

A.U. KURESHI

v.

HIGH COURT OF GUJARAT & ANR.
(Civil Appeal No. 472 of 2009)

JANUARY 27, 2009

[K.G. BALAKRISHNAN, C.J. AND P. SATHASIVAM, J.]

Administrative Law:

Bias – Disciplinary Committee of High Court recommending dismissal of a Judicial Officer for misconduct – Officer dismissed by State Government – Dismissal order challenged by Judicial Officer before High Court on judicial side – Bench hearing the petition comprising one of the members of Disciplinary Committee as Judge – Petition dismissed – HELD: The decision made by Disciplinary Committee was a vital component of the process by which High Court made recommendation to State Government for dismissal of the Judicial Officer – It is, therefore, not proper for a member of the said Disciplinary Committee to decide on a challenge against the same dismissal order while acting in a purely judicial capacity – Order of the High Court set aside and case remitted to it for decision afresh in accordance with law – Maxim – ‘nemo debet esse judex in propria sua causa’ – Applicability of

Ashok Kumar Yadav vs. State of Haryana (1985) 4 SCC 417, relied on.

Case Law Reference:

(1985) 4 SCC 417

relied on

para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 472 of 2009.

A From the Judgment/Order dated 25.7.2006 passed by the Hon'ble High Court of Judicature at Ahmedabad in Special Civil Appln. No. 6164/2002.

B Sanjeev Kumar and Venkateswara Rao Anumolu for the Appellant.

Sunil Kumar Jain and Aneesh Mittal for the Respondent.

The Order of the Court was delivered by

C ORDER

1. Leave granted.

D 2. The present appeal has been filed against the impugned order of the High Court of Gujarat at Ahmedabad, dated July 25, 2006 which was passed in Special Civil Application No. 6164 of 2002, whereby the High Court has dismissed the said application.

FACTS :

E 3. The appellant was a Judicial Officer who joined the Gujarat Judicial Service in 1991 and was posted as Civil Judge (Junior Division) at the District Court, Bharuch. The High Court of Gujarat (respondent) received a complaint wherein it was alleged that a case bearing Criminal Case No. 2059/89 under the Gambling Act was listed for hearing in the appellant's Court and that the appellant had acquitted the accused and also returned the money seized from the accused from the scene of occurrence. On the basis of this complaint the respondent issued a charge-sheet to the appellant and the appellant submitted his reply. A departmental inquiry was initiated against the appellant and the concerned Inquiry officer submitted his report to the High Court of Gujarat stating that the charges levelled against the appellant had been proved. On the basis of this report, a show-cause notice was issued to the appellant. The appellant filed his reply to this show-cause notice.

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Dissatisfied with the appellant's reply, the High Court decided that it would be appropriate to dismiss the appellant from service. By letter dated October 25, 2001, the High Court of Gujarat recommended to the State Government that the appellant be dismissed from service and accordingly an order was passed.

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4. The appellant, being aggrieved, filed Special Civil Application No. 6164 of 2002 before the High Court of Gujarat at Ahmedabad, which has been dismissed by the impugned order.

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5. Hence, this appeal by grant of special leave.

6. The learned counsel for the appellant has submitted before us that one of the members of the Disciplinary Committee of the High Court of Gujarat which dealt with the appellant's appeal was one of the judges on the bench which heard Special Civil Application No. 6164 of 2002 on the judicial side. This fact has not been contested by the learned counsel appearing for the respondents.

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7. In view of this, it is our opinion that the learned judge who was part of the Disciplinary Committee which suggested the appellant's dismissal should not have later heard the matter on the judicial side. In the present case, the Disciplinary Committee had suggested the appellant's dismissal on the basis of which the High Court of Gujarat made the subsequent recommendation to the State government.

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8. The decision made by the Disciplinary Committee was a vital component of the process by which the High Court of Gujarat made the recommendation to the State government for the dismissal of the appellant. It is therefore not proper for a member of the said Disciplinary Committee to decide on a challenge against the same dismissal order while acting in a purely judicial capacity.

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- A 9. It is an accepted principle of natural justice that a person should not be a judge in his or her own cause. In common law, this principle has been derived from the Latin maxim – '*nemo debet esse iudex in propria sua causa*'. A reasonable permutation of this principle is that no judge should adjudicate a dispute which he or she has dealt with in any capacity, other than a purely judicial one. The failure to adhere to this principle creates an apprehension of bias on part of the said judge. It would be useful to refer to the observations of Justice P.N. Bhagwati in *Ashok Kumar Yadav v. State of Haryana*, (1985) 4 SCC 417:
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"One of the fundamental principles of our jurisprudence is that no man can be a judge in his own cause. The question is not whether the judge is actually biased or has in fact decided partially but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. If there is a reasonable likelihood of bias 'it is in accordance with natural justice and common sense that the judge likely to be so biased should be incapacitated from sitting'. The basic principle underlying this rule is that justice must not only be done but must also appear to be done."

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- F 10. Accordingly, we accept this appeal, set aside the impugned order of the High Court of Gujarat at Ahmedabad and remit the case to the High Court to decide it afresh in accordance with law.

R.P.

Appeal allowed.