

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8629 OF 2011
(Arising out of SLP (C) NO. 17022 OF 2008)

Trilok Sudhirbhai Pandya Appellant

Versus

Union of India & Ors. Respondents

WITH

CIVIL APPEAL NO. 8630 OF 2011
(Arising out of SLP (C) No. 17021 OF 2008)

Nilkanth Sudhirbhai Pandya Appellant

Versus

Union of India & Ors. Respondents

AND

CIVIL APPEAL NO. 8631 OF 2011
(Arising out of SLP (C) No. 29771 OF 2009)

Laljibhai Kadvabhai Savaliya & Ors. Appellants

Versus

Gas Transportation and Infrastructure
Co. Ltd. & Ors. Respondents

JUDGMENT**A. K. PATNAIK, J.****Civil Appeals arising out of SLP (C) Nos.17022 of 2008 and 17021 of 2008:**

Leave granted.

2. These are appeals against the common order dated 06.12.2007 of the Division Bench of the High Court of Gujarat in Special Civil Application Nos.9015 of 2007 and 9016 of 2007.
3. The facts very briefly are that the Government of Gujarat by its letter dated 31.01.2006 requested the Government of India for approval of the nomination of persons to be appointed as Competent Authority for acquisition of right of user under the Petroleum and Minerals, Pipelines (Acquisition of Right of User in Land) Act, 1962 (for short 'the Act') and one of the persons was Shri V.I. Gohil, Retired Deputy Collector. In the letter dated 31.01.2006 of the Government of Gujarat making the aforesaid request to the Government of India, it was stated that the

expenses of pay and allowances and any other incidentals of the officials shall be borne by the respondent no.4-company from the date of their joining in the respondent no.4-company. The Government of India approved the appointment of Shri V.I. Gohil and issued a notification under Section 2(a) of the Act authorizing Shri V.I. Gohil to act as the Competent Authority under the Act for laying of the pipelines by respondent no.4 for transportation of natural gas in the State of Gujarat from the LNG terminals at Jamnagar and Hazira in Gujarat for distribution to various consumers located in the State of Gujarat and in the adjoining States of Rajasthan and Madhya Pradesh in respect of all the districts of Gujarat. The Competent Authority under the Act then issued notices under Section 6(1) of the Act to the appellants for the acquisition of the right of user of their properties and although the appellants filed objections to the proposed acquisition, the same was decided against the appellants. The appellants then filed claims for compensation under

Section 10 of the Act before the Competent Authority and the claim for compensation was taken up for hearing at the office of the respondent no.4. The appellants raised preliminary objections to the sitting of the Competent Authority at the premises of the respondent no.4 in view of the fact that the claim for compensation was in respect of the acquisition of right of user for the project of the respondent no.4.

4. When such preliminary objections were of no avail, the appellants filed writ petitions (Special Civil Application Nos.9015 of 2007 and 9016 of 2007) before the High Court of Gujarat challenging the notification dated 07.03.2006 of the Government of India appointing Shri V.I. Gohil as the Competent Authority for determination of compensation payable to the appellants under the Act for acquisition of the right of user in respect of their properties on the ground that the Competent Authority is likely to act with bias considering the fact that his pay and allowances and all other incidentals are being borne by the respondent no.4-company and the Competent

Authority is virtually an employee of the respondent no.4. By the impugned order dated 06.12.2007, the High Court held that simply because the Competent Authority was discharging the function from the premises of the respondent no.4 and was getting pay and allowances and perquisites directly from RGTIL and was provided rent free accommodation and use of the vehicle of the respondent no.4, the appointment of the Competent Authority cannot be held to be as one vitiated by the bias. The High Court relied on the decision of this Court in *Hindustan Petroleum Corporation Ltd. v. Yashwant Gajanan Joshi and Others* [1991 Supp (2) SCC 592] wherein a similar challenge to the appointment of an employee of Hindustan Petroleum Corporation Limited as Competent Authority under the Act on the ground of bias was rejected by this Court. The High Court also held that the Competent Authority was not adjudicating any rights of the landowners against the respondent no.4 and his primary duty was to determine the compensation as provided under Section 10 of the Act, which also has in-

built guidelines for such determination and if the owner of the land is aggrieved with the determination of compensation, he has a remedy by way of filing an application before the District Judge for determination of the compensation. The High Court accordingly dismissed the writ petitions.

5. The learned counsel for the appellants submitted that the High Court wrongly relied on the decision of this Court in *Hindustan Petroleum Corporation Ltd. v. Yashwant Gajanan Joshi and Others* (supra) because the acquisition of the right of user in that case was for a public sector company and an employee of a public sector company had been appointed as the Competent Authority, but in the present case the acquisition of right of user was in favour of the respondent no.4, which is a private sector company and this private sector company was paying the salary, allowances and all other incidentals of the Competent Authority. They submitted that in the aforesaid case of *Hindustan Petroleum Corporation Ltd. v. Yashwant Gajanan Joshi and Others* (supra) this Court

has observed that it would altogether be a different case if it was a case of a private employer and his employee was appointed as a Competent Authority and had further observed that a case of person in private employment cannot be equated with that of a person in public employment. They submitted that the law is well-settled that not only actual bias but also the apparent likelihood of a bias vitiates the appointment of an adjudicating authority. In support of this submission, they relied on the decisions of this Court in *Ranjit Thakur v. Union of India and Others* [(1987) 4 SCC 611], *Rattan Lal Sharma v. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School, and Others* [(1993) 4 SCC 10] and *Indian Oil Corporation and Others v. Raja Transport Private Limited* [(2009) 8 SCC 520]. They submitted that the very fact that the expenses of pay and allowances and all other incidentals of the Competent Authority are directly borne by the respondent no.4 is enough to establish that the Competent Authority is an employee of the respondent no.4 and there were sufficient

circumstances to create a reasonable apprehension in the mind of the appellants that the Competent Authority was likely to act with bias while determining the compensation payable to the appellants.

6. In reply, learned counsel for the respondents submitted that the respondent no.4 had no role in the appointment of the Competent Authority and it was the State Government which made the recommendation and the Central Government which made the appointment by a notification under Section 2(a) of the Act. He further submitted that under Section 10 of the Act the Competent Authority determines the compensation payable to the landowners but it does not exercise a judicial function. He submitted that the compensation determined by the Competent Authority is only in the first instance and if the amount so determined is not acceptable to either of the parties then the compensation shall, on an application by either of the parties, be determined by the District Judge within the limits of whose jurisdiction the land is situated. He further

submitted that the determination of the compensation by the Competent Authority is also in accordance with the statutory rules, and in particular Rules 4 and 4(a) of the Petroleum and Minerals, Pipelines (Acquisition of Right of User in Land) Act, 1962 and a perusal of these rules would show that they contained in-built guidelines to be followed by the Competent Authority while determining the compensation payable to the landowners. He submitted that this Court had in *Hindustan Petroleum Corporation Ltd. v. Yashwant Gajanan Joshi and Others* (supra) rejected a similar challenge to appointment of an employee of the company in whose favour the right of user is being acquired as the Competent Authority. He finally submitted that it is well-settled that violation of principles of natural justice will be a ground for the Court to interfere only if actual prejudice is shown by the person aggrieved. In support of this proposition, he relied on *State Bank of Patiala v. S.K. Sharma* [(1996) 3 SCC 364], *P.D. Agrawal v. State Bank of India* [(2006) 8 SCC 776] and *Ashok Kumar Sonkar v. Union of India*

[(2007) 4 SCC 54]. He also cited the decision of this Court in *Union Carbide Corporation v. Union of India* [(1991) 4 SCC 584] in support this submission that an appeal to a neutral District Judge as provided in Section 10 of the Act would wash away bias, if any, at the original stage.

7. For deciding the questions raised in these appeals, we have to refer to the relevant provisions of Sections 2(a), 5, 6, 10, 11 and 12 of the Act:

2(a) "Competent Authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the Competent Authority under this Act and different persons or authorities may be authorised to perform all or any of the functions of the competent authority under this Act in the same area or different areas specified in the notification."

5. Hearing of objections:-

- (1) Any person interested in the land may, within twenty-one days from the date of the notification under sub-section (1) of section 3, object to the laying of the pipelines under the land.
- (2) Every objection under sub-section (1) shall be made to the Competent Authority in writing and

shall set out the grounds thereof and the Competent Authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections.

- (3) Any order made by the Competent Authority under sub-section (2) shall be final.

6. Declaration of acquisition of right of user:-

- (1) Where no objections under sub-section (1) of section 5 have been made to the Competent Authority within the period specified therein or where the Competent Authority has disallowed the objections under sub-section (2) of that section, that authority shall, as soon as may be, either make a report in respect of the land described in the notification under sub-section (1) of section 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government and upon receipt of such report the Central Government shall, if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral, declare, by notification in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired and different declarations may be made from time to time in respect of different parcels of the land described in the notification issued under sub-section (1) of

section 3, irrespective of whether one report or different reports have been made by the Competent Authority under this section.

- (2) On the publication of the declaration under sub-section (1), the right of user [in the land specified therein shall vest absolutely in the Central Government free from all encumbrances.
- (3) Where in respect of any land, a notification has been issued under sub-section (1) of section 3 but [no declaration in respect of any parcel of land covered by that notification has been published under this section] within a period of one year from the date of that notification, that notification shall cease to have effect on the expiration of that period.
- (3-A) No declaration in respect of any land covered by a notification issued under sub-section (1) of section 3, published after the commencement of the Petroleum Pipelines (Acquisition of Right of User in Land) Amendment Act, 1977 (13 of 1977), shall be made after the expiry of three years from the date of such publication.
- (4) Notwithstanding anything contained in sub-section (2), the Central Government may, on such terms and conditions as it may think fit to impose, direct by order in writing, that the right of user in the land for laying the pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction, in the State Government or the corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in that State

Government or corporation, as the case may be, free from all encumbrances.

10. Compensation.

- (1) Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the Competent Authority in the first instance.
- (2) If the amount of compensation determined by the Competent Authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.
- (3) The Competent Authority or the District Judge while determining the compensation under sub-section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of—
 - (i) the removal of trees or standing crops, if any, on the land while exercising the powers under section 4, section 7 or section 8;

- (ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or
- (iii) any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner:

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3.

- (4) Where the right of user of any land has vested in the Central Government, the State Government or the corporation, the Central Government, the State Government or the corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent. of the market value of that land on the date of the notification under sub-section (1) of section 3.
- (5) The market value of the land on the said date shall be determined by the Competent Authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the District Judge referred to in sub-section (2), be determined by that District Judge.
- (6) The decision of the District Judge under sub-section (2) or sub-section (5) shall be final.

11. Deposit and payment of compensation.

- (1) The amount of compensation determined under section 10 shall be deposited by the Central Government, the State Government or the corporation, as the case may be, with the Competent Authority within such time and in such manner as may be prescribed.
- (2) If the amount of compensation is not deposited within the time prescribed under sub-section (1), the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay interest thereon at the rate of six per cent. per annum from the date on which the compensation had to be deposited till the date of the actual deposit.
- (3) As soon as may be after the compensation has been deposited under sub-section (1) the Competent Authority shall, on behalf of the Central Government, the State Government or the corporation, as the case may be, pay the compensation to the persons entitled thereto.
- (4) Where several persons claim to be interested in the amount of compensation deposited under sub-section (1), the Competent Authority shall determine the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them.
- (5) If any dispute arises as to the apportionment of the compensation or any part thereof or as to the persons to whom the same or any part thereof is payable, the Competent Authority shall refer the dispute to the decision of the

District Judge within the limits of whose jurisdiction the land or any part thereof is situated and the decision of the District Judge thereon shall be final.

12. Competent Authority to have certain powers of civil courts.

The Competent Authority shall have, for the purposes of this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commission for examination of witnesses.

8. A reading of the Section 2(a) of the Act shows that the person to be appointed as Competent Authority is to perform all or any of the functions of the Competent Authority under the Act in the same area or different areas specified in the notification. Accordingly, the Competent Authority is to hear objections of persons

interested in the land to the laying of the pipelines under the land and the order passed by the Competent Authority under Section 5 is final. On the basis of the report of the Competent Authority, the Central Government, if satisfied that the land is required for laying any pipelines for the transport of petroleum or any mineral, may declare under Section 6 of the Act that the right of user in the land for laying the pipelines should be acquired and on the publication of such declaration, the right of user in the land specified in the declaration shall vest absolutely in the Central Government free from all encumbrances. Under Section 10 of the Act, the Competent Authority in the first instance is to determine the compensation payable to a person interested in the land under which the pipeline is proposed to be, or is being, or has been laid for any damage, loss or injury sustained by him. Under Section 11, the amount of compensation determined under Section 10 is to be deposited with the Competent Authority within such time and in such manner as may be prescribed and the

Competent Authority is to pay on behalf of the Central Government, the State Government or the Corporation, as the case may be, the compensation to the persons entitled thereto and where several persons claim to be interested in the amount of the compensation, the Competent Authority is to determine the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them. Under Section 12, the Competent Authority has all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 for summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, reception of evidence on affidavits, requisitioning any public record from any court or office and issuing commission for examination of witnesses.

9. The aforesaid reference to the various provisions of the Act show that the Competent Authority has got vast powers, which affects the rights of persons interested in the land over which the pipeline is to be laid and on the

reports of the Competent Authority, the Central Government and the State Government are to take decisions affecting the rights of persons interested in the land. Under the provisions of the Act, therefore, the Competent Authority does not merely determine the compensation at the first instance in accordance with the statutory rules as has been contended by learned counsel for the respondent no.4, but has to perform various other quasi-judicial functions which are normally performed by public servants whose pay, allowances and other incidentals of service are met out of the public exchequer. If instead of public servants, a person is appointed whose pay, allowances and other incidentals are not paid out of the public exchequer but directly paid by a private employer such as the respondent no.4, for whom the right of user is being acquired and by whom the compensation is payable, persons interested in the land will have reasonable grounds for assuming that such a Competent Authority, who is dependent on a private corporation for his salary, allowances, accommodation

and transport allowances, will have a bias in favour of the private corporation.

10. This Court as early as in 1957 held in *Manak Lal, Advocate v. Dr. Prem Chand Singhvi and Others* [AIR 1957 SC 425] 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 the aforesaid decision, this Court also held:

“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.”

In the aforesaid decision, the observations of Viscount Cave L.C. in *Frome United Breweries Co. v. Bath Jussties* (1926 Appeal Cases 586 at p.590) that the rule that every member of

a Tribunal must be able to act judicially and without bias applies not only to judicial Tribunals but also in the case of authorities which have to act as Judges of the rights of others. In aforesaid decision, this Court also held that it would always be a question of fact to be decided in each case 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 litigants or the public at large a reasonable doubt about the fairness of the administration of justice.

11. In *Ranjit Thakur v. Union of India and Others* (supra), M.N. Venkatachaliah, J. writing the judgment for the Court held in Paras 16 and 17 of the judgment:

“16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting 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*’.

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the

apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, “Am I biased?” but to look at the mind of the party before him.”

12. Thus, as per the judgment of this Court the test of likelihood of bias is whether there is a reasonable apprehension in the mind of the party before the Court or the Tribunal that the Court or the Tribunal will not act with fairness and without bias on account of certain objective circumstances. There is no dispute in the present case that the salary, allowances, accommodation and transport were being borne by the respondent-company directly. Thus, the Competent Authority was virtually an employee of the respondent no.4-company and there were grounds for the appellants to entertain a reasonable apprehension in their mind that the Competent Authority will not act fairly and is likely to act with bias. In the judgment of this Court in *Ranjit Thakur v. Union of India and Others* (supra) it has been held that a judgment which is the result of bias or want of

impartiality is a nullity and the trial *coram non-judice*.

Thus, the entire proceedings for determination of compensation before Shri V.I. Gohil would be a nullity.

13. In *Hindustan Petroleum Corporation Ltd. v. Yashwant Gajanan Joshi and Others* (supra), relied on by the High Court as well as learned counsel for the respondent no.4, this Court has clearly made a distinction between a public corporation and private employer. In para 13 of the judgment, this Court has held:

“.... It would be to broad a proposition to extend the theory of bias to exclude persons only because such person draws the salary from the bodies like public corporation, State Government. It would altogether be a different case if it was a case of a private employer and his employee. We cannot equate the case of a person in private employment with that of a person in public employment. ...”

14. For the aforesaid reasons, we allow these appeals, set aside the impugned orders of the High Court as well as the proceedings for determination of compensation in the case of the appellants only. We, however, make it clear that this judgment will not affect any of the orders

passed by Shri V.I. Gohil with regard to acquisition of the right of user as the appellants challenged the appointment of Shri Gohil in the Writ Petitions before the High Court in the present case only after he started the proceedings for determination of compensation. We direct that the Union of India will appoint another unbiased person in place of Shri Gohil for determination of compensation payable to the appellants. No costs.

Civil Appeal arising out of S.L.P. (C) No.29771 of 2009

Leave granted.

2. This is an appeal against the order dated 17.07.2009 of the Division Bench of the High Court of Gujarat in Special Civil Application No.15424 of 2008.
3. In Special Civil Application No.15424 of 2008, the appellants had challenged the appointment of Shri V.I. Gohil as Competent Authority under the Act by notification dated 07.03.2006 and the High Court relying on the earlier order dated 06.12.2007 of the Division Bench of the High Court in Special Civil Application Nos.9015 of 2007 rejected the

contention that the appointment of Shri V.I. Gohil as Competent Authority was invalid.

4. For reasons stated in Civil Appeals arising out of SLP (C) Nos.17022 of 2008 and 17021 of 2008, we allow this appeal, set aside the impugned order dated 17.07.2009 in Special Civil Application No.15424 of 2008 as well as the proceedings for determination of compensation in the case of the appellants only. We make it clear that this judgment will not affect any orders passed by Shri V.I. Gohil with regard to acquisition of the right of user as the appellants filed the Writ Petition before the High Court in the present case only at the stage of determination of compensation. We direct that the Union of India will appoint another unbiased person in place of Shri Gohil for determination of compensation payable to the appellants. No costs.

.....J.
(R. V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,

October 13, 2011.