

## **Bias in Administrative Adjudication** *(Nemo Judex in re Sua)*

Good laws are the outward manifestation of our inward values. Besides, they are the product of our progressive civilisation. Although, ideal codes are important but a true test of the height of civilisation lies in the quality of institutions which administer these codes. Thus adjudicatory institutions are the core of lasting values. However, in the maintenance of the standard and dignity of such institutions adjudicators play an important role. In fact, it is the quality of the judge i.e. their conduct, character and impartiality, which determines the standard of adjudicative process.

The success of the administration of justice depends ultimately upon two requisite conditions - moral, which is a matter of character and other is legal - legal qualification and capability of a judge. Thus, there is no guarantee of justice except the personality of the judge. It is no doubt desirable that all judges like "Caesar's wife should be above suspicion".

### **2. *Nemo judex in causa sua* : Maxim Considered**

The maxim *nemo judex in causa sua* literally means that no person shall be a judge in his own cause. It is concerned with the independence and impartiality of the decision maker. *Dr. Bonham's Case* (1610) 8 Co. Rep. 1142, the Chief Justice Coke in the instant case observed that

"....it appears in our books that in many cases the common law will control Acts of Parliament and sometimes adjudge them to be utterly void. For when an Act of Parliament is against common right and reason or repugnant or impossible to be performed the common law will control it, and adjudge such Act to be void."

In *Birdi Vs. Home Secretary* (1975) Lord Denning said that he might hold an Act of Parliament void in so far as it conflicted with the European Convention on Human Rights. But he changed the above view in *R Vs. Home Secretary ex.p. Bhajan Singh* (1976) Q.B.198. In modern age no judge in the United Kingdom could

dare repeat this exploit.

However, in certain cases society demand that its judges be biased, says Robson: (W.A.Robson, Justice and Administrative Law, 3rd ed. 1951, at 410).

"A man who had no standard of moral values which approximate broadly to the accepted opinions of the day, who had no beliefs as to what is harmful to society and what beneficial, who has no bias in favour of marriage as against promiscuous sexual relations, honesty as against deceit, truthfulness as against lying, who did not think prosperity better than poverty, or orthodox religion is preferable to atheism, courage better than cowardice, constitutional government more desirable than anarchy would not be tolerated as a judge on the bench..."

In *G.N. Nayak Vs. Goa University* (2002) 2 SCC 712, it was held that a preference which is rational and unaccompanied by consideration of personal interest, pecuniary or otherwise, would not vitiate the action. A senior officer's appreciation of performance of a junior officer, on facts, may not constitute former's bias.

### 3. **Kinds of Bias**

1. Pecuniary Bias
2. Personal Bias
3. Official Bias or Departmental Bias or Policy Bias

In *State of W.B. Vs. Shivnanda Pathak and Ors.* (1998) 5 SCC.513 - Bias on account of *judicial obstinacy*.

Bias has many forms. It may be pecuniary bias, personal bias, bias as to subject matter in dispute, or policy bias etc. The present case deals with a new form of bias namely, bias on account of *judicial obstinacy*.

"There are many ways to discover bias; for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias".

Reasonable suspicion test looks mainly to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities.

Judiciary is not free from "fallibility".

## 1. Pecuniary Bias Cases:

- (i) *Dimes Vs. Grand Junction Canal Co.* (1852) 3 H.L.C.
- (ii) *Jeejeebhoy Vs. Asstt. Collector, Thana* AIR 1965 S.C. 1096
- (iii) *R. Vs. Rand* (1866) L.R.I. Q.B. 230.
- (iv) *Tumey Vs. Ohio* 273 U.S. 5.10 (1927).

" Every procedure which could offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the delinquent or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law". (532).

## 2. Personal Bias –

This may be of two kinds:

- o Positive personal bias
- o Negative personal bias.

### (a) Positive Personal Bias - grounds

- (i) Friendship
- (ii) Family Relationship

- (a) *Annamalai Vs. State of Madras*, AIR 1957 A.P. 739.
- (b) *Visakhapattanam Motor Transport Vs. Bangaru Raju* AIR 1953 Mad. 709.
- (c) *Mrs. Nesargi Case* (1983)
- (d) *D.K.Khanna Vs. Union of India*, AIR 1975 H.P. 30
- (e) *Dr.(Mrs.) Kirti Deshmankar Vs. Union of India* (1991) 1SCC 104.  
Participation of candidate's mother-in-law in selection committee

vitiating the selection.

- (f) *Rattan Lal Sharma Vs. Managing Committee (Dr. Hari Ram Secondary Education)* (1993) 4 SCC 10
- (g) *A.K.Kraipak Vs. Union of India.* AIR 1970 SC 150.
- (h) *S. P. Kapoor (Dr.) Vs State of H. P.* (1981) 4 SCC 716- S. C. quashed the selection list prepared by the Departmental Promotion Committee (DPC) which had considered the confidential reports of the candidates prepared by an officer who himself was a candidate for promotion.

(iii) **Professional Relationship**

- (a) *Peerzada Ahmad Salem Vs Vice-Chancellor, Aligarh Muslim University,* AIR 1982 All. 76.

## II. Negative Personal Bias

### Personal animosity or hostility -

- (a) *Mineral Development Corporation Ltd. Vs. State of Bihar* AIR 1960 S.C. 468
- (b) *A.P.S.R.T. Corporation Vs. Satyanarayana Transport Private Ltd Guntur* AIR 1965 S.C. 1303
- (c) *Meenglass Tea Estate Vs. Workman,* AIR 1963 S.C. 1719.
- (d) *State of Uttar Pradesh Vs. Mohammad Nooh,* AIR 1958 S.C. 86.- The presiding officer in a departmental enquiry offered himself as witness with a view to contradict the testimony of a witness. The Supreme Court quashed the order based on such enquiry.
- (e) *Manak Lal Vs. Dr. Prem Chand* AIR 1957 S.C. 425.
- (f) *S. Parthasarathi Vs. State of A.P.,* AIR 1973 S.C. 2701
- (g) *Institute of Chartered Accountants of India Vs. L.K. Ratna* AIR 1987 S.C. 71.-

Removal of Chartered Accountant for five years by the Institute for professional misconduct - Involvement of the President and Vice-President of all the three levels - Court suggested amendment to the Act / Rules.

- (h) *Baidyanath Mahapatra Vs. State of Orissa* AIR 1989 S.C. 2218

The appellant was retired permanently from the government service on the basis of the recommendation of a review committee which had considered stale adverse entries. That committee included Secretary to the Government who was later on appointed as Chairman of the SAT. The tribunal dismissed petition of the appellant. It was held by the S.C. that tribunal decision was biased.

- (i) *Krishna Bus Service (P) Ltd. Vs. State of Haryana* (1985) 3 SCC 711

A Manager conducted an enquiry on the charge that he was beaten by the workmen. The enquiry was held as vitiated by bias.

### (3) Official Bias

It is most impersonal in nature. The problem of departmental bias is something which is inherent in the administrative process.

- (a) *Franklin Vs. Minister of Town and Country Planning* (1948) A.C. 87.

- (b) *G.Nageswara Rao Vs. A.P.S.R.T. Corporation.* AIR 1959 S.C. 308 (First Gullapalli) AIR 1959 SC 1376 (Second)

- (c) *K.Challiah Vs. Chairman, Industrial Finance Corporation.* AIR 1973 Mad. 122.

- (d) *K.R.Bhaskarnanda Vs. State of Karnataka* AIR 1990 Kant.182

Karnataka Motor Vehicles Rules, 1963- R.91- Transport Commr. who is an official Director of Karnataka SRTC - is disqualified to function as Chairman or Member of K.S.T. Authority as long as she is Director of K.S.R.T. Corporation - the transport Commissioner as long as she is a member of the Board of Director's of the Corporation is ineligible to hold the office of the Chairman or a member of K.S. T. Authority.

- (e) *Akhil Bharatiya Grahak Panchayat (Bombay Branch) Vs. State of Maharashtra* AIR 1985 Bom. 14 –

H.C. held that Minister was not disqualified from hearing objections against the increase of fares.

### 4. Test of Bias

Judicial opinion as to the test appropriate to determine whether the rule *nemo judex* has been breached reveals a "somewhat confusing walter of authority".

A perusal of decisions reveals mainly two tests viz., "real Likelihood" and "reasonable likelihood". *A.K.kraipak Vs. Union of India* AIR 1970 S.C. 150 and *A.K.Yadav Vs. State of Haryana* (1985) 4 SCC 417 (Garner 6th ed. at 138-139). The Bias rule looks to external appearance rather than to proof of actual improper exercise of power. If the reasonable observers would have the requisite degree of suspicion of bias in the decision maker than that decision can be challenged. See also *International Airport Authority Vs. K.D. Bali* AIR 1988 S.C. 1099

## 5. Exceptions

- (i) Necessity
- (ii) Waiver
- (iii) Statutory exclusion

### Waiver

1. *Vidya Prakash Vs. Union of India* AIR 1988 SC 705

If a delinquent officer does not raise the plea of bias at the appropriate time, he may not succeed in challenging the order passed latter by raising that contention.

2. *Bank Nationalisation Case*.

3. *G.Sarana (Dr.) Vs. University of Lucknow* AIR 1976 S.C. 2428

## 6. Non-Observance - Effect

"Void" or "Voidable". Non-observance of the rule *nemo judex in re sua* makes the order "void".

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