

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 222 of 2017
APPEAL No. 226 of 2017

Dated : 16th June, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

The Kerala High Tension and Extra High Tension

Industrial Electricity Consumers' Association,
Productivity House, Jawaharlal Nehru Road,
Kalamassery – 683 104, Kerala,
Represented by its Secretary – Mr. K. Suresh
Appellant

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Versus

1. Kerala State Electricity Regulatory Commission

C.V. Raman Pillai Road, Vellayambalam,
Thiruvananthapuram – 695 010, Kerala
Represented by its Secretary

2. The Kerala State Electricity Board Ltd.,

Vydhyuthi Bhavanam, Pattom,
Thiruvananthapuram – 695 004, Kerala,
Represented by its Secretary.

Counsel for the Appellant(s) : George Poonthottam Ld. Sr. Adv
M.P. Vinod
Atul Shankar Vinod for App. 1

Counsel for the Respondent(s) : M.T. George for Res. 1
Subhash Chandran K.R
Krishna L.R for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In these two appeals, the Appellant – Kerala High Tension and Extra High Tension Industrial Electricity Consumers Association has assailed the orders dated 16th March, 2017 and 20th March, 2017 passed by the 1st Respondent – Kerala State Electricity Regulatory Commission (hereinafter referred to as “the Commission”).
2. During the course of the hearing of these two appeals, it was submitted by Learned Counsel for the Appellant that the members of the Commission who have signed the majority orders which have been impugned in these two appeals, were the officers of the 2nd Respondent, the Kerala State Electricity Board Ltd. (in short “KSEB”) prior to their appointment as Members of the Commission and have signed the petitions on behalf of the Board in which the impugned orders have been passed. Thus, ground of bias was raised on behalf of the Appellant very seriously. Accordingly, we have heard Learned

Counsel for the parties on the aspect of bias and hereby proceed to determine the same.

Factual Matrix

3. The Appellant is an Association of Industries principally of High Tension and Extra High Tension Industrial Consumers of electricity in the State of Kerala. It is a society duly registered under the Society Registration Act.

4. An order dated 1st June, 2011 was passed by the Commission in the matter of approval of Annual Revenue Requirement (ARR) and ERC of the 1st Respondent – KSEB for the year 2012-13. Another order dated 20.10.2012 was passed by the Commission in the matter of truing up of the accounts of KSEB for the Financial Year 2010-11.

5. Appeal No. 19 of 2013 was filed before this Tribunal by KSEB against the order dated 1st June, 2011 of the Commission. Similarly, Appeal No. 1 of 2013 was filed before this Tribunal by KSEB against the order dated 30th October, 2012 of the Commission. Both the appeals were heard together and disposed off by a common order dated 10.11.2014 directing the Commission to true up the employees

cost from Financial Year 2010-11 to 2012-13 as per the observations/directions contained in that order.

6. In pursuance to the said order dated 10.11.2014 of this Tribunal, a trueing up application was filed by KSEB before the Commission on 19.11.2014. The petition has been disposed off by the Commission vide order dated 16th March, 2017 (impugned in the Appeal No. 222 of 2017) with a majority of 2:1. It is pertinent to note here that the majority order of the Commission has been signed and issued by the two members namely Shri K. Vikraman Nair and Shri S. Venugopal. Chairperson of the Commission, Shri T.M. Manmohan has passed separate dissenting order.

7. Similarly, the KSEB filed another petition before the Commission on 21st April, 2015 in pursuance to the judgement dated 10.11.2014 of the Tribunal, for true up of employees cost for the Financial Year 2012-13. The petition has been disposed off by the Commission vide order dated 20th March, 2017 which has been impugned in the Appeal No. 226 of 2017 again with the majority of 2:1. This majority order also has been issued and signed by the two members namely Shri K. Vikraman Nair and Shri S. Venugopal. In this

case also, a separate dissenting order was passed by the Chairman of the Commission, Shri T.M. Manmohan.

Submissions of the parties

8. It was submitted on behalf of the Appellant that one of the Members of the Commission who is signatory to the majority order impugned in these two appeals, namely Shri S. Venugopal was in direct control of finances of KSEB when the truing up petitions were prepared and presented before the Commission. It is further submitted that the petitions were also presented to the Commission at that time by Shri Venugopal. It is argued that in these circumstances, the Member, Shri S. Venogopal was an interested party to the truing up petitions holding a bias in favour of KSEB and, therefore, the majority orders, to whom he is a signatory cannot be sustained and are liable to set aside on this very scope.

9. On behalf of Respondent No. 1 – Commission, it is submitted that no document has been produced on behalf of the Appellant to substantiate the allegation of bias. It is pointed out that the Appellant has only produced the true copies of the truing up petitions filed by KSEB before the Commission and perusal of these petitions would

show that these have been signed by Chief Engineer (Commercial and Tariff) on behalf of KSEB and not by Shri K. Vikraman Nair or Shri S. Venugopal. It is argued that the allegations of bias are absolutely baseless, misleading and liable to be rejected.

10. On behalf of the 2nd Respondent – KSEB, it is argued that the allegations of bias against the Members of the Commission are ill-founded and to allege bias against an expert body like the Commission without a proof tantamounts to negation of the wisdom shown by the Government in appointing the Members of the Commission and thus, liable to be dismissed with contempt. It is submitted that similar allegation of bias was previously raised before the High Court of Kerala in Writ Petition bearing No. 1955 of 2012 which was dismissed vide judgement dated 23rd July, 2015. It is submitted that the allegation of bias has been raised only as a pretext to get impugned orders quashed by hook or crook.

11. Reliance is placed upon the judgement of Hon'ble Supreme Court in Crawford Bayley & Co. Vs. Union of India and ors. (2006) 6 SCC 25 in which it has been held that the doctrine of bias is not attracted when the authorities belonging to the same department are

given adjudicatory functions. It has also been held that the doctrine comes into play only when it is shown that the officer concerned has personal bias or personal interest or is personally interested in the matters concerned. It is argued that in view of these principles laid down by the Apex Court the allegation of bias raised by the Appellant in the instant appeals loses any force.

Analysis

12. “Nemo Judex in Causa Sua” is a latin phrase meaning “No one should be a judge in his own case”. It is a fundamental principle of natural justice, emphasizing the need for impartiality and fairness in judicial proceedings. This principle ensures that those deciding a case are free from bias or from personal interest thereby promoting confidence in justice delivery system. This principle signifies that a person should not be the decision-maker in a situation where they have a direct or indirect personal interest. It is a core principle of natural justice, ensuring that justice is not only done but also seen to be done. This principle does not apply only to the judges in regular courts but also to anyone making decisions in a quasi-judicial capacity, such as Electricity Regulatory Commissions etc.

13. According to Lectric Law Library's Lexicon, any mental condition that would prevent a judge or a jury from being fair and impartial is called bias. A particular influential power which sways the judgment; the inclination or propensity of the mind towards a particular object. It may be ground for disqualification of the judge or juror in question.

14. In the instant case, both the impugned orders dated 16th March, 2017 and 20th March, 2017 of the Commission are the majority orders signed by the two members namely Shri K. Vikraman Nair and Shri S. Venugopal. Whereas the 3rd Member of the Commission Shri T.M. Manmohan, Chairperson dissented from the majority opinion and has given his separate minority view.

15. As pointed out by the Learned Counsel for the 1st Respondent – Commission, true copies of the truing up petitions have been filed by the Appellant along with memoranda's of appeals perusal of which show that these have been signed by Chief Engineer (Commercial and Tariff) on behalf of KSEB. However, the name of the Chief Engineer, who has signed the truing up petitions, does not appear on these two copies of the petitions.

16. We find that with the counter affidavit filed by the 2nd Respondent – KSEB itself, in both these appeals, copies of true up petitions have been annexed as Exhibit No. 1. Perusal of these Exhibits would reveal that truing up petitions have been prepared and signed by none other than Shri Venugopal as Chief Engineer (Commercial and Tariff) KSEB. In the affidavit filed along with the petition Shri S. Venugopal has deposed on oath that the contents of the petitions are true based on his information, knowledge and belief.

17. In the petitions, all the facts and calculations have been given with the prayer to the Commission to reconsider the truing up petitions for the Financial Years 2010-11 to 2012-13 as per the directions of this Tribunal contained in the common judgement dated 10th November, 2014 passed in Appeal Nos. 1 of 2013 and 19 of 2013.

18. It is manifest from the perusal of the truing up petitions filed before the Commission on behalf of KSEB in which the impugned orders have been passed, that these were prepared and submitted on behalf of KSEB by Shri Venugopal and the facts & figures mentioned therein were within his personal knowledge. Therefore, in these circumstances, it was not proper and in the interest of justice for Shri

Venugopal to participate in the proceedings of truing up petitions and to pass/sign the orders thereupon.

19. Patently, Shri Venugopal was not merely an officer of the KSEB with no connection or interest with the truing up petitions. In fact he had direct connection and interest in the truing up petitions as he was the officer responsible for preparing and submitting the petitions before the Commission. Such position and conduct of Shri Venugopal normally would give rise to charge of bias against him. It is a human tendency not to go against the facts and figures collected and assessed by one in certain capacity. It is difficult for us to ignore the contentions on behalf of the Appellant that Shri Venugopal would have found it difficult to go against the facts and figures which he himself had prepared and submitted to the Commission at one point of time.

20. On this aspect of bias which is under consideration in these two appeals, we find it apposite to quote the following observations of the Hon'ble Supreme Court in State of Punjab Vs. Davinder Pal Singh Bhullar and Ors. (2011) 14 SCC 770;

“28. The principle in these cases is derived from the legal maxim - nemo debet esse judex in propria sua causa. It applies only when the interest attributed is such as to render the case his own cause. This principle is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. (Vide Rameshwar Bhartia v. State of Assam, Mineral Development Ltd. v. State of Bihar, Meenglas Tea Estate v. Workmen and Transport Department v. Munuswamy Mudaliar.

29. The failure to adhere to this principle creates an apprehension of bias on the part of the Judge. The question is not whether the Judge is actually biased or, in fact, has really not decided the matter impartially, but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. (Vide: A.U. Kureshi v. High Court of Gujarat & Mohd. Yunus Khan v. State of U.P.)

30. In Manak Lal v. Prem Chand Singhvi this Court while dealing with the issue of bias held as under: (AIR p.430, para 6)

Actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not

necessary.... What is relevant is the reasonableness of the apprehension in that regard in the mind of the appellant.

31. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way. Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice, i.e., the Judge has to act fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial "coram non judice". Therefore, the consequential order, if any, is liable to be quashed. (Vide Vassiliades v. Vassiliades, S. Parthasarathi v. State of A.P. and Ranjit Thakur v. Union of India.)

32. In Rupa Ashok Hurra v. Ashok Hurra this Court observed that public confidence in the judiciary is said to be the basic criterion of judging the justice delivery system. If any act or action, even if it is a passive one, erodes or is even likely to erode the ethics of the judiciary, the matter needs a further look. In the event, there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as

regards the doctrine of integrity in the justice delivery system, technicality ought not to outweigh the course of justice -- the same being the true effect of the doctrine of ex debito justitiae. It is enough if there is a ground of an appearance of bias.

33. While deciding Rupa Ashok Hurra case, this Court placed reliance upon the judgment of the House of Lords in R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No.2), in which the House of Lords on 25.11.1998, restored warrant of arrest of Senator Pinochet who was the Head of the State of Chile and was to stand trial in Spain for some alleged offences. It came to be known later that one of the Law Lords (Lord Hoffmann), who heard the case, had links with Amnesty International (AI) which had become a party to the case. This was not disclosed by him at the time of the hearing of the case by the House. Pinochet Ugarte, on coming to know of that fact, sought reconsideration of the said judgment of the House of Lords on the ground of appearance of bias and not actual bias. On the principle of disqualification of a Judge to hear a matter on the ground of appearance of bias, it was pointed out: (Pinochet Case, AC p.132)

An appeal to the House of Lords will only be reopened where a party though no fault of its own, has been

subjected to an unfair procedure. A decision of the House of Lords will not be varied or rescinded merely because it is subsequently thought to be wrong.

34. In Locabail (U.K.) Ltd. v. Bayfield Properties Ltd. the House of Lords (sic Court of Appeal) considered the issue of disqualification of a Judge on the ground of bias and held that in applying the real danger or possibility of bias test, it is often appropriate to inquire whether the Judge knew of the matter in question. To that end, a reviewing court may receive a written statement from the Judge. A Judge must recuse himself from a case before any objection is made or if the circumstances give rise to automatic disqualification or he feels personally embarrassed in hearing the case. If, in any other case, the Judge becomes aware of any matter which can arguably be said to give rise to a real danger of bias, it is generally desirable that disclosure should be made to the parties in advance of the hearing. Where objection is then made, it will be as wrong for the Judge to yield to a tenuous or frivolous objection as it will be to ignore an objection of substance. However, if there is real ground for doubt, that doubt must be resolved in favour of recusal. Where, following appropriate disclosure by the Judge, a party raises no objection to the Judge hearing or continuing to hear a case, that party cannot subsequently complain that the matter disclosed gives rise to a real danger of bias.

35. *In P.D. Dinakaran (1) v. Judges Inquiry Committee* this Court has held that in India the courts have held that, to disqualify a person as a Judge, the test of real likelihood of bias, i.e., real danger is to be applied, considering whether a fair minded and informed person, apprised of all the facts, would have a serious apprehension of bias. In other words, the courts give effect to the maxim that 'justice must not only be done but be seen to be done', by examining not actual bias but real possibility of bias based on facts and materials. The Court further held: (SCC p. 410, para 41)

"41. ... The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision-making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a

position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially."

36. Thus, it is evident that the allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in hand. The court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order. Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order, etc. stands vitiated for want of impartiality. Such judgment/order is a nullity and the trial coram non a iudice."

21. Thus, it is manifest that while considering the allegation of bias against a judicial or quasi-judicial authority, it is not to be seen as to whether the authority is actually biased or, in fact has actually not decided the matter impartially but what matters is whether the circumstances are such as to create a reasonable apprehension in mind of others that there is likelihood of bias affecting the decision. At

the same time, actual proof of bias is not necessary, what is relevant is the reasonableness of the apprehension of bias in the mind of a party to the litigation. It is to be borne in mind that mere ground of appearance of bias and not actual bias is enough to vitiate the judgement/order. Justice should not only be done but should also seem to be done.

22. In the instant case the circumstances in which the impugned orders have been passed by the Commission, as noted herein above, would undoubtedly create a reasonable apprehension in the mind of any person that Shri Venugopal (one of the members of the commission who has signed the impugned orders) was biased towards KSEB and thus the majority order signed by him is affected by bias.

23. The facts and circumstances of this case narrated herein above clearly show that Shri Venugopal was completely involved in preparation and submission of truing up petitions on behalf of KSEB before the Commission in which the Impugned orders have been passed. Therefore, he had complete knowledge of the matter in question and ought to have recused himself from hearing the petitions. It was absolutely wrong and against the cardinal principles of natural

justice on the part of Shri Venugopal to sit in judgement over the truing up petitions which he himself had prepared and submitted to the Commission on behalf of KSEB. In such a situation, any reasonable and fair minded person would get a serious apprehension of bias against Shri Venugopal.

24. Hence, in our considered opinion, the allegation of bias raised by the Appellant against Shri Venugopal has force and cannot be brushed aside lightly. Shri Venugopal having himself prepared and submitted the truing up petitions before the Commission at one point of time was having full knowledge of the case beforehand and therefore, was disqualified to hear the petitions and pass orders thereon after becoming the Member of the Commission. The conduct of Shri Venugopal shows that he has acted as a judge in a case which he himself at once brought to the Commission as the concerned officer of KSEB.

25. In view of the above discussion, we are of the firm view that the impugned orders of the Commission are hit by the principle of “Nemo Judex in Causa Sua”. These cannot be sustained and are hereby set aside. The truing up petitions in both the cases are remanded back to

the Commission for fresh consideration as per law. In view of the pendency of these appeals before this Tribunal for a very long duration, we think it appropriate to direct the Commission to pass a fresh order within three months from date of this judgment.

Pronounced in the open court on this 16th day of June, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

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