

COURT OF APPEAL**Mohamed Mohideen Hassen et al****Vs.****N.S. Peiris et al**

C.A. 124/81 – Rent Board of Review No. 3303 – Bandarawela Rent Board. No. 17-1980

Writ of Certiorari. Allegation of bias on the part of adjudicating body – Personal interest

Petitioners were trustees of the Bandarawela Jumma Mosque. The 1st Respondent was the tenant of 6/2 Welimada Road, Bandarawela, the second Respondent was the Chairman of the Rent Board, Bandarawela and the other Respondents were members of the Rent Board.

The First Respondent applied by letter dated 1.9.80 to the Rent Board among other things to have the authorized rent determined. The Rent Board by its order dated 26.09.80 determined the authorized rent at Rs. 12.50 per month while granting relief in respect of all the other items applied for.

Petitioner filed application for a Writ of Certiorari to have the order of the Rent Board quashed for the following reasons.

1. That the 2nd Respondent who was the Chairman of the Rent Board was personally interested in the outcome of the application as he was in occupation of the adjoining premises viz. 6/1 Welimada Road, also belonging to the Petitioners.
2. That the 2nd Respondent gave preference to the hearing of the application of the 1st Respondent dated 1.9.80
3. That 2nd respondents and others refused to issue notice to the Commissioner of Wakfs as a necessary party or witness and made no record of this application nor of its rejection.
4. Respondents did not give the Petitioner a fair and impartial hearing.

Held: that the evidence pertaining to the allegations considered as a whole will lead to the probable conclusion that there was a real likelihood of bias on the part of the Rent Board and therefore the order of the Rent Board should be quashed.

APPLICATION for a Writ of Certiorari

Before: L.H. de Alwis, J. & Seneviratne, J.

Counsel: Faiz Mustapha for Petitioners.
Respondents absent and unrepresented.

Argued on: 25.11.1981

Decided on: 11.03.82

Cur. adv. vult.

SENEVIRATNE, J.

The petitioners in this Application are the trustees of the Bandarawela Jumma Mosque appointed by the Wakfs Board under Section 14 of the Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956. The first respondent to this application is a tenant of premises No. 6/2, Welimada Road, Bandarawela, belonging to the Jumma Mosque. The second respondent was the Chairman of the Rent Board of Bandarawela. The third to sixth respondents were the other members of the Board.

This is an application for a Mandate in the nature of a writ of Certiorari to quash the decision and order of the Rent Board, Bandarawela dated 26th September, 1980, in application No. 17/1980. (P9).

There are several averments and grounds on which the petitioners base this application for a Writ of Certiorari. I will refer only to the averments that are relevant to the submissions made by the learned Counsel for the petitioners, and for this decision. The petitioners served a notice to quit the premises No. 6/2 on the first respondent. The date of the notice to quit is not given in the petition but the petition referred to the reply (P4) of the first respondent dated 7th July, 1979, for the notice to quit. According to document P4 the date of the notice to quit appears to be 12th June, 1979. The first respondent made an application dated 1.9.1980; (P6) to the Rent Board, Bandarawela, seeking the following relief - (a) A certificate of tenancy, (b) Determination of authorised rent (c) Reconnection of the electricity and (d) Permission for the rent to be deposited in the Urban Council. This application was heard by the Rent Board,

Bandarawela, on 25.09.1980 the proceedings of which are marked P7 and it delivered its order on 26.09.80, a copy of which is marked P8. The Rent Board by this order marked P8 granted all the relief prayed for by the first respondent in his application, namely (a) a certificate of tenancy, (b) a determination of authorised rent at Rs. 12/30 per month, (c) an order that the electricity connection be restored and (d) permission to deposit the rent in the Urban Council.

The petitioners have, in their application averred that the entire proceedings of the Rent Board are vitiated and nullified for the following reasons:- (a) The second respondent who was the Chairman of the Rent Board was personally interested in the outcome of the application as he too was in occupation of the premises adjoining the premises 6/2, to wit: 6/1, Welimada Road, Bandarawela, belonging to the Bandarawela Jumma Mosque. In proof of this averment the petitioners have marked in evidence a copy of a letter dated 14.11.1980 written by the second respondent, an Attorney-at-Law to a client. This letter (P10) is written on a letter head of the second respondent which described him as an Attorney-at-Law and Notary Public and the address given on the letter head is 6/1, Welimada Road, Bandarawela. (b) The petitioners further allege that the second respondent gave preference to the hearing of the application of the first respondent which is dated 1.9.80. The Board, by a notice dated 5.9.80, fixed the inquiry for 25.9.80, on which day the proceedings were recorded, and made its order on 26.09.80 - P7 & P8. (c) The second to sixth respondents refused to issue a notice to the Commissioner of Wakfs as a necessary party or a witness although the application was made to do so on 25.09.80. The second to sixth respondents have not made a record of this application and also made no record of the rejection of this application. (d) The petitioners aver that as the Board did not give the petitioners a fair and impartial hearing and the quick disposal of the application clearly shows that the decision of the Board was hasty, biassed and pre-determined. On the above grounds the petitioners moved that the decision of the Rent Board dated 26.09.80 be quashed.

The reasons adduced by the Petitioners to obtain this Writ of Certiorari show that an allegation of bias has been made against the Rent Board of which the second respondent was the Chairman. According to English authorities "Bias" is a ground on which the proceedings of a judicial or quasi judicial body can be quashed. The

nature of the bias which the petitioner in an instance like this should prove on grounds of probability is a "Real likelihood of bias or reasonable suspicion of bias." A "real likelihood of bias" means at least a 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, is based on the reasonable apprehensions of a reasonable man fully apprised of the facts However, the pendulum has now swung towards a test of reasonable suspicion, founded on the apprehensions of a reasonable man who had taken reasonable steps to inform himself of the material facts. "Reasonable suspicion" tests look mainly to outward appearances; "Real likelihood" tests focus on the court's own evaluation of the probabilities; but in practice the tests have much in common with one another, and in the vast majority of cases they will lead to the same result." (1)

The case of *Metropolitan Properties Co. (F.G.C.) Ltd. Vs. Lannon & others* (2) is a case in which the facts are very similar to the application before this Court, and in which case the principles relevant to this application have been laid down. Metropolitan Properties Co. (F.G.C.) Ltd. was the owner of a number of flats in Oakwood Court, London. This company wanted the amount of rent for each of the flats determined in terms of the Rent Act of 1965. In terms of this Rent Act, the Rent Officer of the area determined the fair rent for these flats. As the rent determined by the Rent Officer of the area was considered to be not fair, this landlord company made an appeal to the Rent Assessment Committee of the area constituted under this Rent Act. The Rent Assessment Committee appointed had, as its Chairman, the respondent to this case, Lannon, a Solicitor. The Rent Assessment Committee inquired into the determination of the fair rent and fixed the fair rent, at a figure less than that determined by the Rent Officer and also less than that suggested as equitable by the tenants. This landlord company appealed on this decision under section 9 of the Tribunals and Inquiries Act of 1958. At the hearing of this appeal this landlord company also moved for a Writ of Certiorari to quash the assessment made by the Rent Assessment Committee of which Lannon was the Chairman. The ground urged for the writ was that the Chairman of the Rent Assessment Committee, Lannon, who was a solicitor was living with his father in a flat which was in a group of flats known as Regency Lodge Flats in another registration area of London. The

group of Regency Lodge Flats was owned by a subsidiary of the Metropolitan Properties Co. (F.G.C) Ltd. (the appellant). A determination of the fair rent for the flats in the Oakwood Court, London, would have a bearing on the fair rent for the flats in the Regency Lodge registration area. It was also proved that this subsidiary company of the appellant who owned the Regency Flats as landlords, had a dispute with the tenants regarding the fair rent. Lannon, the Chairman of the Assessment Committee, who was living with his father, who was a tenant of a flat in Regency Flats, had been advising his father regarding the fair rent for these flats and he had also advised certain other tenants of the group of flats regarding the fair rent. The appellant-company alleged that Lannon, the Chairman of the Assessment Committee, was disqualified from hearing the case as there were reasonable grounds for the landlord-company to believe that he could not give them an unbiased hearing. No suggestion of actual bias was made against the Chairman Lannon. Lord Denning, M.R. who delivered the judgment, held that "there was no actual bias on the part of Lannon and want of good faith but there was albeit unconscious, a real likelihood of bias." Lord Denning has then proceeded to lay down the principles of law on which a Court should determine whether there was a likelihood of bias on the part of a Court of Justice or an adjudicator. Lord Denning stated as follows:-

"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 or the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a likelihood that he would, or did, in fact favour 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 Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough. There must be circumstances from which a reasonable men would think it likely or probable that the justice, or chairman, as the case may be, would or did favour one side unfairly at the expense of the other. The Court will not inquire whether he did, in fact, favour one side unfairly. Suffice, is 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." Lord Denning held that the decision of the Assessment Committee was voidable and should be avoided. The appeal was allowed and the case was remitted to another Rent Assessment Committee.

The principle decided in the Metropolitan Property Company case has been followed by the Supreme Court. In *Re Ratnagopal* (3) a one man Commission of Inquiry had been appointed under the Commission of Inquiry Act to inquire into any abuses which had occurred in relation to tenders for government contracts. Ratnagopal was summoned as a witness by the Commissioner. Witness Ratnagopal refused to be sworn or affirmed and as such, was reported to the Supreme Court for contempt of the Commission in terms of the Commissioner of Inquiry Act. One of the defences taken by Ratnagopal was an allegation of "bias" against the Commissioner. This was heard before a Bench of three Judges and the judgment of T.S. Fernando, J. dealt with the submissions regarding bias. T.S. Fernando, J. stated as follows: "The probable test to be applied is, in my opinion, an objective one, and I would formulate it somewhat on the following lines: would a reasonable man in all the circumstances of the case, believe that there was a real likelihood of the Commissioner being biased against him?" T.S. Fernando, J., applying this test, held that "in this instance, the respondent Ratnagopal has failed to satisfy the Court that there was a likelihood of bias on the part of the Commissioner."

W.D. Simon and three others (Appellants) and the Commissioner of National Housing and three others (Respondents) (4) was an Application for a Mandate in the nature of a Writ of Certiorari to quash the proceedings and the order made by the second respondent, the Asst. Commissioner of National Housing, who held an inquiry under section 5(2) of the Protection of Tenants (Special Provisions) Act No. 28 of 1970. The petitioners filed an affidavit making allegations of bias and partiality against the second respondent and moved that the order be quashed on grounds that it was made contrary to the principles of natural justice. *Wimalaratne, J.* who delivered the judgment applied the tests of "real likelihood of bias" and "reasonable suspicion of bias" relying on the principles laid down in the *Metropolitan Co. (F.G.C.) Ltd.* case and the case of *In Re Ratnagopal*. Having considered the facts of that case he held that "The proceedings considered as a whole leave no room whatsoever for the view that there was a real likelihood of bias against the petitioners."

I will now consider the application before me on the basis of the principles of law applicable which I have set out above. The second respondent, was an Attorney-at-Law practising in the Bandarawela courts. The premises which were the subject matter of the application before the Rent Board was premises No. 6/2. The petitioners have adduced proof that the second respondent was a tenant of this Mosque in respect of the adjoining premises No. 6/1. There is no doubt whatsoever that the determination of the rent for premises No. 6/2 by the Rent Board of which the second respondent was the Chairman, would have a material bearing on any determination of the rent in respect of premises No. 6/1. The petitioners have further made the allegation that the Board refused an application to cite a witness without making any record of the same, and that the application of the 1st respondent was hastily disposed of. The second respondent particularly and any other members of the Board have not filed any counter affidavits denying these allegations. I am of the view that the evidence pertaining to the allegation, considered as a whole, will lead to the probable conclusion that there was real likelihood of bias on the part of the Chairman of this Rent Board, i.e. the second respondent. As I have come to this conclusion I hold that the order of the Rent Board which is the subject matter of this application should be declared void and that the proceedings be quashed as applied for. The application of the petitioners is allowed without costs as there was no appearance for the respondents.

L.H.de Alwis, J.— I agree.

Application allowed

References:

- (1) de Smith's Judicial Review of Administrative Action - 4th Ed. pages 262 and 263.
- (2) (1968) 3 Weekly Reports, 694.
- (3) (1968) 70 N.L.R. 409
- (4) (1972) 75 N.L.R. 471