

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No.273 of 2017

M/s A. P. Nirman Pvt. Ltd. Through : Rajesh Agrawal Managing Director, (Proprietor), S/o Shri Gopiram Agrawal, Aged About 46 Years, R/o C-86, V I P Estate, Shankar Nagar, P. S. Shankar Nagar, District Raipur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Chief Secretary, Water Resources Department, Mahanadi Bhawan, New Mantralay, Raipur (Chhattisgarh)
2. The Engineer-in-Chief, Public Works Department, Sirpur Bhawan, District Raipur (Chhattisgarh)
3. The Engineer-in-Chief, Water Resources Department, Sinhawa Bhawan, Raipur (Chhattisgarh)
4. The Chief Engineer, Water Resources Department, Mahanadi Godawari Kachhar, Raipur District Raipur (Chhattisgarh).
5. The Superintending Engineer, Water Resources Department, Gariyaband, District Gariyaband (Chhattisgarh)
6. Executive Engineer, Water Resources Department, Gariyaband, District Gariyaband (Chhattisgarh)
7. Nodal Officer, Public Works Department, Raipur, District Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr.Sunil Tripathi, Advocate
For Respondents	:	Mr.P.K.Bhaduri, Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/10/2017

1. The petitioner was initially 'A' Class contractor, he was decategorized in Class "B" by respondent No.2/Engineer-in-Chief, Public Works Department, Raipur by order dated 17.6.2016 (Annexure P/2). The petitioner preferred an appeal in accordance with "Unified Registration System, e-Registration" on 13.7.2016

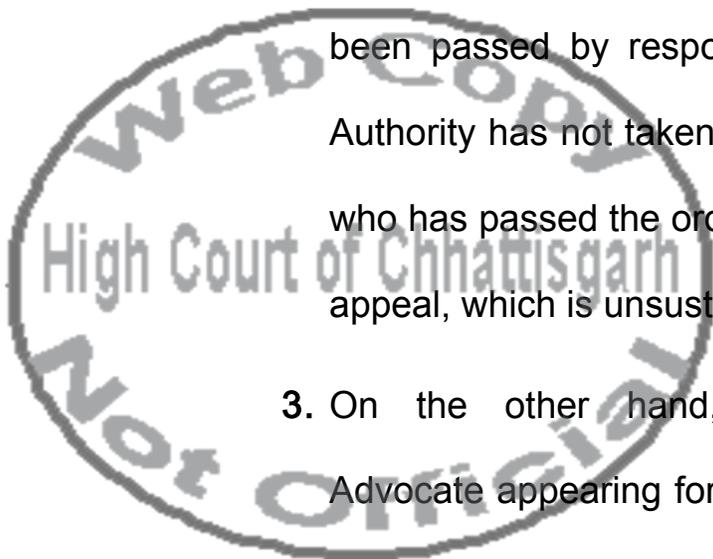
before the Appellate Authority. By order dated 14.12.2016 (Annexure P/1), appeal preferred by the petitioner has been rejected again by respondent No.2/Engineer-in-Chief, Public Works Department. Feeling aggrieved against the order passed by respondent No.2 dismissing his appeal, this writ petition under Article 226 of the Constitution of India has been filed by the petitioner herein.

2. Mr.Sunil Tripathi, learned counsel appearing for the petitioner, would submit that order of de-categorization to Class "B" has been passed by respondent No.2 and in appeal the Appellate Authority has not taken any decision and again respondent No.2, who has passed the order of de-categorization, has dismissed the appeal, which is unsustainable and bad in law.

3. On the other hand, Mr.P.K.Bhaduri, learned Government Advocate appearing for the respondents/State, would submit that power to hear the appeal is with the Engineer-in-Chief, Public Works Department, the petitioner having participated in appeal, by principle of acquiescence cannot challenge the order dated 14.12.2016 passed by the Appellate Authority, therefore, the writ petition deserves to be dismissed.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

5. Under the "Unified Registration System, e-Registration", the



contractor has to be registered in A,B,C,D category and power to hear appeal against the order of de-categorization has been given to the Appellate Authority consisting of three member Board which reads as under:-

“3. अपीलीय प्राधिकारी : तीन सदस्यीय बोर्ड

1. प्रमुख अभियंता, लोक निर्माण विभाग
2. संबंधित विभाग के संस्था प्रमुख
(सदस्य सचिव)
3. संचालक वित्त, कार्यालय प्रमुख अभियंता,
लोक निर्माण विभाग”

6. The petitioner was de-categorized by order of respondent No.2/Engineer-in-Chief, Public Works Department, Raipur. As per “Unified Registration System, e-Registration, appeal was preferred before the Appellate Authority that consisted of three members i.e. Engineer-in-Chief, Public Works Department, Member Secretary of the concerned Department and Director, Finance of the Office of the Engineer-in-Chief, Public Works Department, therefore, appeal ought to have been decided by three member Committee, who is the Appellate Authority, but in this case, respondent No.2/Engineer-in-Chief, Public Works Department, who has passed the order of de-categorization himself has heard and passed the order of dismissing the appeal of the petitioner, which is wholly impermissible in law. Adjudicating authority cannot be the Appellate Authority.

7. The maxim *nemo judex in causa sua* means “a man should not be a judge on his own cause”. The maxim has come to mean that

the deciding authority must be impartial. This is known as the rule against bias. The principle that bias disqualifies an individual from acting as a judge flows from the following two maxims:

- (i) No one should be a judge in his own cause; and
- (ii) Justice should not only be done but also seen to be done.

The first maxim applies not only when the adjudicator is himself a party to the dispute he is deciding, but also when he has some interest therein. The interest may be pecuniary or personal or of some other type. According to the second maxim, it is not necessary to prove that a particular decision was actually influenced by bias. It is sufficient if there is a reasonable suspicion about the adjudicator's fairness. The fountain of justice must not only be pure but it must also enjoy public confidence and credibility. The adjudicator must not only be free from bias, but there must not be even an appearance of bias.

8. In the leading case of R.V. Susses Justices, Ex p McCarthy¹,

Lord Hewart observed thus:-

“.....it is not merely of some importance but is of fundamental importance, that justice should both be done and be manifestly seen to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.”

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9. An essential element of judicial process is that the judge has to be impartial and neutral, and be in a position to apply his mind objectively to the dispute before him. Proceedings before a judge may be vitiated if he is biased, or if there are factors which may influence him to improperly favour one party at the cost of the other party in the dispute.

10. In the matter of J. Mohapatra and Co. v. State of Orissa²

Their Lordships of the Supreme Court have observed on the applicability of the doctrine of bias in adjudicatory proceedings as under:-

“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.”

11. Their Lordships of the Supreme Court in the matter of Zahira Habibulla H. Sheikh v. State of Gujarat³ have held that though justice is depicted to be blindfolded, it is only a veil not to see who the party before it is while pronouncing judgment or the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind/attention of the court away from the truth of the cause of /is before it, in disregard of its duty to prevent miscarriage of justice.

2 (1984) 4 SCC 103

3 (2004) 4 SCC 158

12. In the matter of Financial Commissioner (Taxation) Punjab and others v. Harbhajan Singh⁴, applying the the maxim *Nemo debet esse judex in propria sua causa* held that same officer having granted assignment as settlement officer could not sit over his own earlier order as Chief Settlement Commissioner.

13. In the matter of Amar Nath Chowdhury v. Braithwaite and Co. Ltd. and others⁵ Their Lordships of the Supreme Court have held that person who acted as disciplinary authority and passed an order of removal of an employee, cannot hear and decide the appeal as an appellate authority. It was observed as

under:-

“5.The question, therefore, arises whether the proceedings of the Board were vitiated on account of participation of the disciplinary authority while deciding the appeal preferred by the appellant.

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)*

4 (1996) 9 SCC 281

5 (2002) 2 SCC 290

Punjab v. Harbhajan Singh 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.”

Their Lordships excluded the applicability of 'doctrine of necessity' by holding as under:-

“8. In view of the aforesaid definition of the expression 'Board', the Board could have constituted a committee of the Board/management or any officers of the Company by excluding Chairman-cum-Managing Director of the Company and delegated any of its power, including the appellate power, to the such a committee to eliminate any allegation of bias against such an appellate authority. It is, therefore, not correct to contend that rule against bias is not available in the present case in view of the 'doctrine of necessity'. We are, therefore, of the view that reliance of the “*doctrine of necessity*” in the present case is totally misplaced.”

14. Following the principle of law laid down by Their Lordships

of the Supreme Court in the above-stated judgments (supra), the impugned order dated 14.12.2016 (Annexure P/1) passed by respondent No.2 is hereby set aside as the adjudicatory authority cannot be the Appellate Authority. Matter is restored to the file of the Appellate Authority, who will consider and take a decision on appeal preferred by the petitioner within a period of four months from the date of receipt of copy of this order. In the meanwhile, the State Government is directed to reconstitute the Appellate Board excluding the Engineer-in-Chief, Public Works Department as he is an authority to take decision on the question of de-categorization of a contractor. The State Government will take appropriate steps and will nominate some other officer of the equivalent rank of the Engineer-in-Chief, Public Works Department as a member of Appeal Committee in place of Engineer-in-Chief, Public Works Department to avoid the situation occurred in this case. That will be done expeditiously.

15. The writ petition is allowed to the extent sketched hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPURWPC No.273 of 2017Petitioner

M/s A.P. Nirman Pvt. Ltd.

*Versus*Respondents

State of Chhattisgarh and others

Head-Note(English)

Justice should not only be done, but manifestly be seen to be done.

(हिन्दी)

न्याय न सिर्फ किया जाना चाहिए अपितु प्रत्यक्ष रूप से कारित होता हुआ देखा भी जाना चाहिए।

