

Supreme Court of India

Bhajan Lal, Chief Minister, ... vs Jindal Strips Ltd. And Ors. on 8 August, 1994

Equivalent citations: JT 1994 (5) SC 254, (1995) 109 PLR 200, 1994 (3) SCALE 703, (1994) 6 SCC 19, 1994 Supp 2 SCR 445, (1995) 1 UPLBEC 80

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Bench: M Venkatachaliah, S Mohan

JUDGMENT S. Mohan, J

1. Leave granted.

2. The appellant is the Chief Minister of Haryana. The first respondent filed a Writ Petition C.W.P. No. 1898 of 1992 challenging the assessment order passed by the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Hissar, Haryana confirming a demand for sales tax of Rs. 2,04,13,895. Similar writ petitions have been filed against separate assessment orders by the first respondent for a total amount of payment aggregating to a liability of Rs. 20 crores. In these writ petitions allegations of personal mala fide have been levelled against the appellant.

3. The writ petition came up for preliminary hearing on 7.2.92 before a Division Bench consisting of S.S. Sodhi and K.C. Garg JJ. The writ petition was admitted and ex parte ad-interim stay was granted. After notice, when the matter came up for hearing before a Bench consisting of S.S. Sodhi and R.S. Mongia, JJ. it was directed to be listed for final hearing on 3.8.92. The then Chief Justice Mr. Rama Jois Proceeded on leave on 1.8.92. Thereupon, S.S. Sodhi, J. became the Acting Chief Justice.

4. On 3.8.92, when the writ petition was listed before the Tax Bench comprising of A.P. Choudhary and N.K. Sodhi, JJ, S.S. Sodhi, J. directed the writ petition to be delisted from the Tax Bench before which it was listed and transferred the case presided over by S.S. Sodhi, J. himself. It appears this was the only case which was directed to be delisted from the Tax Bench and transferred to the Division Bench presided over by the then Acting Chief Justice.

5. On 21.8.92, Chief Justice Mr. Rama Jois returned from leave and resumed charge. On 24.8.92 this Court in Special Leave Petition (Civil) No. 7700 of 1992 arising out of a connected Writ Petition (Civil) No. 3864 of 1992 directed the case be remanded to the High Court ordering expeditious disposal along with C.W.P. No. 1898 of 1992. On 1.9.92, Chief Justice Rama Jois resigned. Thereupon, again, S.S. Sodhi, J, became Acting Chief Justice. He continued in that capacity till 13.11.92. When the writ petition was pending hearing, G.R. Majithia, J. sought an explanation from the Registrar (Judicial) as to why the case was transferred from the Tax Bench to the Bench presided over by the Acting Chief Justice. On 21.10.92, S.S. Sodhi, J. delisted the writ petition from his Bench and re-transferred it to the Tax Bench comprising of A.L. Bahri and Ashok Bhan, JJ. The case did not reach for hearing before this Bench. On 22.10.92, G.R. Majithia, J. once again wrote to the Registrar (Judicial) seeking compliance with his earlier order dated 20.10.92. This letter was forwarded by the Registrar (Judicial) to the Acting Chief Justice soliciting orders in respect thereof. It was directed that the note be placed in the file.

6. On 14.11.92, justice S.D. Agarwala was appointed as chief Justice, As result, S.S. Sodhi, J. became the seniormost puisne Judge.

7. On the re-opening of the High Court after summer vacation, the writ petition along with other connected petitions were placed for hearing before the Tax Bench comprising of S.S. Sodhi and Ashok Bhan, JJ. A request was made for an early hearing of the writ petition on behalf of the first respondent. Accordingly a direction was issued that the writ petitions be placed for final hearing on 13.9.93. The hearing went on 13.9.93. A preliminary objection was raised on behalf of the State about the maintainability of the writ petition since the alternate statutory remedies available to the first respondent had not been exhausted. The Division Bench did not consider that objection but directed the arguments be addressed on merits. The petitions were adjourned for further order to 4.10.93.

8. The records bear out G.R. Majithia, J. addressed a letter to the learned Chief Justice on 13.9.93 referring to his earlier communication on the subject and requested to know the circumstances under which the writ petition had been transferred to a Division Bench presided over by S.S. Sodhi, J. Be that so. On 4.10.93, the hearing recommended on the writ petition.

9. The appellant on his return after long tour of Rajasthan arid Delhi, on 4.10.93, came to know about these happenings. They were the cause of some consternation and apprehension in his mind since allegations of malafides had been levelled against him by the first respondent who is said to be a political opponent. Therefore, on 4.10.93 an application C.M. No. 9909 of 1993 was moved requesting the Division Bench to transfer the matter from their Bench. Notice was issued and the hearing was fixed on 6.10.93.

10. After hearing the arguments, the application for transfer was dismissed. However, time was granted till 12.10.93 to approach this Court and it was indicated that thereafter the matter would be taken up on day to day basis.

11. Appellant assails in this appeal the order refusing transfer. During this civil appeal, an additional affidavit was filed on behalf of the appellant giving details of the course which the writ petition took. He would have it, on 3.8.93, when S.S. Sodhi, J. took over as Acting Chief Justice the writ petition was listed at Serial No. 342 before A.P. Choudhary and N.K. Sodhi, JJ. S.S. Sodhi, J. orally directed the Registrar (Judicial), Shri B.R. Gulati that the writ petition along with connected writ petitions be listed before a Bench presided over by the then Acting Chief Justice. The note in support of the same is produced as Annexure 'F'.

12. The affidavit further proceeds to state that the deponent reliably learnt that the then Acting Chief Justice, in fact, went to the Chambers of N.K. Sodhi, J. and told him that by mistake it had been listed before a Bench presided over by A.P. Chaudhari, J. N.K. Sodhi, J. was somewhat agitated and told the Acting Chief Justice that the transfer of the case from that Bench was not in accordance with the normal practice of the High Court. There was no reason why the matter was removed from the roaster. A.P. Chaudhari, J. also is said to have sent a formal note to the Registrar as to why this particular matter had been removed from their Bench and the note was apparently returned with an

endorsement by the Registrar (Judicial) indicating that this was done on to the oral directions of the Acting Chief Justice. The deponent believed that S.S. Sodhi, J. thereafter met N.K. Sodhi, J. to express his regret for what had happened. The list of the Tax Bench comprising of A.P. Chaudhari and N.K. Sodhi, JJ. was circulated on the evening of August, 1, 1992 on or the morning of August 2, 1992. The Constitution of the Tax Bench of A.P. Chaudhari and N.K. Sodhi, JJ. was circulated on the evening of 1st August or morning of 2nd August, 1992. On 31.7.92 a request was made before S.S. Sodhi, J. that CWP 1898/92, which he had while presiding over the Bench fixed for 3.8.92 may not be taken up on that day.

13. His further averment is as under:

It is further reliably learnt that Hon'ble Chief Justice Rama Jois returned to Chandigarh in August, 1992 and both Justice N.K. Sodhi and Justice A.P. Chaudhari met the Hon'ble Chief Justice and it seems that the Hon'ble Chief Justice conveyed to them that he had already told the Acting Chief Justice that this should not have been done and that the Acting Chief Justice should not hear the matter when it came up for hearing. Under these circumstances, it was felt that the Hon'ble Judges from whose Bench it was delisted should not carry the matter any further.

If these facts are correct, obviously Hon'ble Justice S.S. Sodhi should not have heard this matter when it came up for hearing before him in October, 1992.

...The deponent feels that it is imperative in matters of this nature that the Court believes that the Executive does not file applications of this nature irresponsibly and with a motivation to have the matter heard by one Bench or another. The deponent has disclosed these facts as they have come to his knowledge, so that the court may not have an impression that the application was motivationally filed and that by the filing of this application, the dignity of the Court is being compromised. The deponent herein respects the highest traditions and dignity of the Court, and would in no circumstances ever compromise it. The facts set out herein all stated instead of show that there was genuine apprehension in the mind of the deponent and that these facts were to the knowledge of the Learned Judge in the matter. Since the petition involved allegations of personal malafides against the deponent, and since the deponent was joined as a party respondent, the circumstances as set out hereinabove warranted that the Learned Judge need not have heard the matter himself, and that the Hon'ble Chief Justice would have, in the circumstances, directed the matter to be listed before any appropriate Bench. It is not that the deponent was, and is wishing the matter to be heard by any particular Bench. It is with this view that the present affidavit is being filed.

14. A counter affidavit has been filed on behalf of the first respondent that the facts stated in the additional affidavit are not admitted by the first respondent since he has no means to verify the correctness of the same. Further, the appellant has not disclosed in his affidavit the source of his information.

15. On 18.11.93 serious arguments were addressed whether the affidavit must disclose the source of information. Therefore, the first respondent though fit to file an affidavit that "his counsel Shri Shanti Bhushan contacted former Chief Justice Mr. Rama Jois in the evening of 18.11.93 itself. He

wrote about the contents of paragraph 8 and also informed him that the counsel for the appellant had stated before this Court that the information contained in that paragraph had been conveyed to the appellant by Chief Justice Mr. Rama Jois. The counsel for the respondent asked Chief Justice Mr. Rama Jois whether it was so to which the reply was that he considered it improper to talk about any conversation which might have taken place between the Chief Justice and other Judges of the High Court in the Chambers. In view of this Principle he could not give any such information to any person much less to a party or its counsel. Thus, it is clear that Chief Justice Mr. Rama Jois Could not have conveyed any such information to the appellant."

16. In response to this, the appellant stated that prior to the date of his filing the petition for transfer on 4.10.93 he contacted the then Chief Justice Mr. Rama Jois on telephone and asked him why S.S. Sodhi, J. had taken up the matter. The appellant would state that he got the information that Chief Justice Mr. Rama Jois had advised S.S. Sodhi, J. not to do so. This was confirmed by Chief Justice Mr. Rama Jois. The appellant was also informed that Chief Justice Mr. Rama Jois had informed S.S. Sodhi, J. that it was wrong on the part of S.S. Sodhi, J. to have transferred the matter in the first place. The appellant states that the retired Chief Justice Mr. Rama Jois was asked whether his name could be mentioned in the application to be moved by him. The appellant was replied that this would embarrass him and his name should not be brought into the proceedings. Therefore, he did not mention the judge's name in the application and in the additional affidavit filed by him.

17. Mr. Kapil Sibal, learned Counsel for the appellant submits that transfer of one case alone to the file of the then Acting Chief Justice would be enough to establish his interestedness. The right to fair trial is guaranteed under the Constitution. It entitles a litigant to adjudication of a cause by a judge who is perceptibly and demonstrably unbiased and without prejudice. In order to dispel any suspicion of a litigant a judge should refuse himself even though the judge is not conscious of any bias or prejudice. Such a prejudice, a state of mind, cannot be proved by direct and positive evidence. Therefore, it cannot be judged on the basis of an objective standard but from the point of view of the litigant. In support of his submission learned Counsel cites the following cases:

*Ex Parte American Steel Barrel Co.* 57 Law Ed. U.S. 1379 at 1383-84.

*Bell v. Chandler* 569 Federal Report 2d Series 556 at 558-559 where the test adopted is not bias or prejudice alone but the bent of mind that may prevent impartiality.

*United States v. Scuito* 531 Federal Report 842 at 845 wherein the test is to accept the affidavit which is taken as true for the purpose of motion.

*Metropolitan Properties Co. v. Lannon* [1969] 1 Queen's Bench Division 577 at 599.

18. This Court had also adopted the same principle as seen from *Ranjit Thakur v. Union of India and Lalita v. State of Bihar* AIR (1957) SC 198 at paragraphs 20 and 21.

19. Thus, it is submitted that the learned Judges had gone wrong in refusing to order transfer when the litigant entertained suspicion that he may not get justice at the hands of this Bench, that too, in a

sensitive matter where allegations of mala fides have been made against the appellant.

20. Mr. Shanti Bhushan, learned Counsel for the first respondent submits that a clear finding has been recorded by the Bench there could be no possible occasion for the appellant to entertain any apprehension that he would not get justice from the Bench. The only ground for transfer urged was that the petition was taken up for hearing by S.S. Sodhi, J. after he had directed the matter to be delisted from the Tax Bench and be listed before his Bench. This ground is untenable. It was the normal practice if a date was fixed for final hearing by a particular Bench, it should come before the same Bench. This practice has not been denied by the appellant. A request was made by the Advocate General of Haryana, the counsel for the appellant before S.S. Sodhi, J. that since he was busy otherwise the case might not be taken up on 3.8.92. This request was acceded to. On 31.7.92, when this request was made S.S. Sodhi, J. was not Acting Chief Justice. The learned Advocate General knew that the matter should be listed before S.S. Sodhi J.'s Bench. However, when it was mistakenly shown on 2.8.92 before a different Bench and since 3.8.92 S.S. Sodhi, J. became Acting Chief Justice he directed the matter be posted before him for hearing. The case remained on the Bench of S.S. Sodhi, J. from 3.8.92 to 21.10.92 and no objection whatsoever was raised. The application of the appellant was a belated attempt after three days of hearing and after 20 days of the commencing of final bearing on 13.9.93 by which time the arguments had reached an advance stage. In *M.Y. Shareef v. The Hon'ble Judges of the High Court of Nagpur* this Court had occasion to condemn the attempts for a change of Bench. The ratio of that ruling will squarely apply to the facts of this case. To the same effect is the case in *Gujarat Electricity Board v. Atmaram Sungomal Poshani*. No doubt, reasonable apprehension of bias which a reasonable person can entertain may be a good ground for transfer. That does not mean a litigant has a right to ask for a change of Bench. A mere statement of a party to a proceeding about his entertaining in apprehension may be inadequate as the facts of this case make it quite clear. Even in the later affidavits filed, the source of information has not been disclosed. The requirement of law is, there must be such a disclosure as seen from *The Barium Chemicals Ltd. v. The Co. Law Board* [1966] Supp. 311 at 352, *Sukhwinder Pal Bipin Kumar v. State of Punjab* and *Smt. Savithramma v. CECIL Naronha* [1988] Supp. 2 SCR 561.

21. The allegations relating to bias have paled into insignificance since the learned Judge (S.S. Sodhi, J) against whom bias is alleged is no longer in the High Court Punjab and Haryana. Normally, therefore, we would have rest content with the dismissal of this appeal as having become really infructuous. But certain unhappy events have taken place in this case which we view with concern. Therefore, we feel obliged to express our mind.

22. The appellant is the Chief Minister of a State. Against him allegations of malafides are made by the first respondent. He might have strongly resented such allegations quite understandably desired to defend himself. On that score, it cannot be said, a particular Bench cannot hear the case. Whatever might have been the reason for the transfer of the writ petition from one Bench to another to make that a ground for allegation of bias appears unjustified. May be, either because of a particular practice prevailing in a court that the Bench which directed the posting of a case should finally hear the matter or because of the change of rosters, the case would have come before a particular Bench. There is nothing to indicate that the then Acting Chief Justice S.S. Sodhi evinced

an interest in hearing this matter or that, he was biased.

23. Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as 'Sua Causa', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one.

24. In the case of non-pecuniary bias, as alleged in the instant case, regard is to be had to the extent and nature of interest. Then alone, the judge will be disqualified. In the leading case *R. v. Sussex Justices, ex p. McCarthy* [1924] 1 KB 256, Lord Hewart observed thus:

It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be 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.

25. In *R. v. Barnsley Licensing Justices, ex p. Barnsley and District Licensed Victuallers' Association* [1960] 2 QB 167 Justice Devlin LJ said at pages 186-87:

We have not to inquire what impression might be left on the minds of the present applicants or on the minds of the public generally. We have to satisfy ourselves that there was a real likelihood of bias not merely satisfy ourselves that that was the sort of merely satisfy ourselves that that was the sort of impression that might reasonably get abroad. The term 'real likelihood of bias' is not used, in my opinion, to import the principle in *R v. Sussex Justices* to which Salmon J., referred. It is used to show that it is not necessary that actual bias should be proved. It is unnecessary, and, indeed might be most undesirable, to investigate the state of mind of each individual justice. 'Real likelihood' depends on the impression which the court gets from the circumstances in which the justices were sitting. Do they give rise to a real likelihood that the justices might be biased? The court might come to the conclusion that there was such a likelihood, without impugning the affidavit of a justice that he was not in fact biased. Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit.

26. The present day law in England is based on reasonable suspicion. *Metropolitan Properties Co. (FGC) Ltd. Lannon* (1969) 1 QB 577, an authority relied on by Mr. Kapil Sibal, lays down:

"In *Hannam v. Bradford City Council* [1970] 2 All ER 690 : [1970] 1 WLR 937 Cross LJ expressed the view, at p. 949, that there is really little, if any, difference between the real likelihood of bias and reasonable suspicion of bias test:

If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think there might well be bias, then there is in his opinion a real likelihood of bias. Of course, someone else with

inside knowledge of the characters of the members in question might say: 'Although things don't look very well, in fact there is no real likelihood of bias.' That, however, would be beside the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with no inside knowledge might well think that it might be biased.

This view was accepted in *R. v. Liverpool Justices, ex p. Topping* [1983] 1 All ER 490 : (1983) 1 WRLR 119. The Divisional Court considered that the correct test to apply is whether there is the appearance of bias, rather than whether there is actual bias; and that as to the way in which the test is to be applied the question is: Would a reasonable and fair-minded person sitting in Court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the applicant was not possible? 'Reasonable suspicion' seems to have prevailed over 'reasonable likelihood' as the test to be applied in determining bias.

27. It is in the light of this, the matter will have to be examined. So done, we hardly find any ground to hold that there could be a reasonable suspicion of bias in this case. That is evident from the facts. The case was in the list of the Bench headed by S.S. Sodhi, J. from 3.8.92 to 21.10.92. No objection was raised. Arguments were advanced for three days on the main writ petition. The application for transfer was taken out on the ground of alleged bias. By then the matter was coming to a close. It cannot be said that there could be any reasonable apprehension of bias which a reasonable person could entertain, as rightly urged by Mr. Shanti Bhushan. It appears the attempt was to avoid the Bench headed by S.S. Sodhi, J.

28. We are unhappy that the appellant should have felt compelled to seek information as to what transpired within "the judicial fortress" among the judicial brethren. Judges should not be dragged in and their names mentioned in such matters. Rightly the former Chief Justice Mr. Rama Jois refused to allow his name to be quoted considering it improper to talk about any conversation which might have taken place between the Chief Justice and the other Judges of the High Court in their Chambers.

29. Then, we came to G.R. Majithia, J. a senior judge. On 20.10.92 he sought an explanation from the Registrar (Judicial) as to why the case was transferred from the Tax Bench to the Bench presided over by the then Acting Chief Justice, S.S. Sodhi, J. Secondly, on 22.10.92, he wrote a letter to the Registrar (Judicial) calling for a report.

30. This letter, at the direction of the then Acting Chief Justice was placed in the file. Again, on 13.9.93 the another letter was written by Majithia, J. to the Chief justice.

31. We have perused these letters. We are of the view that learned judge should not have sent these communications. This conduct might incur the criticism of transgressing the proprieties of the high office. We cannot but express our unhappiness about these letters; whatever might have been the compulsions that impelled the learned Judge to do so. We presume that the learned Judge did so on his own impression of the proprieties of procedure adopted by the Registry. But his enquiries and letters are not consistent with the restraint expected of the high office.

32. Courts are indeed a storm center facing the panoply of human problems, crowded dockets and unrelenting work schedules. Justice Oliver Wendell Holmes said:

We are quiet here but it is the quiet of a storm center.

33. In Justice Benjamin Cardozo's memorable words, "the great tides and currents which engulf the rest of men, do not turn aside in their course, and pass judges by." We should only add that the judges must remain unruffled and calm in the midst of contending forces. To recall the words of Mr. Justice Frankfurter in *Public Utilities Commission of the District of Columbia v. Franklin S. Pollak* 343 US 451 at 465-466 (96 Law. Ed. 1068 at 1079):

The Judicial process demands that a judge move within the framework of relevant legal rules and the covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted.

34. With this we leave.

35. Civil appeal No. 5525/94 arising out S.L.P. (C) No. 16577 of 1993 and Transfer Petition (Civil) No. 880 of 1993 are dismissed. No costs.