

(2014) 11 MAD CK 0488

In the Madras High Court

Case No : Writ Petition No. 19578 of 2013 and M.P. No. 2 of 2013

A.R. Kumaar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0488

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Judgement

M.M. Sundresh, J.—The Government of Pondicherry has enacted Pondicherry Khadi and Village Industries Board Act, 1980 (in short, "the Act") and also framed relevant rules. In exercise of powers conferred under Section 3 of the Act, it established the 2nd respondent for the purpose of promoting and developing Khadi and Village Industries in the Union Territory of Pondicherry. Under Section 4, the 1st respondent has been constituting the Board by appointing not more than nine members.

2. Under Section 11(2) of the Act, the 2nd respondent Board is empowered to appoint a financial Advisor-cum-Chief Accounts Officer and such other Officers and servants as it considers necessary for its effective performance of its functions. Under Section 28 of the Act, the 2nd respondent is required to submit the programmes before the 1st respondent for the creation of various posts. Accordingly, the posts have been created by the 2nd respondent, which have been approved by the 1st respondent. The 2nd respondent has appointed the 3rd respondent (I) as L.D.C on 29.8.1988, (II) as U.D.C on 3.9.1997, (III) as Assistant Programmer on 1.6.1998 and (IV) as Programmer on 1.11.1998. The 2nd respondent has published advertisement in The Hindu on 22.5.1999 inviting applications from the candidates possessing Master's Degree in Public Administration. Ten candidates submitted their applications. The three candidates, who have completed Master's Degree in Public Administration, were called for Interview, in which, the 3rd respondent was one of them. He was found

to be fit for recruitment. Accordingly, by the order dated 1.6.1999, the then Chief Executive Officer appointed the 3rd respondent as the Deputy Chief Executive Officer with effect from 1.6.1999. He joined duty therein and worked in the said post.

3. A resolution was passed by the 2nd respondent on 24.1.2001 by which it was resolved to transfer the post of Deputy Chief Executive Officer from Pondicherry to Karaikal along with the incumbent. Resolution No. 13 was passed by the 2nd respondent on 14.8.2001, which is as follows:

""The Board ratified the decision taken by circulation to abolish the post of Deputy Chief Executive Officer and to terminate the individuals with effect from 19.06.2001. Further, the Board was apprised of the subsequent developments that had taken place on the subject.""

4. Accordingly, the post of Deputy Chief Executive Officer was abolished and the 3rd respondent was terminated. A challenge was made by the 3rd respondent against the same by filing writ petition in W.P.No. 12446 of 2001. The writ petition was taken on file and an order of interim injunction was granted. A decision was made by the 2nd respondent to re-transfer the post of Deputy Chief Executive Officer along with two incumbents viz., respondent No. 3 from Karaikal to Pondicherry on 20.9.2004. By the letter dated 4.10.2004, the 1st respondent has stated that the 2nd respondent was competent to implement the said resolution. Accordingly, it was given effect to. A representation was given by the 3rd respondent dated 8.8.2005 offering to withdraw the writ petition with a request to rescind the earlier resolution of the Board dated 14.8.2001. After considering the same, the resolution was passed by the Board in Resolution No. 2 as follows on 31.8.2005:-

""The above subject matter has been placed before the Board in its 48th meeting held on 10-08-2005. After the Board has deferred the Agenda for being discussed in a separate meeting, since it requires further study. Hence, the matter was discussed in this meeting. After lengthy discussion, the Board has resolved to send a comprehensive proposal to Govt., seeking approval/clearance from Law Department, since the above W.P. filed by the Official is pending disposal in the File of Hon"ble High Court, Madras.""

5. The Law Department after receipt of the relevant records passed the following Order on 7.2.2006 as follows:-

"If it is administratively decided by the Board that the earlier resolution dated 14-08-2001 of the Board as well as other attendant abolition of post/termination order dated 19.06.2001 are to be rescinded. We do not see any legal objection is (sic. in) so doing, with the condition that this is to be effected subject to the Writ Petition and based upon an undertaking of the Dy. CEO to withdraw the same. Further action may be taken in co-ordination with the Senior Govt. Pleader, High Court, Madras.""

In pursuant to the same, resolution No. 9 has been passed by the Board on 17.02.2006, which is as follows:

""After close perusal of issue, the Board has resolved to rescind the Board's earlier Resolution No. 13 dated 14.08.2001 regarding abolition of the post of Dy.CEO after abolition of the post of Dy.CEO after obtaining necessary undertaking letter from the Writ Petitioner Thiru.G.Ganesan, Dy.CEO to withdraw the same and thereafter to consult the Senior Govt. Pleader at High Court for Puducherry for further action based on the advise of the Law Department, Puducherry.""

6. Subsequently, the 2nd respondent in Memorandum dated 9.3.2006 to the 3rd respondent has stated as follows:

"Adverting to his representation first cited and in pursuance of the Board's resolution second cited Thiru.G.Ganesan, Dy.CEO is informed that the Board has taken a decision to rescind the Board's earlier resolution No. 13 dt.14.08.01 regarding abolition of the post of Dy.Chief Executive Officer, on condition that he withdraw the W.P.No. 12446/2001 which is pending disposal on the file of Hon"ble High Court, Madras.""

7. Thereafter, the 3rd respondent withdrew the writ petition in W.P.No. 12446 of 2001. After getting legal opinion, the files are placed before the Chairman, (the Secretary to Government ((Ind & Com)) for approval. The matter was referred to the Law Department for advise. The Law Department has opined that it is for the 2nd respondent to take necessary action for implementing resolution No. 9 vis-a-vis the action taken by the 3rd respondent in pursuant to the Memorandum dated 9.3.2006. The 2nd respondent in Resolution No. 22, has resolved as follows:

""The subject matter of rescinding Board's earlier Resolution No. 13 of 38th meeting of the Board held on 14.08.01 regarding abolition of the post of Dy.CEO was discussed in depth, with reference to the dismissal of the W.P.No. 12446/2001 as withdrawn, advice of the Senior Govt. Pleader cum Public Prosecutor for Puducherry at High Court, Chennai and advice of Law Department. Then the Board has resolved to take up a detailed proposal to Government for approval""

8. The Note dated 18.10.2007 of the 2nd respondent was sent to the Government for approval. As per the direction of the Government, the original minutes are produced. In and by the Note dated 26.02.2008, the Department of Industrial Development (Ind. & Com.), has observed as follows:

"21. It is stated that the Board passed resolution No. 22 in the 51st Meeting held on 06.09.07 to rescind the Board's Resolution No. 13 of 38th Meeting held on 14.08.01 instead of 41st Meeting held on 14.08.01.

22. Hence, the proposal may be returned to the Chief Executive Office, Pondicherry Khadi and Village Industries Board, Puducherry with a request to

resubmit the proposal after passing a resolution to rescind the Board's earlier resolution No. 13 of 41st Meeting held on 14.08.01 regarding abolition of Dy.Chief Executive Officer post.'"

Accordingly, the Note was returned for re-submitting the same after complying with the directions issued therein.

9. Thereafter the Government has appointed a Chairman in G.O.Ms.No. 16/2012-Ind.B., dated 28.11.2012 appointing the Chairman to the Board, who has taken charge with effect from 13.12.2012. As the Board has not been reconstituted no further progress could be made, as the Government has not appointed the official/non-official members to the Board, which is under progress. These are the back ground facts governing the case.

10. The petitioner, who is also an employee of the 2nd respondent, has come forward to file this writ petition seeking a writ of Quo warranto on the ground that the 3rd respondent is an usurper of a public office. Learned counsel for the petitioner submitted that after the abolition of the post and termination of the 3rd respondent he cannot continue. Even otherwise there is no post as on today and therefore the writ petition will have to be allowed.

11. Per contra, learned counsel for the respondents submitted that the writ petition as filed is premature.

12. Under Section 11(2) of the Act, the 2nd respondent is competent to make appropriate appointments. Merely because the 1st respondent is yet to approve it cannot be said that the appointment is illegal. The 3rd respondent has been working from more than ten years. The budgetary allocation pertaining to the Secretary of the 3rd respondent has been approved by the 1st respondent from time to time. The petitioner has suppressed material facts about the subsequent developments which he has obtained under the Right to Information Act. The writ petition is not maintainable as no writ of quo warranto would lie. Therefore, the writ petition will have to be dismissed.

13. The scope and ambit of a writ of quo warranto is limited. It can only be issued when a person holding public office lacks eligibility or the appointment is contrary to the statutory rules. In the case on hand, the 3rd respondent has been appointed after due publication made in the news paper. Admittedly, the 2nd respondent has got power under Section 11(2) to make the appointment. Merely because the said appointment is yet to be approved by the 1st respondent, it cannot be said that the appointment is contrary to the statutory rules. The petitioner also has not established that the post of the 3rd respondent is a statutory one. It is settled law that suitability or eligibility of the candidate is within the domain of appointing authority and the power of judicial review is not required to be exercised, that too, when dealing with a writ of quo warranto. It is not as if the 3rd respondent lacks any qualification. The petitioner has also not established the fact that the appointment has been made contrary to the statutory rules. Considering the scope and ambit of a writ of quo warranto, the

Supreme Court in a recent pronouncement in Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and Others, held as follows:

""18. In The University of Mysore and Another Vs. C.D. Govinda Rao and Another, , Gajendrakadkar, J. (as His Lordship then was) speaking for the Constitution Bench, has stated thus:

""7. Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognized in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitle to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.""

[Emphasis supplied]

19. In High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others, , S.B. Sinha, J., in his concurring opinion, while adverting to the concept of exercise of jurisdiction by the High Court in relation to a writ of quo warranto, has expressed thus:

""22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain Vs. Union of India and Others,

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another, .

20. In Centre for PIL and Another Vs. Union of India (UOI) and Another, , a three-Judge Bench, after referring to the decision in R.K. Jain (supra), has ruled thus:-

""64. Even in R.K. Jain case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decision when impugned under the judicial review jurisdiction.""

21. From the aforesaid exposition of law it is clear as noon day that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.""

14. Applying the ratio of above decision to the case on hand, this Court is of the considered view that the writ petition is liable to be dismissed as not maintainable as the 3rd respondent can neither be termed as usurper nor he lacks the basic qualification. The appointment also cannot be termed as having been made contrary to the statutory rules.

15. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.