ANDHRA PRADESH HIGH COURT

M. Ariffuddin Nizami

Vs.

D.D. Chitale

W.A. No. 100 of 1971 and 150 of 1971

(M. Krishna Rao and Chennakesava Reddy, JJ.)

11.08.1972

JUDGMENT

Chennakesava Reddy, J.

1. These two Writ Appeals are directed against the judgment of our learned brother Rama Chandra Rao, J., allowing the Writ Petition presented by respondents Nos. 1 and 2 herein under Article 226 of the Constitution and quashing the order of the State Government in G.O. Ms. No.8. Education, dated 3rd January,1966. Respondents 5,7,8,9 and 10 in the Writ Petition are the appellants in W.A. No.100 of 1971 and Respondent No.4 is the appellant in W.A. No. 150 of 1971.

2. The short and relevant facts necessary for the decision of these appeals may briefly by stated: Applications were invited on 1st September,1964, by the Andhra Pradesh Public Service Commission for appointment of one Associate Professor in Architecture, four Assistant Professors in Architecture and four Lecturers in Architecture in the Andhra Pradesh Technical Education Service. The Writ Petitioners 1 and 2 who traced the history of their clean and unblemished record of service from 1945 and 1939 respectively claim to be highly qualified and experienced persons in Architecture. Suffice to say that they were working as lecturers in Architecture in the Government College of Fine Arts and Architecture, Hyderabad at the material time. Both the petitioners vehemently protested against ignoring their seniority-cum-merit and suitability for promotion as Assistant Professors. However, in response to the advertisement the writ petitioners also applied for direct recruitment to the posts of Associate Professor and Assistant Professor in Architecture and their applications were forwarded by the Government in their letter No. 5716-DI-64-2, Education, dated 25th October,1964, with a recommendation that in case the two candidates were otherwise qualified, the Government proposed to relax age Rules and General Rule 3 (15) in their favor. Pursuant to such recommendation of the Government, the Service Commission entertained the applications of respondents 1 and 2. under rule 5(2) of the Commission's Rules of Procedure, the Director of Technical Education who is the Head of the Department was requested by the Commission in its letter No. 997-G/1964 dated 14th December, 1964, to be present with the Commission at the time of the oral test for the said posts or in the alternative to nominate a representative who is an officer next to him in rank or grade.

Thereupon, the Director of Technical Education by his letter No. B-683/1964 dated 17th December,1964, nominated Sri Salamath Ali Khan, Principal of the College of Fine Arts and Architecture, Hyderabad to be present with the Commission at the time of the oral test of the candidates. It appears that the said Salamath Ali Khan who sat with the Commission at the time of the interview of the respondents and the appellants entered earlier into an agreement of partnership in a private Consortium of Architects with some of the applicants. The Commission found that the petitioners were not eligible to be considered for promotion and selected respondents 4 to 12 on merit. Accordingly, the Government of Andhra Pradesh issued G.O.Ms. No.8 Education, dated 3rd January,1966 approving the selection of these candidates made by the Service Commission by the method of direct recruitment and appointing them in various posts mentioned therein. Petitioners 1 and 2 aggrieved by this selection made a representation to the Government unsuccessfully on 13th August,1965, and ultimately filed this Writ Petition seeking to quash the G.O. passed by the Government on 3rd January,1966, appointing respondents 4 to 12 to the posts mentioned therein alleging inter alia that the selection made by the Service Commission and the appointments based thereon made by the Government were vitiated by the bias of Sri Salamath Ali Khan who was emasshed in the familiar net of professional obligations towards his associates and partners in the profession and that all the posts should not have been filled up by direct recruitment ignoring the just claims of the petitioners for promotion to the next higher post.

3. The learned Single Judge upheld both the contentions and allowed the Writ Petition.

4. Aggrieved by the said decision, respondents Nos. 4,5,7,8,9 and 10 in the Writ Petition filed these Writ Appeals. In these Writ Appeals the basic question that presents itself for decision is whether the selection made by the Public Service Commission has to be struck down as vitiated by the prohibition of 'bias' and particularly due to the participation of Mr. Salamath Ali Khan in the proceedings of the Public Service Commission. For the decision of this question it is necessary to state a few more relevant facts relating to the agreement of partnership executed by and between Mr. Salamath Ali Khan and respondents 4,5,8, 11 and the first Writ Petitioner. On 30th August, 1964, Mr. Salamath Ali Khan and respondents 4,5,8,11 and the first Writ Petitioner who are all consulting Architects and carrying on separately their profession and business entered into an agreement of partnership for the preparation of lay out plan for the University at Rajendranagar wherein they agreed to pool their efforts and work together for the project and share the profits and losses.

5. The applications for appointment of one Associate Professor, four Assistant Professors and four Lecturers were called for by the Public Service Commission on 1st September,1965. The petitioners and respondents 4 to 12 applied in response to the advertisement. The oral test for selection was held on 30th and 31st December,1964 by the Public Service Commission Mr. Salamath Ali Khan sat with the commission and participated in the selection for the said posts. He might have had most excellent and upright motives. But would right minded people, looking at the situation as a whole, think that the selection was fair and not biased in any way by the vitiating 'interest' of Mr. Salamath Ali Khan? Is his participation in the selection fatal to the concept of impartiality and appointment by merit enshrined in Articles 14 to 16 of the Constitution of India? But the first Writ Petitioner was himself a party to the said agreement. He had prior knowledge of the predisposition of Mr. Salamath Ali Khan and took his chance in the selection. It at once raises the conundrum whether the petitioners are barred from raising any

objection to the selection by the doctrine of waiver.

6. Before we proceed to set out our answer to this puzzling problem we may pause to observe that the State Public Service Commission are, to use a cliche which puts the point well "bulwarks of our Constitution" and are established to secure complete independence and impartiality in the matter of appointments purely on merit and what is even more important the constitutional guarantee of equality of opportunity in matters relating to employment under the State. With the object of making them completely independent of the Government of the day, the chairman and the members of the Commission are debarred from accepting any office either under the State Government or under the Central Government after they cease to hold office, lest the executive should temp them to depart from their duty. Any selection by such an institution should not only be impartial, but should also appear impartial to all right minded persons. There should be no reasonable likelihood of bias in favor of one or the other.

7. Mr. Salamath Ali Khan is a partner in the profession along with the respondents 4,5,8 and 11 and petitioner No.1. He sat with the Public Service Commission and respondents 4 to 12 were selected. We have to ensure that the sacred role assigned to the Public Service Commissioner under our Constitution does not appear affected or whittled down and the impartiality of the selection impaired by 'bias' in favor of one person or the other.

8. The learned Counsel for the appellants submits that the participation of Mr. Salamath Ali Khan does not give rise to any bias as the agreement was a mere agreement to form a partnership. He further submits that the test of bias as a vitiating factor is whether there was in fact a real likelihood of bias.

9. In "Principles of Administrative Law" by J.A.G.Griffith, Professor of English law, university of London and H. Street, Professor of English law, University of Manchester personal 'bias' has been defined thus at page 157:-

> "The third type of bias is personal bias. A Judge may be relative, friend or business associate of a party, or he may be personally hostile as a result of events happening either before or during the course of a trial. The Courts have not been consistent in laying down when bias of this type will invalidate a hearing. The House of Lords in *Frome United Breweries v. Bath Justices*[1], approved an earlier test of whether there is a real likelihood of bias."

In "Administrative Law" by H.W.R. Wade, professor of English law in the University of Oxford it is stated under the rule against 'bias' as follows at page 159:-

> "The rule at common law is that any direct pecuniary interest, however, small disqualifies the adjudicator, while personal interest of any other kind must be such as to raise a real likelihood of bias."

S.A. De Smith in his book 'Judicial Review of Administrative Action' has explained 'real likelihood' of bias at page 244 thus;

[1] LR (1926) AC 586

> "A 'real likelihood' of bias means at least substantial possibility of bias. The Court, it has been said, will judge of the matter 'as a reasonable man would judge of any matter in the conduct of his own business". The test of real likelihood of bias, which has been applied in a number of leading cases in magisterial and liquor licensing law, is based on the reasonable apprehension of a reasonable man fully appraised of the facts. It is no doubt desirable that all judges, like Caesar's wife, should be above suspicion, but it would be hopeless for the Courts to insist that only "people who cannot be suspected of improper motives" were qualified at common law to discharge judicial functions, or to quash decision on the strength of the suspicion of fools or other capricious and unreasonable people."

What is the position if the Court is satisfied, on the evidence before it, that there was no real likelihood of bias, but is nevertheless of the opinion that a reasonable man, at the time when decision under review was made, could well have suspected that the tribunal would be biased? Does the public interest nevertheless demand that the original decision be set aside. The cases do not speak with one voice on this matter. The Courts have often quashed decisions on the strength of the reasonable suspicions of the party aggrieved, without having made any finding that a real likelihood of bias in fact existed.

> "A reasonable apprehension of bias may arise because of the professional, business or other vocational relationship of an adjudicator with a party before him".

S.A. de Smith in his book 'Constitutional and Administrative Law at page 558 dealing with the rules of natural justice observed as follows:-

> "The rule has two main aspects. First, an adjudicator must not have any direct financial or proprietary interest in the outcome of the proceedings. Secondly, he must not be reasonably suspected, or show a real likelihood of bias.....likelihood of bias may arise from a number of causes, membership of as organization that is a party to the proceedings; partisanship expressed in extra judicial pronouncements; the facts of appearing as a witness for a party to the proceedings; personal animosity or friendship towards a party, family relationship with a party, professional or commercial relationships with a party; and so on..... The test of likelihood of bias must be applied realistically."

Lord Denning M.R. in *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and others*[2], carefully explained the rule relating to bias. He observed:-

> "In considering whether there was a real likelihood of bias, the Court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would or did, in fact favors one side at the expense of the other. The Court looks at the impression which would be given to other people. Even if he was as impartial as could

be, nevertheless if right minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand;

[2] LR (1969) I QB 577

See. *Reg. v. Huggins*[3], and *Rex. v. Sunderland Justices*[6], per Vaughan Williams L.J. Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough; See *Reg. v. Camborne Justice, Ex-parte Pearce*[4], and *Reg. v. Nailsworth Licensing Justices, Ex parte Bird*[5], There must be circdumstances from which a reasonable man would think it likely or probable that the justice or chairman, as the case may be would or did, favor one side unfairly at the expense of the other. The Court will not inquire whether he did in fact, favor one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking: 'The Judge was biased'".

10. The rule3 against bias has been enunciated by the Supreme Court in *G. Nageswara Rao v. A.P.S.R.T.C. Corporation*[7], Subba Rao, J. (as he then was) observed thus:-

"The aforesaid decisions accept the fundamental principle of natural justice that in the case of quasi judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interest in one party or the other should not, even formally, take part in the proceedings though in fact he does not influence the mind of the person, who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The hearing given by the Secretary, Transport Department, certainly offends the said principle of natural justice and the proceeding and the hearing given, in violation of that principle, are bad."

The Supreme court again dealing with this legal principle in *Manak Lal v. Dr. Premchand*[8], observed as follows:-

"It is well settled that every member of a tribunal that is called upon to try issues in judicial or quasi judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. As Viscount Cave L. C. has observed in *Frome United Breweries Co. v. Bath Justices*[9],

This rule has been asserted not only in the case of Courts of Justice and other Judicial Tribunals, but in the case of authorities which, though in no sense to be called Courts,

have to act as judges of the rights of others.

In dealing with cases of bias attributed to members constituting tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however, small it may be in subject

[3] LR (1895) I QB 563
[4] LR (1955) I QB 41
[5](1953) 2 All ER 652
[6] LR (1901) 2 KB 357 (CA)
[7]1959 SCJ 967 : (1959) 2 MLJ (SC) 156 : (1959) 2 An.WR (SC) 156 : AIR 1959 SC 308
[8] AIR 1957 SC 425 : 1957 SCJ 359 : 1957 SCR 575 : (1957) MLJ (Crl) 254
[9] LR (1926) AC 586

matter of the proceedings, would wholly disqualify a member from acting as a Judge. But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case. "The principle" says Halsbury, "nemo depet esse judex in causa propria sua" precludes a justice, who is interested in the subject matter of a dispute, from acting as a justice therein. (Halsbury's Laws of England, Vol. XXI, p.535, para 952). In our opinion there is and can be no doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

On the facts the learned Judges held that the constitution of the Tribunal suffered from a serious infirmity in that Sri Chhangani who had appeared for the opposite party Dr. Premchand was appointed chairman of the Bar Council Tribunal.

11. The same principle was enunciated with equal emphasis by Hedge, J., in *A.K. Kraipak v. Union of India*[10], In that case Nagisbund was appointed one of the members of the selection board. He was also one of the candidates seeking to be selected to the All India Forest Service along with the petitioners and others. he sat in the selection board and participated in its deliberations when the names of the other candidates were considered for selection. The learned Judge observed:-

"It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the selection board. he must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All India Service is entitled to great weight. But then under the circumstances it was improper to have included Nagisbund as a member of the selection board. He was one of the person to be considered for selection. It is against all cannons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the Committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the

deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney-General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human

[10](1970) 1 SCJ 381 : (1970) 1 SCR 457 : AIR 1970 SC 150

conduct. It was in the interests of Nagisbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates."

In the instant case, as already mentioned above, Mr. Salamath Ali Khan and respondents Nos. 4,5,8 and 11 and the first writ petitioner were partners of the Consortium of Architects. The agreement was entered into on 30th August,1964 and the selection by the Public Service Commission took place in December,1964, a few months after the agreement was entered into. Mr. Salamath Ali Khan participated in the proceedings. As the head of the Department, his opinion as regards the suitability of candidates for selection was entitled to great weight. He participated in the deliberations of the selection and was a party to the preparation of the list of selected candidates in the order of preference. In the circumstances, a likelihood of bias towards persons who were partners along with him can reasonably be inferred. One cannot convince himself that Mr. Salamath Ali Khan could have been impartial. The real question is not whether he was biased. The question is whether there is a reasonable ground for believing that he was likely to have been biased towards his partners in the profession. In deciding the question of bias, we have to take into consideration the human probabilities and the ordinary course of human conduct. It is a question of fact to be decided in each case. We are of the opinion, in the circumstances, that there was a reasonable likelihood bias in the selection in favor of respondents. The selection was therefore vitiated and ought to be struck down. The decision relied upon by Mr. P.A. Choudhary in *Regina v. Camborne Justices* in support of the test of bias is not supported by the later decision in *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and others*, referred to above.

12. It is contended by Sri P.A. Choudary, learned Counsel for the appellants that the bias does not render the selection invalid as that objection against the participation of Sri Salamath Ali Khan was not taken by the first petitioner at the time of his interview although he was himself a party to the agreement. In other words, he has waived the objection. Therefore the question is whether the doctrine of waiver can be invoked in the circumstances. The first petitioner was no doubt a partner of the Consortium of Architects. Therefore, he was aware of the agreement. The second petitioner had no knowledge of this agreement. There is nothing on record to show that he was connected with the consortium in any way. It should be remembered that even the first petitioner did not know that Mr. Salamath Ali Khan would be one of the members sitting with the Commission in the selection of candidates until he saw him actually sitting with the Public

Service Commission to his great embarrassment when he was actually interviewed. Even thereafter when the petitioner sent representation to the Government on 30th August,1965, he never protested even in that petition against the participation of Mr. Salamath Ali Khan in the selection. It is therefore obvious that the petitioner was not aware that he had a legal right to object to the participation of Mr. Salamath Ali Khan. Waiver like election, presupposes that a person is fully cognizant of his rights and neglects to enforce them. Smith in his book 'Judicial Review of Administrative Action' (Second edition) dealing with the adjudication by one who is disqualified on the ground of likelihood of bias observed as followed:-

> "A party may waive his objections to adjudication by persons subject to those disqualifications. Objection is generally deemed to have been waived if the party or his legal representative knew of the disqualification and acquiesced in the proceedings by failing to take objection at the earliest practicable opportunity. But there is no presumption of waiver if the disqualified adjudicator failed to make a complete disclosure of his interest, or if the party affected was prevented by surprise from taking the objection at the appropriate time or if he was represented by Counsel and did not know of his right to object at the time."

In *Rex. v. Essex Justices*[11], the doctrine of Waiver has been lucidly explained as follows by Avory,J.:-

> "The other question that has been raised is whether there has been any waiver by the applicant of his right to object to the clerk sitting and acting as clerk at the hearing of the summons. The applicant in para 10 of his affidavit says: "During the proceedings at which I attended I felt embarrassed in my conduct of the case by reason of the feeling that although Mr. C. Gordon Jones had formally divested himself of his capacity of solicitor for my wife and was now a part of the Tribunal whose duty it was to adjudge the matter in question or was their legal advisor, he was adverse to me." He knew the fact, therefore, that the clerk to the justices was a member of the firm which had acted for his wife. He goes on: "I was not aware at the time that I could make an objection to his conducting the proceedings or advising the Magistrates or retiring with them." The question is whether in these circumstances the applicant can be said to have waived his right to make the objection. In answering that question we ought, in my view, to act upon the principle laid down by Lord Romilly, M.R. in *Vyvyan v. Vyuyan*[12], in these words : "Waiver or acquiescence, like election, presupposes that the person to be bound is fully cognizant of his rights, and that being so, he neglects to enforce them or chooses one benefit instead of another, either, but not both, of which he might claim". It cannot be said that the applicant was fully congnizant of his right to take objection to the clerk to the justices acting as such, and, that being so, he did not waive that right by failing to exercise it."

In the same effect are views expressed in *Manak Lal v. Dr. Prem Chand*, Gajendragadkar, J. (as he then was), observed at page 431 as follows:-

"The next question which falls to be considered is whether it was open to the appellant to take this objection for the first time before the High Court. In other words, has he or has he not waived his objection to the presence of Shri Chhangani in the Tribunal? Shri Daphtary does not seriously contest the position that the objection could have been effectively waived. The alleged bias in a member of the Tribunal does not render the proceedings invalid if it is shown that the objection against the presence of the member in question had not been taken by the party even though the party knew about the circumstances giving rise to the allegations about the alleged bias and was aware of his right to challenge the presence of the member in the Tribunal. It is true that waiver cannot always and in every case be inferred merely from the failure of the party to take the objection. Waiver can be inferred only if and after it is shown that the party knew about the relevant facts

[11] LR (1927) 2 KB 475

[12]20 Beav 65

and was aware of his right to take the objection in question."

In this case it is clear as already noticed that the petitioner was not cognizant of his legal right to object to the participation of Mr. Salamath Ali Khan. Therefore we are of the opinion that the petitioner had not waived his right to take the objection to the participation of Salamath Ali Khan.

13. The learned Counsel for the appellants relying upon the decision in *Manak Lal v. Dr. Prem Chand* contended that the petitioner must be held to have waived his objection. In that case the appellant himself was an Advocate with ten years standing at the Bar. Besides, he had the assistance of a lawyer in defending him in the proceedings before the Tribunal. In these circumstances the leanred Judges held that it would be extremely difficult to assume that neither the appellant nor his lawyer knew that the presence of Shri Chhangani in the Tribunal could be effectively challenged by them. The learned Judges observed as follows:-

"We are disposed to think that even a layman, not familiar with legal technicalities and equitable principles on which this doctrine of disability has been based would have immediately apprehended that the lawyer who had appeared for Dr. Prem Chand was authorised to sit in judgement over the conduct of the appellant and that might cause embarrassment to the appellant and might lead to prejudice against him. From a purely commonsense point of view of a layman, the position was patently awkward and so, the argument that the appellant was not conscious of his legal rights in this matter appears to us to be an afterthought....Since we have no doubt that the appellant knew the material facts and must be deemed to have been conscious of his legal rights in that matter, his failure to take the present plea at the earlier stage of the proceedings creates an effective bar of waiver against him."

But in the instant case we have held that the first petitioner was not conscious of his legal right and therefore the doctrine of waiver cannot be successfully invoked against him.

14. It is next argued by Mr. P.A. Choudary that the selection is purely an Administrative act and that the rules of natural justice would not apply to such an act. It is now well settled that the rules of natural justice are equally applicable to administrative proceedings. The Supreme Court in a more recent judgement in *A.K. Kraipak v. Union of India* observed as follows:-

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely : (1) no one shall be judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purposes of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi judicial in character. Arriving at a just decision is the air of both quasi judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala*[13], the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

In this case we have no doubt that Mr. Salamath Ali Khan can reasonably be suspected to have been biased and his advice must have greatly influenced the selection of candidates by the Public Service Commission.

15. The last contention raised by the learned Counsel is that the petitioners are not entitled to any relief in as much as there is inordinate delay in filing the writ petition. The learned Counsel relied upon *Racindra Nath v. Union of India*[14], in support of this contention. In that case there was a delay of 15 years. But in this case the impugned Government Order was issued on 3rd January,1966 and the Writ Petition was filed on 21st July,1967. We do not think in the

circumstances that the delay in this case is sufficient to disentitle the petitioners for relief.

16. We may now sum up our several conclusions : Whether a particulars set of circumstances constitutes bias is a question of fact to be determined in each case and there is no yard-stick to lay down the previse limits. The true test of bias is not whether there is a real likelihood of bias. But it is sufficient if a reasonable man thinks that there is a likelihood of bias and it is for the Court to determine whether there is such a reasonable apprehension. A plea of bias can be waived by omission to raise an objection. In order to constitute such waiver it should be shown that the particular person was conscious of his right to raise the plea of bias and also that he knew that he had the right to raise the plea at the particular point of time. In the absence of any such proof, it is not permissible for the court to infer waiver by the mere omission to raise the plea. The plea of bias a s a vitiating circumstance, is not confined of the law of natural justice and fair play and vitiates even administrative actions. Mere delay by itself is not a ground for rejecting an application under Article 226 of the Constitution unless it is so inordinate and likely to up set vested

[13] AIR 1969 SC 198

[14] AIR 1970 SC 470: (1970) 2 SCR 697 : (1971) 1 SCJ 182

rights of other parties who have received benefit on account of the delay or laches on the part of the writ petitioners.

17. For the forging reasons, the writ appeals deserve to be dismissed and are accordingly dismissed with costs. Advocate's fee ₹ 100/- in each.

Appeals dismissed.