Jagat Nath Wahal And Ors. vs The U.P. State Road Transport ... on 5 November, 1976

Equivalent citations: AIR1977ALL83, AIR 1977 ALLAHABAD 83

JUDGMENT

K.C. Agrawal, J.

1. This special appeal is directed against the judgment of the learned single Judge allowing the writ petition filed by the U. P. State Road Transport Corporation, Lucknow (hereinafter referred to as the respondent 1).

Through the said writ petition, the respondent 1 prayed for quashing the order dated 27th February, 1973 passed by the State Transport Appellate (Tribunal) at Lucknow (hereinafter called 'the Appellate Tribunal'). The dispute in the present case is with regard to the grant of stage carriage permits on Meerut-Delhi, an inter-State route. It appears that applications were filed by the appellants for grant of stage carriage permit sometime in 1972 on the aforesaid route. These applications were published on March 4, 1972 in the official Gazette of the State of U. P. No one filed any objection to the said applications. These applications were, thereafter, heard by the State Transport Authority on various dates viz. on August 7/8/9 anl 23 of 1972. They were rejected on October 24, 1972 by the State Transport Authority on the ground that as Meerut-Delhi route was a nationalised route, the applications filed by the appellants for the grant of permits on the aforesaid route were not maintainable. Aggrieved by the above order, the appellants preferred appeals before the Appellate Tribunal. In these appeals, the respondent I filed an application for being impleaded as a party. The said application was rejected on December 20, 1972, and the appeals filed by the appellants were allowed by the Appellate Tribunal by the impugned order dated 27-2- 1973. The respondent 1 thereafter filed the writ petition giving rise to this appeal at Allahabad and prayed for quashing of the aforesaid order of the Appellate Tribunal as well as for a Mandamus prohibiting the respondents 1 to 4 of the writ petition from giving effect to the impugned order mentioned above. The writ petition had been filed on a number of grounds including that as Meerut-Delhi route had been nationalised by the State Government and that the State Transport Undertaking had the exclusive privilege of plying its vehicles on the aforesaid route, the grant of permits to the appellants being contrary to the provisions of the Motor Vehicles Act, 1939 was illegal.

2. The writ petition was resisted by the appellants and it was denied that the Meerut-Delhi route had been notified as required by the Motor Vehicles Act for the exclusive right of plying vehicles On that route to the complete exclusion of private operators. The contention raised on behalf of the appellants was that the route in question was not a notified route, therefore the Appellate Tribunal had jurisdiction to grant stage carriage permits to the appellants. The learned single Judge accepting the case of the respondent 1 allowed the writ petition quashing the order of the Appellate Tribunal

dated 27th February, 1973. The view taken by the learned single Judge was that as the Notification dated 12th February, 1951 notifying Meerut-Delhi route as a nationalised route was validated by the U. P. Act IX of 1955, the result was that no private operator could legally obtain any permit on that route. In this view of the matter, the learned single Judge further found that the Transport Authorities, namely, the State Transport Authority and the Appellate Tribunal had no jurisdiction to entertain any application for the grant of stage carriage permit to private operators. Aggrieved by the judgment of the learned single Judge, the present appeal has been filed by the appellants.

3. The appellants have challenged the correctness of the Judgment of the learned single Judge on the following four grounds;

(i) that U. P. State Road Transport Act (Act II of 1951) having been declared ultra vires by the Supreme Court on the ground of legislative competence in Saghir Ahmad's case (AIR 1954 SC 728), the notification in Annexure 1, dated February 12, 1951 issued under Section 13 (1) (b) of U. P. Act II of 1951' became non-est and was not in existence on 18-6-1951, the date on which U. P. State Road Transport Services (Development) Act (Act IX of 1955) had been enforced. Hence Sections 19 and 20 of U. P. Act IX of 1955 could not validate the above notification dated 12th February, 1951.

(ii) that the writ petition filed by the respondent 1 challenging the order of the Appellate Tribunal was not entertainable at Allahabad, inasmuch as the Allahabad High Court had no jurisdiction to entertain and hear the same at Allahabad, hence the judgment rendered by the learned single Judge was without jurisdiction.

(iii) that the respondent I being no party to the dispute before the Appellate Tribunal and having not filed any objection to the grant of the applications under Section 57 (3) of the Motor Vehicles Act had no locus standi to file the writ petition.

(iv) that the learned single Judge who decided the writ petition was biased in favour of the respondent 1 and had, therefore, disqualified himself from deciding the writ petition.

4. We will take up these arguments in seriatim, but before doing so, we wish to deal with the history of the legislation covering the point involved in the present appeal very briefly. It appears that sometime after 1947, the State Government decided to run its own buses on the public thoroughfare. In furtherance of this policy, the Transport Authorities began cancelling permits already issued to private operators and refusing permits to them. Upon this a number of writ petitions were filed under Article 226 of the Constitution in this Court In Moti Lal v. State of U. P., (AIR 1951 All 257) (FB), this Court held that the action of Government was illegal. Thereupon, the State Legislature enacted the U. P. State Road Transport Act, 1951. This became law on and from the 10th February, 1951. Section 13 (1) (b) of the Act provided that every route on which the State Road Transport Services was operating on the appointed date be deemed to be a route specified in a notification under Section 3 of the aforesaid Act and the services operating under a scheme duly prepared and published under and in accordance with Sections 4 and 5 provided that the State Government published in the official gazette within fifteen days of the commencement of the Act a notification as to the aforesaid Road Transport Services "providing as far as may be for all or any of the matters

specified in Sub-section (2) of Section 4, and the scheme duly confirmed and published under Sub-section (3) of Section 5." The route to which it relates shall be called a notified route and the provisions of Sections 6 and 7 shall be applicable thereto. In the instant case, it is a common case of the parties that within fifteen days of the commencement of the aforesaid Act, a notification as required by Section 13 (1) (b) of the Act was published notifying Meerut-Delhi route as the nationalised route. This Act was, however, subsequently challenged by means of a writ petition. Its validity was upheld by the High Court, but in appeal the Supreme Court in Saghir Ahmad's case (AIR 1954 SC 728) (supra) declared it ultra vires. Thereafter, the State Legislature passed the U. P. Road Transport Services (Development) Act, 1955, which came into force with effect from March 24, 1955. This Act was to operate retrospectively from June 18, 1351. Sections 3 to 9 made provisions for the framing of the scheme for the exclusive operation of State Road Transport Services on routes notified by the State Government. Section 10 provided as to the consequences of the publication of the scheme and Section 11 provided for payment of compensation. Section 19 deals with the validation of proceedings and actions taken under U. P. Act II of 1951. The validity of U. P. Act IX of 1955 was also challenged, but was ultimately upheld by the Supreme Court in Deep Chand v. State of U. P., AIR 1959 SC 648.

5. Coming to the first submission of the learned counsel for the appellants, it may be stated that Shri A. J. Fanthome appearing for the appellants urged that as the U. P. Act II of 1951 was declared ultra vires the Constitution by the Supreme Court in Saghir Ahmad's case (AIR 1954 SC 728) (supra) on the ground of legislative competence of the State Legislature, the notification issued therein on 12th February, 1951 was dead and no life could be infused into it by the subsequent legislative measures. He urged that the real controversy about the notification dated 12th February, 1951 being invalid on the ground suggested above was not appreciated by the learned single Judge and the committed an error in confining the consideration to the validity of the notification mentioned above only on the doctrine of eclipse. We have given our considered thought to the submission made by the learned counsel for the appellants, but find ourselves wholly unable to subscribe to the same. Firstly, it is incorrect that the learned single Judge did not consider the effect of law enacted by a Legislature without having Legislative competence. The learned single Judge was of the opinion and so are we that a legislation on a topic not within the competence of the Legislature is absolutely null and void and a subsequent cessation of that field to the Legislature will not have the effect of infusing life into what was stillborn piece of legislation and a fresh legislation on the subject would be necessary. A case, however, where the legislation is declared ultra vires being contrary to Part III of the Constitution is different. In the instant case, therefore, the enquiry is whether the Supreme Court in Saghir Ahmad's case (AIR 1954 SC 728) (supra) declared Act II of 1951' ultra vires on the ground of legislative competence or on the ground of the same being in contravention of Part III of the Constitution. It may be recalled that Act II of 1951 was passed by the Legislature in order to confer on the State Government the right of plying buses on public thoroughfare to the exclusion of private operators. The validity of this Act was challenged before the High Court, but a Division Bench of the High Court repelled the contentions of the petitioner and dismissed the writ petition, but the appeal preferred against this decision before the Supreme Court was allowed and a Mandamus was issued restraining the State of U. P. from enforcing the provision of the U. P. State Road Transport Act, 1950 (Act II of 1951). It appears from a perusal of the judgment given in the above case that the said Act was found to be invalid on two grounds;

(i) that U. P. Act II of 1951 violated the fundamental right of the appellant of that appeal guaranteed by Article 19(1)(g) of the Constitution, as it was not shown to be protected by Clause (6) of the Article as it stood at the time of enactment.

(ii) that the Act having deprived the private operators of the business of running buses on public roads but having made no provisions for the payment of compensation, as required by Article 31(2) of the Constitution was invalid. The above two grounds on which the U. P. Act II of 1951 was declared Ultra vires did not have any connection or relation with the ground of legislative competence.

6. In Saghir Ahmad's case (AIR 1954 SC 728) neither the Supreme Court was addressed nor did it record any finding that the aforesaid Act was beyond the legislative competence of the State Legislature. Accordingly the submission of the learned counsel for the appellants that as in Saghir Ahmad's case U. P. Act II of 1951 was found to be beyond the legislative competence, therefore, the notification dated 12th February. 1951 fell to the ground along with the Act and that the same could not be revived or picked up subsequently by U. P. Act IX of 1955 has no substance. In fact, as stated above, the learned single Judge also had taken the same view on this controversy when he found that a law enacted by a Legislature without having legislative competence would be void ab initial and the same could not be revived or revitalised even if the legislative competence was conferred on that Legislature subsequently.

7. So far as the question of legislative competence is concerned, although the learned counsel for the appellants did not make any submission before us on that point, we refer to Entry 35 of the Concurrent List of the Seventh Schedule Which confers power on a State Legislature to make a law of mechanically propelled vehicles. Admittedly Motor Vehicles Act is covered by it. In H. C. Narayanappa v. State of Mysore, (AIR 1960 SC 1073), the validity of a scheme framed under Section 68-C of the Motor Vehicles Act was challenged before the Supreme Court on a number of grounds including that of the legislative competence. Repelling the submission, the Supreme Court held that Chapter IV-A could completely be enacted by the Parliament under Entry 21 read with Entry 35 of the Concurrent List. It may be noted that although in the said case the provision of which the validity had been challenged was that of the Central legislation, but the law laid down in the said case will apply with equal force to the present case. The right of the State to carry on trade or business is recognised by Article 298. The authority to exclude competitors in the field of such trade or business is conferred on the State by entrusting power; to enact laws under Entry 21 of List III: of the Seventh Schedule. We accordingly find that the submission of the learned counsel for the appellants that as Act II of 1951 was found beyond the legislative competence by the Supreme Court in Saghir Ahmad's case (AIR 1954 SC 728), therefore, the notification issued, on the 12th February, 1951 could not be validated by the subsequent legislation by Sections 19 and 20 of U. P. Act IX of 1955 has no substance and must fail. As the learned counsel confined himself only to the argument mentioned above on the question of invalidity of notification dated 12th February, 1951, we do not wish to discuss and decide the other aspect of the question which had been decided by the learned single Judge.

8. We may mention that in this special appeal one of the arguments which had been earlier raised on behalf of the appellants was that the words "was operating" occurring in Section 19 (2) (a) of U. P. Act IX of 1955 did Mot take within its ambit those operators who were plying or running their vehicles without obtaining permits' from 'the Transport Authorities. On the basis of this, the "submission was that as the U. P. Government Roadways were running their vehicles in 1955 without permits, therefore the action of the State Government could not be saved by Section 19 (2) (a) of U. P. Act IX of 1955. This question was referred to a Full Bench. The Full Bench bv its judgment dated 22-4-1975 found that the word 'operating' in Section 19 (2) (a) does not presuppose the running or plying of vehicles in accordance with law and with a right to do so. Operating in this provision means actual or factual operating of vehicles of the State Road Transport Services on the routes. Following the answer given by the Full Bench to the question mentioned above, we find that as the U. P. Government Roadways was admittedly plying its vehicles on the date of the enforcement of U. P. Act IX of 1955. the notification issued on February 12. 1951 was validated by the aforesaid section.

9. The second submission made by the learned counsel for the appellants was that as the appellants made applications for permits on the route in question to the State Transport Authority at Lucknow and that the said applications were decided at Lucknow by the aforesaid authority as well as by the Appellate Tribunal, therefore the writ petition giving rise to the present appeal, could not be filed at Allahabad, and the judgment and order of the learned single Judge is a nullity. The submission made on behalf of the appellants is devoid of merits. In a case of enforcement of right of monopoly claimed in respect of a route, it was necessary for the respondent 1 to allege that there was some route over which it had the exclusive right to ply the vehicles. Consequently, the existence of a route was a 'part of the cause of action. Hence, as the route in question is admittedly -situated within the jurisdiction of this Court, we see no reason as to why the writ petition could not be filed at Allahabad. Apart from Section 20 of the Code of Civil Procedure which makes it clear that the suit may be instituted where a part of the cause of action arises, this is undoubtedly the general principle as well. The expression 'cause of action' has been compendiously defined to mean every fact which a party invoking the jurisdiction of the Court is required to prove. The basis of the claim of the respondent 1, was that since Meerut-Delhi route was a notified route, the Appellate Tribunal had no jurisdiction to grant the permits in respect of the same to the appellants, and if the respondent 1 were to fail in proving the existence of this route, it would fail. The submission of the learned counsel for the appellants, however, was that as the writ petition was directed against the order of the Appellate Tribunal which was situated at Lucknow, therefore, it was not the situs of the route but the place where the impugned order was passed that was the determining factor. In our opinion, even if it is possible to hold that a part of the cause of action arose at Lucknow, it did not deprive this Court from entertaining the petition at Allahabad. On the facts and in the circumstances of the present case, the respondent 1 had the choice to institute proceedings either at Allahabad or at Lucknow. This controversy has now been set at rest by the Supreme Court by taking the view that under Clause 14 of the United Provinces High Court (Amalgamation) Order, 1948, a writ petition can be instituted or filed where a part of the cause of action arises. The decision of the Supreme Court is to be found in Nasiruddin v. S. T. A. Tribunal, (AI.R 1976 SC 331). The relevant passage which needs to be quoted in this regard is as follows :

> "Fourth, the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction: Similarly if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises; where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding, jurisdiction, it may arise in either place."

10. The next submission of the learned counsel for the appellants was that the respondent 1 had no locus standi, to file the writ petition, inasmuch as it, having not preferred any objection under Section 57 (3) of the Motor Vehicles Act could not be considered to be a person aggrieved so as to entitle to challenge the order of the Appellate Tribunal by means of a writ-petition. The submission made by the learned counsel is devoid of substance. It may be noted that on 4th March, 1972 when the applications filed by the appellants for the grant of permits of the route in question were published in the official gazette, the respondent 1 had not come into existence. The respondent 1 was constituted under Section 3 of the U. P. State Road Transport Corporation Act, 1950 by means of a notification dated 31st May, 1972 published in the U. P. Gazette Extraordinary dated June 1, 1972. The said Corporation became successor to the erstwhile U. P. Government Roadways thereafter. It appears from the perusal of the judgment of the Transport Authority that the respondent 1 was, in fact heard by the said Authority at the time when the applications for the grant of permits made by the appellants were being considered. After the decision given by the State Transport Authority by which the applications made by the appellants were rejected, appeals as stated above were preferred by the appellants. In these appeals, the respondent 1 was not impleaded as a party. An application was filed on behalf of the respondent 1 for impleadment. It was, however, rejected by the Appellate Tribunal and therefore the appeals were decided without hearing the; respondent 1. In the circumstances of the present case, it appears to us that the Appellate Tribunal was not justified in rejecting the application for impleadment of the respondent 1, but without going into the matter in greater detail and expressing a concluded opinion on the same, we find that as the respondent 1 was vitally interested in the route in question, it is not possible to accept that the writ petition filed at its instance was not maintainable, or a petition to be maintainable under Article 226 of the Constitution what is enquired to be seen is whether the person invoking the jurisdiction of this Court can be considered to be a person aggrieved. A person will be held to be aggrieved by a decision if the decision is materially adverse to him or affects him. Normally, one is required to establish that he has been denied or deprived of something to which he is legally entitled in order to establish that he is a person aggrieved, aS we have already dealt with the question involving in the writ petition, without repeating the same we wish to mention that the only person who could be interested in the rejection of the permits of the appellants could be the respondent 1 inasmuch as according to the respondent 1, the route being a notified one, it had the exclusive right to ply its vehicles to the

exclusion of private operators. Learned counsel for the appellants relied on an unreported decision of the Supreme Court given in Purshottam Bhai Poonam Bhai Patel v. State Transport Appellate Authority, (Civil Appeal No. 762 of 1963) decided on 14-4-1964 (SC)). We have carefully examined the facts of this case and find that the same is of no assistance to the appellants. In this case, the controversy involved was altogether a different one. The Supreme Court did not consider the question as to whether the Society which had filed the writ petition had a locus standi to file a writ petition under Article 226 of the Constitution, it having failed to file an objection under Section 57 (3) and not being a party in the appeal. This decision of the Supreme Court was considered by a Division Bench of this Court in Special Appeal No. 15 of 1972, (Jagat Nath Wahal v. State Transport Undertaking) decided on 9-10-1972. After dealing with the facts the Division Bench found that the question of the maintainability of the writ petition under Article 226 was not considered in that case. It appears to us firstly the respondent No. 1 having come into existence after 3lst of May 1972 could not raise any objection to the application filed by the appellants for the grant of permits, therefore, its petition cannot be dismissed on that ground. Secondly the omission to file objection under Section 57 (3) in the present case was not a ground on which the petition filed by it could be dismissed by us. As the Tribunal made a manifestly wrong order and the respondent No. 1 was a person aggrieved, its petition was certainly maintainable.

11. Another case to which a reference was made by the learned counsel for the appellants is Civil Appeals Nos. 1381 to 1384 of 1967, (Rajasthan State Road Transport Corporation v. Laxmi Motor Works, Udaipur) decided on January 4, 1968. This case also, to our mind, is not helpful to the appellants. In this case a scheme for nationalisation of Motor Transport on Udaipur-Ahmedabad route was prepared by the General Manager of the Rajasthan State Roadways which was a department of the Government of Rahasthan. Subsequently, under the Road Transport Corporation Act, the Rajasthan State Road Transport Corporation was constituted with authority t6 provide transport services on the route or routes-proposed to be nationalised. In the background of these facts, the question which was raised before the Supreme Court was whether the scheme, which, had been initiated by the Rajasthan State Roadways, Could be pursued by the State Road Transport Corporation. Accepting the plea, the Supreme Court found that in the absence of a provision conferring power by the rules upon the State Transport Corporation, the right, power and privilege conferred upon the State Roadways, could not devolve upon the Corporation. This would show that the controversy involved in the aforesaid decision was altogether different than one with which we are concerned. The facts and the circumstances of the present case are altogether different. In the instant case, the respondent No. 1 was definitely a person aggrieved. The decision of the Supreme Court given in J. M. Desai v. Roshan Kumar, (AIR 1976 SC 578) relied upon by the learned counsel for the appellants is also not helpful to them in advancing the submission made on their behalf. In this case, a person who had not filed any objection to the grant of a certificate to run a Cinema Hall, filed a writ petition. The Supreme Court found that the Act and the rules, with which they were concerned, did not confer any substantive justiciable right on a rival in a cinema trade. It was further held that as a proprietor of the cinema theatre holding a licence had no legal right under the statutory provisions which could be said to have been subjected to or threatened with an injury as result of the grant of no objection certificate to the rival proprietor, he could not be said to be a person aggrieved. The controversy in the instant case is altogether different and we accordingly find that as the interest of the respondent 1 was vitally involved, and the permits had been granted by the

Appellate Tribunal on a notified route on which it had the exclusive privilege of plying its vehicles, the submission of the appellants that the respondent 1 had no locus standi to file the writ petition is not acceptable to us.

12. The only other submission which remains to be dealt with is about the bias of the learned single Judge who decided the writ petition. Normally, as we have agreed with the view taken by the learned single Judge, it would not have been necessary for us to go into this question, but as the allegation made is of serious nature, we wish to deal with the same. For appreciating the point, it may be necessary to mention few facts throw-

ing light on the same. It appears that the writ petition was presented before the Bench consisting of K. N. Singh and Gopi Nath, JJ., on the 16th March, 1973. After hearing the counsel for the petitioner, the Court admitted the writ petition. Shri S. K. Dhaon, Advocate, appeared on behalf of the appellants before the Bench at the time of admission and argued that interim order be not passed in favour of the respondent 1. The Court further being of the opinion that the case required the grant of interim order acceded to do so, but granted time to Shri S. K. Dhaon for filing a counter-affidavit and directed the stay application to be listed after the expiry of three weeks. Thereafter the appellants filed an application along with an affidavit for vacating the stay order and mentioned therein that the Bench gave no opportunity to respondents' counsel, Shri S. K. Dhaon and passed the interim order. As in the opinion of K. N. Singh and Gopi Nath, JJ., the assertion of this fact was not correct, they called upon Jagat Nath Wahal, appellant No. 1, to explain the circumstances under which the aforesaid statement was made. Thereupon, he appeared in Court and made the statement. The Court also took the statement of Shri S. K. Dhaon and Shri A. J. Fanthome. After taking all the statements, the Court was of the view that the affidavit filed by Jagat Nath Wahal incorporated a wrong fact and the conduct of Shri A. J. Fanthome was not befitting a responsible member of the Bar in advising his client to file a false affidavit. Being however of the view that as the appellant No. 1 had realised his mistake and apologised, the Court did not think it necessary to direct his prosecution. Thereafter when the writ petition was listed for final hearing before the learned single Judge an application was filed by the appellants for the transfer of the case on the ground that as the point involved in the writ petition was the same as was involved in Writ Petition No. 3363 of 1967 in which K. N. Singh, J., appeared as the Chief Standing Counsel on behalf of the U. P. Government Roadways and therefore the case be transferred to some other Court After hearing counsel for the parties, the learned single Judge, did not find any merit in this application and observing that the controversy involved in the present writ petition being different than that in which he appeared for U. P. Government Roadways, he rejected the application on January 15, 1974. The writ petition was, thereafter, heard by him and as he did not find any merits in the same, he dismissed the writ petition by the judgment under appeal.

13. Shri A. J. Fanthome, who appeared before us in this appeal, urged that as the learned single Judge appeared in Writ Petition No. 3363 of 1967 on behalf of the U. P. Government Roadways, he had disqualified himself from deciding the writ petition. He further contended that the judicial etiquette demanded of him to transfer the case to some other Court. We have given our anxious consideration to the submission of the learned counsel for the appellants but find ourselves wholly unable to accede to the same. The mere fact that the learned single Judge, was the counsel of the U.

P. Government Roadways at one time was hardly any circumstance which could create any suspicion in the mind of any reasonable man that he would not get justice at his hands. It is no doubt true that bias of a Judge in favour of a party or against a party vitiates the entire proceedings, but as said by Professor De. Smith in his book "Judicial Review of Administrative Action" Third Edition age 230 that "bias which disqualifies one o discharge judicial function must be based on the reasonable apprehension of a reasonable man fully apprised of the acts." It is not possible as said by Prof. De. Smith "to quash decisions on the strength of the suspicion of fools or other capricious and unreasonable people". No Judge would be worth the salt if he permits his opinion to be influenced by his past association with his client. A man becomes different when he puts on a Judge's gown. He is a very different personality. Therefore, merely because at one time the learned Single Judge, was the Chief Standing Counsel for the State of U. P. and had appeared in many cases on behalf of the Government including Writ Petition 3363 of 1967 does not mean that he carried any bias in favour of the U. P. Government Roadways or the view point which he canvassed in that case. Incidentally, in the instant case, the point involved for decision in the writ petition giving rise to the present appeal was different than that which was involved in Writ Petition No. 3363 of 1967, but even if the point would have been the same, we would have never been prepared to accept that merely because a person as a lawyer appears to advance that view point, he does not decide the same impartially what the dictates of his conscience desire.

14. It was suggested on behalf of the appellants that as K. N. Singh, J. was a member of the Bench which had found the appellant No. 1 guilty of having filed false affidavit by the judgment dated 9-5-1974, therefore he ought not to have decided the writ petition. We are not prepared to accept that merely because he found the appellant No. 1 guilty of having filed a false affidavit on the aforesaid date sitting with Hon'ble Gopi Nath, J., he had disqualified himself from deciding the writ petition. It is a matter of common knowledge that the tendency of filing false affidavits is on the increase. If the Bench found in the instant case that the appellant No. 1 had filed an incorrect affidavit, they very rightly recorded a finding thereon. It is, in fact, the duty of a Judge to denounce wrong-doing when it is established before him, as observed by Lord Denning in ((1974) 3 All ER 217 at p. 223) :--

> "It was Lord Bacon in his essay on Judicature who said : 'The principal duty of a Judge is to suppress force and fraud'. As part of this it is the duty of a Judge to denounce wrong-doing when it is established before him. He speaks for all law-abiding citizens. His words uphold the opinion of the good. And shake the confidence of the wicked. By condemning wrongdoing, he reinforces the moral sanction on which law and order so much depend."

We are, therefore, unable to accept that merely because the action of filing false affidavit was disapproved by a Bench of which Hon'ble K. N. Singh, J. was a member, that should have created any bias against the appellants. If such an argument is accepted, the working of the Court may become impossible. Another circumstance to which a reference was made by the learned counsel for the appellants is that the learned single Judge in his judgment referred to certain facts which did not exist on the record of the present writ petition and that the same were, in fact, taken from the file of Writ Petition No. 3363 of 1967. What appears to us is that a copy of that writ petition must have

been passed on to the learned single Judge as it was passed on to us and, therefore, merely because some facts which had no bearing on the decision of the case had been taken from that writ petition does not show, that the learned single Judge was biased against the appellants. At the end, we may mention that Shri S. N. Kackkar for the respondent 1 stated before us that when the hearing of the writ petition was started on merits, Hon'ble K. N. Singh, J., put to Shri S. C. Khare appearing for the appellants as to whether he would like the case to be decided by the learned single Judge and that Shri Khare stated that he had absolutely no objection to the hearing of the petition by Hon'ble K. N. Singh, J. We in fact wanted to verify from Shri S. C. Khare and for that purpose requested him to throw light on this controversy. He, however, stated that he did not remember as to what had happened in the writ petition at that time. We have, however, no reason not to accept the statement of Sri S. N. Kacker, who is a Senior Advocate of this Court. We cannot avoid observing that there was no justification on the part of the appellants for advancing this argument. It showed a lack of discretion and decorum. Such an argument tends to lower the dignity of the bench and to degrade and discredit the administration of justice.

15. For the reasons given above, the appeal fails and is dismissed with costs.