the post. Any literary association in this context, or any knowledge about the

literary activities of the candidates would not, therefore, necessarily lead to a conclusion of bias. Looking to the circumstances of the present case,

it is not possible to come to a conclusion that the Selection Committee was biased in favour of the candidate selected.

15. In a similar case where bias was alleged between a teacher and the student, the Apex Court in *Dalpat Abasaheb Solunke & Ors. v. Dr.*

B.S. Mahajan & Ors., AIR 1990 SC 434, in paragraph 10 held as under :

10. The fourth and the last ground given by the High Court to set aside the appointment of the appellant in CA No. 3507/89 is that the fourth and

the fifth respondents to the Writ Petition were guides of the appellant when he was doing his M.Sc. by Research. We are unable to understand as

to how the fact that they were his guides when the appellant was doing his M.Sc. would influence their decision in selecting him, or vitiate the

selection made. They must have been guides to many who had appeared for the interview. As senior teachers in the faculty in question, it is one of

their duties to guide the students. In fact, very often the experts on the selection Committees have to be drawn from the teaching faculty and most

of them have to interview candidates who were at one or the other time their students. That cannot disqualify them from being the members of the

Selection Committees. In fact, as stated by the 4th respondent in his affidavit before the High Court, even the 2nd respondent, the aggrieved

candidate was also his student. Curiously enough the High Court has discarded the said fact by observing that in point of time, the appellant was

closer to the 4th respondent as a student since the appellant was his student at a later date. It is not necessary to comment further on this reasoning.

As an aside of the very same reason, the High Court has also found the presence of the sixth respondent on the Committee as vitiating the

selection, and the only reason given by the High Court in that behalf is as follows.

....In this background if we consider the reply of sixth respondent, Shri Shyamrao S. Kadam, the member of the Selection Committee were of the

opinion that the apprehension expressed by the petitioner that the members of the Selection Committee had shown favour to the 7th respondent

cannot be said to be without any substance.

There is no discussion or finding given by the High Court on the alleged role played by the 6th respondent. We are therefore at a loss to know in

what manner the 6th respondent had influenced the decision of the Selection Committee, probably the Court had nothing further to say with regard

to the alleged ""role"" of the 6th respondent, We therefore refrain from saying anything more on the subject.

16. Having heard learned counsel for the petitioners at length and after considering the matter in depth, in my opinion, the apprehension of bias

entertained by the petitioners against the Divisional Commissioner, Jammu, being the presiding officer of a Revenue Court, are without any legal

basis. The mere fact that the said presiding officer was a batchmate of the private respondent No. 3 or that he was fixing early dates in the matter

would not constitute a sufficient ground for seeking transfer on the ground of bias.

17. In fact, an effort of a conscientious officer to deal with matter before it and conclude the same at the earliest should not be taken as a matter of

suspicion against such an officer especially when the general complaint with the adjudicatory system in the country is that there are delays in

deciding cases. In fact, allegations of bias and mala fides casually made on mere apprehension sometimes have devastating demoralizing effect on

officers, who have reputation of honesty, integrity and impartiality.

18. Be that as it may, the petition is found to be without merit and is accordingly dismissed along with connected application.