## LETTERS PATENT APPEAL.

*Before Bhandari, C. J. and Gosain, J.*

THE COURT OF WARDS OF THE ESTATE OF BEDI DEVINDER SINGH OF UNA, DISTRICT HOSHIARPUR,—*Appellant*

*versus*

IQBAL SINGH CHADHA,—*Respondent*

**Letters Patent Appeal No. 34 of 1956.**

1959

Apr., 15th

*The Treasure-trove Act (VI of 1878)—Section 7—Collector holding inquiry under—Whether acts in a* quasi-*judicial capacity—Collector initiating proceedings in his capacity as Deputy Commissioner and deciding the case in his capacity as Collector—Whether can be said to be a judge and prosecutor at the same time—*Quasi-*judicial tribunals—Procedure to be followed by—Whether the same as prescribed for Courts—Hearing—Requirements of—Evidence—Meaning of—Strict rules of evidence—Whether applicable to administrative tribunals—Bias—Meaning of—When can a judicial or* quasi-*judicial officer be said to be biased.*

*Held*, that a Collector who hears a case under the provisions of the Treasure-trove Act, 1878, acts in a *quasi*-judicial capacity and the procedure to be followed by him must be of a *quasi*-judicial character. The mere fact the Collector initiated the proceedings in his capacity as Deputy Commissioner and decided the matter in controversy between the parties in his capacity as Collector is not sufficient to indicate any bias or prejudice, conscious or unconscious, direct or indirect. In any case, the jurisdiction of the Collector to hear and determine a case under the said Act is exclusive for the legislature has made no provision for the transfer of such cases from one Collector to another and if he had declined to hear this case on the ground of interest, the proceedings could not have been decided at all. An officer, otherwise disqualified, may still act if his failure to act would nullify the law or close the doors of justice.

*Held*, that a *quasi*-judicial tribunal cannot be held to the technical strictness of the procedure prescribed for ordinary civil actions but he must follow the pocedure prescribed by or under the statute by which the tribunal has been created or, in the absence of such procedure, by the procedure which has been devised by the tribunal itself. It is of the utmost importance, however, that the procedure should be consistent with the rules of natural justice, that the elementary and fundamental principles of a fair and impartial trial should be observed, and that the positive provisions of the statute should be complied with. Notice of hearing should be given particularly if the statute so requires. The right to a hearing embraces the right to a reasonable opportunity to know the claims of the opposing party; the right to know the witnesses against him, the right to cross-examine those witnesses, the right to offer evidence in explanation or rebuttal, and the right to test, explain and refute. The requirement of a full hearing means one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the stand-point of justice and law, of the steps asked to be taken. It is not absolutely essential that formal issues should be framed in a proceeding before an administrative tribunal.

*Held*, that in its broadest sense the expression "Evidence" includes all the means by which an alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. In its narrower and techincal sense it consists of a set of rules which are believed to be best calculated to elicit and establish the truth. These rules of common sense have through constant application crystallized themselves into rules of law and have become a part and parcel of our jurisprudence. As these rules have been formulated with the object of ascertaining the truth, and as judicial and *quasi*-judicial tribunals are continuously engaged in eliciting and establishing the truth of the propositions placed before them, these rules should ordinarily be followed not only in trials before Courts of law but also in proceedings before administrative tribunals. The strict or technical rules of evidence applicable to trials do not, however, apply to proceedings before administrative tribunals and failure to apply such rules does not invalidate

such proceedings, provided the provisions of law are not departed from and the substantial rights of the parties are not violated. When no objection as to the admissibility of a document is taken before the tribunal, it should not be allowed to be raised in the High Court for the first time in a writ petition.

*Held*, that a tribunal has power to direct the course of the proceedings and, as one of the necessary incidents of that power, is at liberty to decline to summon witnesses when the party has agreed to produce them on his own responsibility, or when the party has failed to deposit the process-fee and the diet money within the time specified by it.

*Held*, that an Officer exercising judicial or *quasi*-judicial powers must approach the decision of every question presented to him with an open mind, without bias, prejudice, personal interest or ill-feeling towards any party. He must be ready and willing to hear, to weigh the evidence fairly and impartially and to determine the case upon its merits. Bias is a leaning of the mind; propensity or prepossession towards an object or view, not leaving the mind indifferent. It is synonymous with partiality and is inconsistent with a state of mind fully open to the conviction which evidence might produce. A judicial or *quasi*-judicial officer is said to be biased or prejudiced when he has a leaning or inclination to or against a party which so sways his mind to one side as to prevent him from holding the scale evenly between the parties or deciding the case impartially between them. This bias may arise on account of relationship or personal or pecuniary interest or on account of a leaning to or ill-will against a party. The personal interest, which disqualifies a judicial or *quasi*-judicial officer, must be an interest direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial or merely speculative or theoretical, for the mere vague suspicions of whimsical, capricious and unreasonable people cannot be made a standard to regulate the action or judicial officers. The fact that an administrative officer acts both as prosecutor and judge does not operate as a disqualification, as dozens of tribunals in which these two roles are combined are functioning all over the country, with the knowledge and approval of Courts.

*Letters Patent Appeal under clause 10 of the Letters Patent of the Punjab High Court against the judgment of Hon'ble Mr. Justice Bishan Narain, dated the 24th January, 1956, passed in Civil Writ No. 283 of 1955 (S. Iqbal Singh v. The Collector and another.)*

D. K. MAHAJAN and GANGA PARSHAD JAIN, for Appellant.

S. D. BAHRI, F. C. MITTAL and S. C. MITTAL, for Respondent.

JUDGMENT

Bhandari, C. J.

BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether the learned Single Judge was justified in interfering with the order of a Collector passed under the provisions of the Indian Treasure-trove Act of 1878.

The facts of the case are very simple indeed. The Punjab Government had entrusted the construction of a new road between Una and Nangal to one Sardar Iqbal Singh, a P.W.D. contractor. On the 25th June, 1954, certain workmen were levelling a portion of this road passing through the estate of Bedi Devinder Singh, which is under the superintendence of Court of Wards, when they found nine cups of gold, of the approximate value of Rs. 16,000 embedded in the soil. Six of these cups were taken over by Daulat Singh a Mistry of S. Iqbal Singh, two by Labhu a labourer, and one by Dhanna another labourer. Bedi Madhusudan Singh, Manager of the Court of Wards, came to know of this discovery but he was unable to obtain any information from Daulat Singh or the workmen and he accordingly reported the matter to the police. On the 29th June, 1954, the police were able to recover nine cups of gold all of which were handed over by the Deputy Commissioner,

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Hoshiarpur, to the Manager of the Court of Wards for being deposited in the treasury in the name of the Court of Wards. Most of these cups bore the inscription "Bedi Sahib Singh", an ancestor of Bedi Devindar Singh.

On the 10th July, 1954, S. Iqbal Singh contractor under whose supervision the road in question was being constructed addressed a communication to the Collector of Hoshiarpur under the provisions of section 4 of the Indian Treasure-trove Act in which he stated that while the digging operations were going on for levelling the road in question he came across nine gold cups of the approximate value of Rs. 16,000 at a place belonging to Government, being a part of the road which he was levelling. He had to go to Jullundur and Hoshiarpur the same day in connection with Government work and he accordingly entrusted these articles to Mistry Daulat Singh for safe custody. When he returned to Una on the evening of the 28th June, some police officers who were accompanied by Bawa Madhusudan Singh came and took the articles away from him. As the land from which the articles were recovered did not belong to any person, Iqbal Singh prayed that the articles in question be restored to him as the finder thereof.

On the 13th November, 1954, the Collector issued a notice under section 5 of the Act of 1878 requiring all persons claiming the treasure to appear before him on the 29th March, 1955. The only claimants to the property were S. Iqbal Singh who claimed to be the finder of the treasure, and Bedi Madhusudan Singh, the Manager of the land from which the treasure was recovered. After examining the evidence which was produced by the parties and after hearing the arguments which

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were addressed to him, the Collector came to the conclusion that the treasure had been found by the workmen who were engaged in the construction of the road and not by S. Iqbal Singh, and that S. Iqbal Singh was not entitled in any way to claim any part of the treasure. S. Iqbal Singh was dissatisfied with the finding at which the Collector had arrived and presented a petition under Article 226 of the Constitution, which came up for hearing before a learned Single Judge of this Court. The learned Judge quashed the proceedings taken by the Collector under the provisions of the Indian Treasure-trove Act as he was of the opinion that S. Iqbal Singh was not afforded a reasonable opportunity of putting his case before the Collector. The Court of Wards has appealed, and the question for this Court is whether the learned Single Judge was justified in interfering with the order of the Collector.

The learned Single Judge has assigned four reasons for quashing the order of the Collector, namely (1) that the Collector omitted to frame the issues which arose in the case; (2) that the Collector declined to summon the official witnesses whom the respondent wanted to produce; (3) that the Collector's order was based on certain documents which were not proved in accordance with law; and (4) that the Collector who was superintending the work of the Court of Wards, was interested in the Court of Wards and was disqualified on the ground of bias from hearing or deciding this case.

A Collector who proceeds to hear a case under the provisions of the Treasure-trove Act, acts in a *quasi*-judicial capacity and the procedure to be followed by him must be of a *quasi*-judicial character. He cannot be held to the technical

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strictness of the procedure prescribed for ordinary civil actions but he must follow the procedure prescribed by or under the statute by which the tribunal has been created or, in the absence of such procedure, by the procedure which has been devised by the tribunal itself. It is of the utmost importance, however, that the procedure should be consistent with the rules of natural justice, that the elementary and fundamental principles of a fair and impartial trial should be observed, and that the positive provisions of the statute should be complied with. Notice of hearing should be given particularly if the statute so requires. The right to a hearing embraces the right to a reasonable opportunity to know the claims of the opposing party ; the right to know the witnesses against him, the right to cross-examine those witnesses, the right to offer evidence in explanation or rebuttal, and the right to test, explain or refute. As pointed out by the Supreme Court of United States, requirement of a full hearing means one in which ample opportunity is afforded to all parties to make by evidence and argument, a showing fairly adequate establish the propriety or impropriety to, from the stand-point of justice and law, of the steps asked to be taken *New England Division's case Akron C and Y. R. Co.* v. *United States* (1).

In the above exposition of law it seems to me that there is no substance in the objections which have been raised. It is said that the Collector omitted to frame the issues which arose in this case and that this omission has operated to the prejudice of the respondent. As the title to treasure-trove belongs to the finder against all the world except the true owner, one of the important issues which always arises in such cases, is whether the person who claims to be the finder of the

(1) 261 U.S. 184

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treasure is in fact the finder thereof. The parties to this controversy were aware of this issue and produced evidence in support of their respective contentions. The complaint, therefore, that the appropriate issues were not framed is wholly devoid of force. In any case, it is not absolutely essential that formal issues should be framed in a proceeding before an administrative tribunal.

Again, it is said that the Collector relied upon certain evidence which was not produced before him in accordance with the provisions of the Indian Evidence Act. It appears that on the 7th April, 1955, when arguments in the case were being heard the petitioner produced two affidavits before the Collector, one from Dhani Ram, dated the 20th December, 1954, in which he alleged that he had come across the treasure when he was excavating the land, and the other from Dhanna, dated the 10th January, 1955, in which he corroborated Dhanni Ram. The learned Single Judge has expressed the view that these documents have not been properly proved and consequently that manifest injustice has been caused to the respondent. The learned Single Judge has proceeded on the assumption that a *quasi*-judicial tribunal is bound by the technical rules of evidence contained in the Indian Evidence Act. This is not so. In its broadest sense the expression "evidence" includes all the means by which an alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. In its narrower and technical sense it consists of a set of rules which are believed to be best calculated to elicit and establish the truth. These rules of common sense have through constant application crystallized themselves into rules of law and have become a part and parcel of our jurisprudence. As these rules have been formulated with the object of

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ascertaining the truth, and as judicial and *quasi*-judicial tribunals are continuously engaged in eliciting and establishing the truth of the propositions placed before them, these rules should ordinarily be followed not only in trials before Courts of law but also in proceedings before administrative tribunals. The strict or technical rules of evidence applicable to trials do not, however, apply to proceedings before administrative tribunals and failure to apply such rules does not invalidate such proceedings, provided the provisions of law are not departed from and the substantial rights of the parties are not violated. The respondent in the present case was represented by counsel before the Collector throughout but he raised no objection before the Collector either on the ground that the documents in question had been put in at a late stage of the proceeding or on the ground that they had not been properly proved. This objection should not in my opinion have been allowed to be raised in the High Court for the first time.

Nor is there any force in the contention that the Collector declined to summon the witnesses whom the respondent wanted to produce. On the 31st May, 1955, the Collector directed the counsel of the respondent to put in a list of witnesses by the 7th June, and to bring the non-official witnesses with himself on the said date. On the 7th June, the petitioner submitted an application in which he requested the Collector to summon the following witnesses on payment of diet money and process fee, namly :—

(1) J. N. Kakkar, S.D.O., P.W.D., Buildings and Roads Branch.

(2) Clerk in charge of the Land Acquisition Officer.

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(3) Durga Dass, Jemadar.

(4) Munshi Jagdish Chand.

(5) Gobind Das, Jemadar.

(6) Clerk of the Sub-Division Officer, Hoshiarpur.

(7) Clerk, Court of Wards.

The Collector ordered that witnesses Nos. 1, 2 and 6 only should be summoned, that diet money and process fee in regard to witness No. 6 should be deposited the same day, that witnesses Nos. 3, 4 and 5 should be brought by the respondent himself and that the case should be put up for hearing on the 21st June, 1955. On the 13th June, the respondent stated that the three non-official witnesses namely, Durga, Das, Gobind Das and Jagdish Chand were not willing to appear in Court unless summoned by the Collector, and prayed that they be summoned. The Collector dismissed this application on the following day, on the ground that the respondent was endeavouring to prolong the enquiry for he had agreed to bring the non-official witnesses himself and summonses were issued for the appearance of the Government servants only. On the 21st June the respondent failed to appear before the Collector or to produce witnesses in support of his case. The Collector then proceeded to pass the following order :—

"In this case the applicant has not appeared so far to give his statement and has been putting in various applications. The list of witnesses put in showed that most of them were to give evidence of formal nature. The applicant's counsel had agreed to produce witnesses without their being summoned. I see no reason

for issuing summons for the appearance of such witnesses. The applicant did not wish to have *dasti* summons. The applicant is given another opportunity to appear and give his statement if he so wishes. No further opportunity will be given."

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On the 30th June the respondent did not appear before the Collector. His counsel, however, told the Collector that he had sent a letter to the respondent concerning the hearing on the 30th June, that he had asked him to appear in person on that date and that he had received no reply to this communication. In view of this statement the Collector adjourned the case and later rejected the petitioner's claim to be the finder of the treasure-trove.

Witness No. 1, the Sub-Divisional Officer was to state only that a letter which is said to have been addressed to him by the petitioner concerning the discovery of the treasure-trove was received by him ; and witness No. 6 namely clerk of the Sub-Divisional Officer, Hoshiarpur, was to make a deposition to the same effect. The Collector directed that this witness should be summoned on payment of process-fee, but neither the process-fee nor the diet money was deposited by the respondent and the witness could not be summoned. Witness No. 7, clerk Court of Wards, was to give evidence of a formal nature, namely whether the place from which the discovery was made was or was not the property of the Court of Wards. The respondent had undertaken to produce the non-official witnesses on his own responsibility. He declined to take out *dasti* summons. The order of the Collector regarding deposit of process-fee and diet money of the clerk of the Sub-Divisional

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Officer was not complied with. In the circumstances it seems to me that the Collector was not unjustified in declining to summon the witnesses. A tribunal has power to direct the course of the proceedings and, as one of the necessary incidents of that power, is at liberty to decline to summon witnesses when the party has agreed to produce them on his own responsibility, or when the party has failed to deposit the process-fee and the diet money within the time specified by it. I am unable to hold that the discretion vested in the Collector has been wrongly or improperly exercised.

The learned Single Judge observes that although ordinarily he would not have interfered with the order of the Collector on merits, he has been constrained to interfere in the present case as the Collector was disqualified to sit in a proceeding which had been initiated at his instance and in which he was both the prosecutor and the judge. It is said that in view of the provisions of section 9 of the Court of Wards Act, the Deputy Commissioner of Hoshiarpur was in charge of Court of Wards in the district, that in his capacity as Deputy Commissioner he directed the Manager of Court of Wards to establish the correctness of his claim to the treasure, and that in his capacity as Collector he decided this claim in favour of the Court of Wards. The learned Single Judge has acordingly expressed the view that when the Collector held the enquiry under section 7 of the Treasure-trove Act, he was realy a judge in his own cause and that there was a real likelihood of operative prejudice in the mind of the Collector.

An officer exercising judicial *or quasi*-judicial powers must approach the decision of every question presented to him with an open mind, without

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bias, prejudice, personal interest or ill-feeling towards any party. He must be ready and willing to hear, to weigh the evidence fairly and impartially and to determine the case upon its merits. Bias is a leaning of the mind ; propensity or pre-possession towards an object or view, not leaving the mind indifferent. It is synonymous with partiality and is inconsistent with a state of mind fully open to the conviction which evidence might produce. A judicial or *quasi*-judicial officer is said to be biased or prejudiced when he has a leaning or inclination to or against a party which so sways his mind to one side as to prevent him from holding the scales evenly between the parties or deciding the case impartially between them. This bias may arise on account of relationship or personal or pecuniary interest or on account of a leaning to or ill-will against a party. The personal interest, which disqualifies a judicial or *quasi*-judicial officer, must be an interest direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial to merely speculative or theoretical, for as pointed out by Lord O'Brien, C.J., in *Rex (Donoghue)* v. *County Cork, JJ.* (1) "the mere vague suspicions of whimsical, capricious and unreasonable people" cannot be made a standard to regulate the action of judicial officers. The fact that an administrative officer acts both as prosecutor and judge does not operate as a disqualification, as dozens of tribunals in which these two roles are combined are functioning all over the country, with the knowledge and approval of Courts.

Now, can it be said that the Collector of Hoshiarpur was under such an influence as prevented him from deciding the case fairly and impartially between the parties to this litigation ?

(1) 1910 L.R. 2 I.R. 271

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The answer is clearly in the negative. There is nothing on the record to indicate that he had prejudged the case or that he had a personal or pecuniary interest therein, or that he was related to an interested person, or that he was biased or prejudiced against the respondent or bore the respondent any grudge or ill-will. The only allegation that has been made against him is that he initiated the present proceedings in his capacity as Deputy Commissioner and that he decided the matters in controversy between the parties in his capacity as Collector. This fact alone is not sufficient, in my opinion, to indicate any bias or prejudice, conscious or unconscious, direct or indirect. In any case, the jurisdiction of the Collector of Hoshiarpur to hear and determine this case was exclusive for the legislature has made no provision for the transfer of such cases from one Collector to another. If he had declined to hear this case on the ground of interest, the proceeding could not have been decided at all. It has been held that an officer otherwise disqualified may still act, if his failure to act would nullify the law or close the doors of justice.

I have gone carefully through the records of the case and an satisfied that the order of the Collector is as well reasoned as it is fair and just. S. Iqbal Singh states that while digging operations were going on and while he was giving directions to his employees his *Kassi* struck against the nine cups of gold. It is highly improbable that the contractor was wielding the shoval himself when the discovery was made. On the other hand, the Court of Wards had submitted affidavits of Labhu and Dhanna workmen who stated that Iqbal Singh was not present at all on the 25th June, 1954, and that the discovery was made by the workmen themselves. Iqbal Singh states that he sent a

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letter about the discovery to the Sub-Divisional Officer, P.W.D., and entrusted the treasure to Mistry Daulat Singh who was incharge of the work at the spot. If Iqbal Singh had entrusted the property only to Mistry Daulat Singh as alleged by him it is somewhat strange that a part of this property was recovered by the police from the workmen. In his original application Iqbal Singh gave no details of the circumstances in which the recovery was made ; he did not even positively assert that he had in fact come across the treasure. This application was put in fourteen days after the discovery of the treasure, and this delay had not been satisfactorily explained. Iqbal Singh did not produce any letters which he claimed to have sent to the Public Works Department. He was given several opportunities to establish his claim as finder of the treasure but he failed to do so and did not even take the trouble of appearing as a witness himself. The recovery memos prepared by the police showed that some of the gold utensils had the name "Bedi Sahib Singh", an ancestor of Bedi Davinder Singh, inscribed on them. It was in view of these several facts and circumstances that the Collector came to the conclusion that Iqbal Singh was not finder of the treasure, that the articles were in fact discovered by certain workmen, and that Iqbal Singh was not entitled in any way to claim any part of the treasure. I entertain no doubt in my mind that the conclusions at which the learned Collector has arrived are consistent with the probabilities of the case and the weight of evidence.

For these reasons I would allow the appeal, set aside the order of the learned Single Judge and dismiss with costs the petition presented by Iqbal Singh.

GOSIAN, J.—I agree.

*B. R. T.*