

IN THE HIGH COURT OF BOMBAY AT GOA

Letters Patent Appeal No.3/2001

Mr. Bishen Singh Negi, major,
Ex-serviceman, Residing at
Flat No.6, Balaria Apartments,
Opp. Dias Building, Mangor Hill,
Vasco-Da-Gama, Goa.

..... Appellant.

V/s.

1. Union of India,
through Secretary of Defence,
Ministry of Defence, New Delhi.

2. Flag Officer, in Commanding,
Goa Area, INS Gomantak,
Vasco-da-Gama, Goa.

3. Officer-in-Charge,
INS Hansa, Varunapuri,
Mangor Hill, Vasco-da-Gama, Goa.

4. Estate Officer,
Captain, Commanding Officer,
INS Hansa.

..... Respondents.

Mr. S.S. Kantak, with Ms. Rakhi Chodankar, Advocates for
the appellant.

Mr. V.P. Thali, Sr. Central Govt. Standing Counsel for
the respondents.

CORAM : R. RADHAKRISHNAN &
P.V. HARDAS, JJ.

DATE : SEPTEMBER 25, 2002.

ORAL JUDGMENT : (Per RADHAKRISHNAN, J.)

Heard learned Counsel for the appellant and
the learned Sr. Central Govt. Standing Counsel for
the respondents. By this Letters Patent Appeal, the

appellant has impugned the order passed by the learned Single Judge in Writ Petition No.60/2001 which was summarily dismissed on 5.3.2001. The main grievance of the learned Counsel for the appellant is that the learned Single Judge has dismissed the above petition observing that the petitioner had not raised the plea of bias before the learned Estate Officer and also before the learned District Judge and had sought to raise this plea of bias only before the High Court. Learned Counsel for the appellant pointed out that this plea of bias was specifically raised before the learned District Judge in the Memo of Appeal, being Ground No. V, which reads as under :

" V-The impugned order cannot be sustained having been made by a person/authority who has acted as the judge of his own cause."

2. We have perused the Judgment of the learned District Judge who has also considered this issue of bias at length in paragraphs 13 and 14 of the Judgment of the learned District Judge and has negatived the contention of bias by detailed reasons.

3. Learned Counsel for the appellant submits that the learned Single Judge had erred in construing that the plea of bias was never raised in the appeal memo before the District Judge and the District Judge

had not considered the same and the same was sought to be argued for the first time before the Court in the aforesaid writ petition. In this context, the learned Counsel for the appellant brought to our notice a Judgment of the Hon'ble Supreme Court in the case of **Badrinath v. Government of Tamil Nadu and others**, reported in (2000) 8 Supreme Court Cases 395, wherein the Hon'ble Supreme Court has clearly held that in case of admitted and uncontroverted facts, the plea of bias can even be raised for the first time before the High Court in a Writ Petition under Article 226 of Constitution of India.

4. Under these circumstance, the learned Counsel for the appellant prays that the aforesaid order of the learned Single Judge which is based on erroneous facts ought to be set aside and the matter be remanded to the Single Judge to be heard strictly on its own merits.

5. Learned Sr. Central Govt. Standing Counsel appearing on behalf of the respondents contends that this plea was not raised at all before the learned Estate Officer and, as such, the learned Single Judge was right in not considering the issue of bias. Learned Sr. Central Govt. Standing Counsel does not dispute that this plea of bias was raised by

the appellant before the District Judge and the learned District Judge had considered the plea of bias.

6. After having considered the submissions of the learned Counsel for the appellant and the learned Sr. Central Govt. Standing Counsel for the respondents, we are clearly of the view that the appellant is entitled to raise this plea of bias before this Court. Even assuming that this plea of bias was not even raised before the learned District Judge in the Memo of Appeal and was not even considered by the learned District Judge, in view of the categorical Judgment of the Hon'ble Supreme Court in the case of **Badrinath v. Govt. of Tamil Nadu and ors.** (supra), the plea of bias can always be raised before this Court. Over and above, we may also note that the learned Single Judge has observed that the petitioner by not raising the plea of bias, has waived that plea, which is also erroneous, in view of the aforesaid Judgment of the Hon'ble Supreme Court.

7. From the record, it is expressly clear that the appellant did raise this plea of bias before the learned Single Judge, as we have pointed out above by quoting the relevant ground. Over and above, the learned District Judge by detailed reasonings, in

paragraphs 13 and 14 of his Judgment dated 15/12/2000 has considered very specifically this issue of plea of bias. Under these circumstances, we cannot agree with the submission of learned Sr. Central Govt. Standing Counsel on behalf of the respondents that this plea can never be raised since the plea was not raised before the learned Estate Officer. This submission of the learned Counsel for the respondents is totally baseless and cannot be sustained at all, both on the basis of the material on record as well as the aforesaid Judgment of the Hon'ble Supreme Court.

8. Under the aforesaid facts and circumstances, we find that the Judgment of the learned Single Judge cannot be sustained and hence the same is liable to be set aside. We restore the aforesaid Writ Petition No.60/2001 to the file and the same be placed before the learned Single Judge to be heard strictly on its own merits, in accordance with law. The Letters Patent Appeal is, accordingly, allowed with costs. The costs quantified at Rs.5,000/-.

S. RADHAKRISHNAN, J.

P.V. HARDAS, J.

ssm.