

(2010) 02 DEL CK 0366

In the Delhi High Court

Case No : Writ Petition (C) 10296 of 2009

Association For Development

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Commission for Protection of Child Rights Act, 2005 — Section 3, 3(2), 4
Constitution of India, 1950 — Article 14

Citation : (2010) 115 DRJ 277 : (2010) 3 ILR Delhi 522 : (2011) 7 RCR(Civil) 1106

Hon'ble Judges : A.P. Shah, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Prashant Bhushan and Pranav Sachdeva, for the Appellant; Gopal Subramaniam, SG, Amarjit Singh Chandhiok, ASG, Neeraj Chaudhari, CGSC and Khalid Arshad, for Respondent Nos. 1, 2 and 3/UOI and NCPCR, K.T.S. Tulsi Ravinder Singh and D.R. Bhatia for Respondent No. 4 and Meera Bhatia, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This writ petition in public interest was filed for declaring the appointment of respondents No. 4 & 5 as members of the National Commission for Protection of Child Rights (NCPCR) as illegal and void, alleging that they did not possess the required qualifications as per Section 3(2)(b) of the Commission for Protection of Child Rights Act, 2005. Respondent No. 1 Union of India and the respondent No. 2 NCPCR have filed a counter affidavit opposing the petition. It is inter alia their plea that the respondents No. 4 & 5 were nominated as members of NCPCR way back in April, 2007 and the writ petition filed in July, 2009 after considerable lapse of time is liable to be dismissed for the reason of laches alone. They have even otherwise opposed the petition. The respondent No. 4 has also filed a counter affidavit opposing the petition and justifying her appointment as the member of NCPCR.

2. The term of appointment of the respondents No. 4&5 will be expiring shortly hereafter on 10th April, 2010. No purpose would be served in adjudicating on

that aspect. The Supreme Court in *Arnit Das Vs. State of Bihar*, has held that it is settled practice that the Court does not decide matter which are only of academic interest on the facts of a particular case. The learned Counsel for the petitioner also has fairly not laid any stress/emphasis in that regard. He has however urged for transparency in the fresh appointments to be made to the NCPCR.

3. Even though in the writ petition no relief qua appointments in general to NCPCR has been claimed but we suggested to the learned Solicitor General to consider the said aspect and the learned Counsel for petitioner has also made several suggestions on the guidelines for future appointments.

4. Section 3 of the Act aforesaid provides for the constitution of the NCPCR by issuance of notification by the Central Government. The NCPCR is to consist of a Chairperson and six members out of which at least two shall be women. Section 3(2)(a) provides that the Chairperson shall be a person of eminence who has done outstanding work in promoting the welfare of children. The members, in terms of Section 3(2)(b) are required to be persons of eminence, ability, integrity, standing and experience in,-

(i) Education;

(ii) Child health, care, welfare or child development;

(iii) Juvenile justice or care of neglected or marginalized children or children with disabilities;

(iv) Elimination of child labour or children in distress;

(v) Child psychology or sociology; and

(vi) Laws relating to children.

5. The proviso to Section 4 of the Act provides as under:

that the Chairperson shall be appointed on the recommendation of a three member Selection Committee constituted by the Central Government under the Chairmanship of the Minister in-charge of the Ministry of Human Resource Development.

6. We had during the course of hearing suggested that the Selection Committee be broad based and suggested the involvement of independent experts in the field to ensure appointment of appropriate persons as Chairperson and members of NCPCR. We had also suggested the presence of the Chairperson of the UPSC and/or the Leader of Opposition in the Lok Sabha on the selection Committee. The counsel for the petitioner has suggested the judicial member of NHRC and the Cabinet Secretary to be the members of the Selection Committee. He has also proposed public advertisement inviting applications for the post of members of the NCPCR and putting in place of a procedure for inviting and considering objections by members of the public to any of the proposed names and certain other criteria.

7. The Learned Solicitor General without prejudice to his legal contentions, after obtaining instructions states that the Govt. of India desires the composition of the Selection Committee for selection of Chairperson and members to be left to be decided by and with the Minister in-charge of the Ministry of Human Resource Development as Chairperson of the Selection Committee. It is however assured that the suggestions aforesaid of this Court will be kept in view while deciding the composition of the Selection Committee and at least one member of the Selection Committee shall be an independent expert of eminence in the field of child rights or welfare. The Learned Solicitor General has further assured that immediately after completing the selection process and at least 30 days before the notification of appointment, the particulars of the members of the Selection Committee as well as of the selected candidate/s together with their qualification, experience and expertise shall be put up on the website of the Ministry of Human Resource Development. The Learned Solicitor General has contended that the aforesaid will allay the apprehensions expressed and should be allowed to be tested in the first instance.

8. We are now concerned with the order to be passed in this petition. We have considered whether any other directions/guidelines for future appointments as Chairperson and members NCPCR ought to be issued by us in this petition. As already observed, the petition is confined only to issuance of a writ of Quo-Warranto for declaring the appointments of respondents No. 4 & 5 as members of the NCPCR as illegal and void and which relief as aforesaid now no longer survives. We may notice that besides the respondents 4 & 5, the respondent No. 3 had been appointed as Chairperson of the NCPCR. The petitioner has in the petition itself stated that the bio-data of the respondent No. 3 shows that she at least fulfills the eligibility conditions of Section 3 of the Act. It thus cannot be said that all appointments to the NCPCR till now are vitiated. The counsel for the petitioner has contended that four other persons were sought to be appointed as members and who did not have the requisite qualification. Certain documents in this regard were handed over in the course of hearing. However, the counsel for the petitioner himself states that owing to the pendency of the present petition, the said appointments were not made. Thus, it is not as if notwithstanding the present petition, the appointments contrary to the statute are being made. The writ petition has had its salutary effect and the assurance meted out by the learned Solicitor General on behalf of the government that in future appointments, due regard shall be given to the suggestions made by this Court and recorded herein above, also cannot be ignored.

9. It is not as if the Act does not lay down any criteria whatsoever for the appointments. However we feel that considering the nature of the duties to be performed by the Chairperson and the members of the NCPCR, it may not be possible to lay down an objective criteria or qualification for appointment.

10. The Supreme Court recently in *N. Kannadasan Vs. Ajoy Khose and Others*, , in the matter of appointments to the State Consumer Dispute Redressal

Commission also held that such objective criteria cannot always be laid down keeping in view the status of the parties. There will always be an element of subjectivity in the said appointments. The parliament has reposed faith in the Minister for composition of a committee to select the Chairperson and members of the NCPCR. In the absence of anything to the contrary being shown, this Court specially at this stage, when the petitioner has not even challenged in the writ petition the selection procedure laid down in the Act, we are not inclined to lay down any further guidelines or conditions. The concessions made by the learned Solicitor General are further likely to bring in an element of transparency and ensure appointments in accordance with the Act.

11. It is well settled that the mere possibility of abuse of process of law, does not so invalidate a legislation. It must be presumed, unless the contrary is proved that administration and application of a particular law would be done "not with an evil eye and unequal hand" In this regard, see *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, & *Budhan Choudhry and Others Vs. The State of Bihar*, and both reiterated in *Sushil Kumar Sharma Vs. Union of India (UOI) and Others*, The possibility of an abuse of process of a provision by the authority does not make the legislation arbitrary or discriminatory or violative of Article 14 of the Constitution. If a statutory provision is otherwise intra vires, constitutional and valid, mere possibility of abuse of power in a given case would not make it objectionable, ultra-vires or unconstitutional. In such cases, the "action" and not the "section" may be vulnerable. The court while upholding the provision of law, may still set aside the action, order or decision and grant appropriate relief to the person aggrieved. Similarly, in *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, a Bench of nine Judges observed that mere possibility of abuse of a provision by those in-charge of administering it cannot be a ground for holding the provision procedurally or substantively unreasonable. It must be remembered that merely because power may sometimes be abused, is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief. The Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

12. In the present case, the petitioner has not laid any foundation with specific plea, with reference to facts and figures of the need for this Court to lay down any more/further guidelines/criteria in the matter of appointment than already existing in the Statute.

13. The Supreme Court in *People's Union for Civil Liberties Vs. Union of India (UOI) and Another*, was concerned with a challenge to the appointment as a member of the NHRC of a person who prior to the appointment was holding the post of Director, CBI and also holding the post of Vice President (Asia), Interpol. The Supreme Court held that neither the UN Resolution relating to setting up of

NHRC nor the Act expressly or impliedly exclude the inclusion of a Police Officer in the Commission. It was held that in the absence of any challenge to the validity of the Act, as in the present case, the Court has to proceed on the basis that the Act is intra vires; it was further held that the Act requires the members to be appointed from amongst the persons having knowledge or practical experience in matters relating to human rights. A plain reading of the said provision does not give any room for interpretation because the language is quite clear. It was further held that the language cannot be distorted by any inference based on any public perception or prejudice. It was further held that the Court should read the section as it is and cannot rewrite it to suit its convenience.

14. In this regard reference may also be made to *Duport Steels Ltd. v. Sirs* (1980) 1 All ER 529 quoted with approval in the recent dicta in *Mandvi Co-op. Bank Ltd. Vs. Nimesh B. Thakore*, as under:

But in the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law. The judge's duty is to interpret and to apply the law not to change it to meet the judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing construction are possible. But our law requires the judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute.

15. It is not the duty of the Court to enlarge the scope of the legislation when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The court cannot add words to a statute or read words into it which are not there. Though, of course a proceeding even at the instance of a busy body for issuance of writ of quo warranto questioning any particular appointment would be maintainable.

16. Having said so, we may nevertheless quote from *Global Energy Ltd. and Another Vs. Central Electricity Regulatory Commission*,

The law sometimes can be written in such subjective manner that it affects efficiency and transparent function of the government. If the statute provides for point-less discretion to agency, it is in essence demolishing the accountability strand within the administrative process as the agency is not under obligation from an objective norm, which can enforce accountability in decision-making process.... A modern deliberative democracy cannot function without these attributes.... The image of law which flows from this framework is its neutrality and objectivity: the ability of law to put sphere of general decision-making outside the discretionary power of those wielding governmental power. Law has to provide a basic level of "legal security" by assuring that law is knowable, dependable and shielded from excessive manipulation.

17. We express our sincere hope that the Minister, being the Chairperson of the Selection Committee will give regard to the aforesaid principles in choosing the other members of Selection Committee and also consider framing guidelines for constitution of Selection Committee to eliminate allegations of arbitrariness from future appointments and bring more transparency and objectivity therein. Further, in view of the statement made by the Solicitor General, we at this stage do not feel the need for making any further directions specially since the Solicitor General himself has fairly stated that the appointments to be made in terms of the statement recorded herein above be allowed to be tested in the first instance. We therefore dispose of this petition binding the government with the statement made and recorded herein above.