CHAPTER-VII
DEPARTMENTAL OR OFFICIAL BIAS

1. INTRODUCTION

In the proceedings before the administrative authorities, usually the department is found as one of the party and in such condition the adjudicator may be interested in pursuing the policy of the department. The adjudicator, in such condition is disqualified only when there is strong policy bias. He is disqualified if he is too much involved with the departmental policy. He is disqualified only when he has shown such abnormal desire to uphold the policy or he is too much personally involved with the policy that he was completely closed his mind with respect to the issues before him in case H.C. Narayanappa v. State of Mysore\(^1\). The adjudicator is disqualified if it is found that he has taken improper attitude to uphold the policy of the department.

It is the responsibility of the government to frame policies and implement theses. Sometimes a law is needed for effective implementation of a policy. Generally, the courts exercise self-restraint in such matters and reject any challenge to a policy unless it is in violation of some constitutional restriction. Any administrative act inconsistent with the legislative policy is set aside. So it is self-evident that ministerial or departmental policy cannot be regarded as disqualifying bias.

\[^1\] A.I.R. 1960 S.C. 1073
In the implementation of a policy very often powers are conferred to make an order or decide some matter after hearing objections to it.

The procedure for hearing objection is subject to the rules of natural justice in so far as they require fair hearing. But they cannot be impeached on the ground of bias except as discussed above. In this regard the decision of the House of Lords in case of Franklin v. Minister of Town and Country Planning\textsuperscript{2}, is illustrative. The Minister had determined that Stevenage should be the first of the new towns under the Act of 1946. Strong objections were made and were fully heard by an inspection at a public inquiry. The Minister after considering the report confirmed the order. Before the Minister visited the site and made a public speech where he firmly resolved to set up the new town.

This was challenged on the ground that the Minister failed to consider the report fairly and without bias. The High Court held that the law required impartial consideration and that in fact had not been given. The Court of Appeal held that the law required impartial consideration, but that it had been given. However, the House of Lords held that the law did not require impartial consideration at all and the Minister could be as biased as he liked, provided that he followed the procedure laid down in the Act.

\textsuperscript{2} (1948) AC 87
2. Recent decided cases in Apex Courts of India

However, the position has been improved by legislation by passing the Tribunal and Inquiries Act 1958-71. In the United States the position improved by requiring independent hearing officers under the Administrative Procedure Act 1946. But in India, the law is where it was left by the House of Lords in the Arlidge case. The Supreme Court tried to improve it in the Gullupalli (first) case but it was overruled in the second Gullupalli case and never followed since then. In the above first case of Gullupali Nageswara Rao v. A.P.S.R.T. Corporation3, the order of the Govt. nationalizing road transport was challenged among other grounds, on the ground that the Secretary of the Transport Department who heard the objections was biased, being a person who initiated the scheme and also being the head of the department whose responsibility it was to exercise it. The Hon'ble Supreme Court held that the hearing given by the Secretary, Transport Department offended the principles of natural justice. The Court observed:

“The aforesaid decision 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 interested in one party or the other should not, even formally, take part in the proceedings.

3. A.I.R. 1959 S.C. 308
though in fact he does not influence the mind of the person, who finally decides the case. This is one of 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."

After the decision, the Govt. amended the Act and the function of hearing the objection was given to the concerned Minister. In the second case of Gullupalli Nageshwara Rao⁴ again challenged this Amendment of the Act on the ground of department bias because the Minister was the head of the Department concerned who had initiated the scheme and who was ultimately responsible for its execution. But in this case the Hon'ble Supreme Court rejected the petition and observed:-

"The relevant provisions of the Motor Vehicle Act do not sanction any dereliction of the principle of natural justice. Any person affected by the scheme of nationalization is required to file objections before the State Govt., and the State Govt. after receiving the objections and representations, gives a personal hearing to the objector as well as to the undertaking and approves or modifies the scheme, as the case may be. The provisions of the Act, therefore, do not authorize the

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4. A.I.R. 1959 S.C. 1376

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Govt. to initiate the scheme and thereafter constitute itself a judge in its own case. The entire scheme of the Act visualizes, in case of conflict between the under-taking and the operators of private buses, that the State Govt. should sit in judgment and resolve the conflict. The Act, therefore, does not authorize the State Govt. to act in derogation of the principles of natural justice."

In case of **Frome United Breweries Co. Ltd. v. Bath Justices**⁵, the House of Lords held that the decision of the tribunal, whereon three justices who referred the matter to the said authority sat, must be set aside on the ground that no one can both be a party and a judge in the same cause.

In the case of **Had Khemu Gawali v. Deputy Commissioner of Police, Bombay**⁶, an order passed under Section 57 of the Bombay Police Act, 22 of 1951 was challenged on the ground that since under the Bombay Police Act, the proceedings are initiated by the police and it is the police which heard and decided the case, the provisions of the Act militiate against one of the accepted fundamental principle of natural justice that the prosecutor should not also be the judge. But the petition was rejected on the ground that so long as the two

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5. 1926 A.C. 586
6. A.I.R. 1956 S.C. 559
functions of initiation and decision were discharged by two separate officers, there was no bias.

If the adjudicator decides any matter under the dictation from a superior authority, the decision will be vitiated on the ground of bias as in case of *Mahadayal Prem Chandra v. C.T.O.*\(^7\). Such dictation may be as to how the dispute is to be decided or it may be general direction laying down the general principles to be followed by the authority in disposing of certain types of cases. The direction as to how the adjudicator is to decide the dispute will vitiate the decision and the decision will be invalid. The general direction will also vitiate the decision if it is compulsive i.e. the adjudicator is bound to follow it. As regard the non-compulsive direction to the adjudicator, the opinion of Jain and Jain appears to be correct. On the basis of decision of the Supreme Court in the case of Rajagopala Naidu, Jain and Jain have derived the conclusion that non-compulsive directions to the quasi-judicial bodies may not be objectionable. Option use of the instructions as laying down relevant criteria for the exercise of its discretion by a quasi-judicial body may not be objectionable.

It is important that the right to object on the ground of bias may be waived as *Waiver of Objection*. The courts insist that the

\(^7\) *A.I.R. 1958 S.C. 667*
objection shall be taken as soon as the aggrieved person knows the facts which entitle him to object. If, after the knowledge of the disqualification arising out of the bias in the adjudicator, he keeps silence and allows the proceedings to continue without any protest and takes a chance of a favourable decision, then, he would not be allowed to alledge bias where the decision goes against him as in case of **G.Saran v. Lucknow University**. His silence, in such conditions, will amount to waiver of his right to objections on the ground of bias and, therefore, he cannot challenge the decision on the ground of bias. Thus, if a person having full knowledge about the members of the Selection Board keeps silence and appears before the Selection Board for interview, he will be presumed to have waived his right to challenge the selection on the ground of bias.

**Adverse Remarks**– Mala fide – In the absence of clear allegation against any particular officer, the plea of mala fide cannot be entertained. **Chaman Lal Goyal v. State of Punjab**, 9

**Article 311** – Judicial Officer – Misconduct – Disciplinary enquiry – Allegation of bias against Enquiry Officer – Petitioner delinquent officer has not approached reviewing authority (High Court) for change of Inquiry Officer or with any such allegation of bias – Inquiring authority

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turned down his application for change of Inquiry Officer on merits – Rules permitted him to approach reviewing authority but such steps have been taken by delinquent officer – No basis for allegation of bias – Inquiry report cannot be assailed as invalid. **K.P. Singh v. High Court of Himachal Pradesh**<sup>10</sup>  

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