

(2015) 01 JH CK 0065

In the Jharkhand High Court

Case No : Writ Petition(S) No. 6707 of 2013

Chandra Bhushan Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2015) 2 AJR 71

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Delip Jerath, Indrajit Sinha, Rajesh Kumar and Abhinash Kumar, for the Appellant; Jai Prakash, A.A.G. and Chaitali C. Sinha, J.C. to A.A.G., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Whether termination of petitioner's tenure as Chairman, Jharkhand State Youth Commission by the impugned notification No. 97 dated 20.11.2013 (Annexure-14), is proper in the eye of law or not, is the question which needs to be answered in the present writ application where initially, petitioner had challenged the show-cause notice issued under Rule 4(vi) of the Jharkhand State Youth Commission Rules, 2012 (Annexure-13) (hereinafter referred to as "Rules").

2. The present issue in controversy has a background of litigation. In fact, this is the third round of litigation in respect of the petitioner's appointment and if the contempt proceedings are added, this would be the fourth one.

3. In order to answer the aforesaid question, the necessary facts and issues involved are being dealt with hereunder.

4. Petitioner's appointment as a Chairman, Jharkhand State Youth Commission by the notification bearing memo No. 21 dated 08.01.2013 (Annexure-2), issued by the Department of Art, Culture, Sport and Youth Affairs, Government of

Jharkhand was terminated by a notification dated 16.02.2013 invoking powers under Rule 4(vi) of the Rules. The writ petition challenging the said termination by the petitioner being WPC No. 1181/2013 was allowed in his favour by the judgment dated 28.06.2013 passed by this Court on the specific grounds that it was arbitrary and violative of principles of natural justice. It was also found as not supported by any reason and could not be upheld on the doctrine of pleasure invoked by the respondents. This Court while allowing the writ petition, had categorically observed that the respondents had failed to bring on record any foundational facts or reasons for exercising such powers.

5. Though, a counter affidavit and supplementary counter affidavit had been filed on their behalf, it was not the stand of the respondents that the petitioner had been removed from the post of Chairman on any ground of disqualification enumerated under Rule 4 of 2012 Rules. Respondents had squarely relied upon the doctrine of pleasure. According to them, such powers were conferred under rule 4(vi) of 2012 Rules, whereunder the State Government may remove incumbents to the post of Chairman/Member of the Youth Commission, by giving one month notice or salary of one month in lieu thereof. Respondents being dissatisfied with the judgment passed in WPC No. 1181/2013, as aforesaid, invoked the review jurisdiction of this court taking a plea that several relevant facts and documents were not produced at the time of hearing of the case by the respondents. In view of the lapses, explanation were sought from a number of officials of the Department. Therefore, the judgment was sought to be reviewed. This Court after hearing the parties, found that no grounds were made by the respondents for review and none of the materials which the review petitioner sought to rely upon were such which could not have been produced with due diligence at the time of hearing of the writ petition or were not within their knowledge. However, while dismissing the review petition, this Court observed that the impugned judgment had not dealt with the issue relating to the original appointment of the writ petitioner as Chairman. This Court also found that the notices were issued upon the petitioner after passing of the judgment in the writ petition asking him to explain as to why his services be not terminated as he does not possess the necessary eligibility criteria and qualification for the said post. This Court therefore observed that such action of the respondents would be an independent cause of action for the petitioner herein and this Court refrained from commenting anything upon the exercise of the respondent State in the said review petition. The interim order passed on 03.10.2013 restraining the authorities of the respondent State from taking final decision in the matter pursuant to such notice, were vacated.

6. Incidentally, it would not be out of place to mention that the petitioner had also pursued a contempt case being Cont. Case (Civil) No. 635/2013 for alleged disobedience of the judgment and order dated 28.06.2013 passed in WPC No. 1181/2013 against the respondents. The said contempt petition was disposed of and proceedings were dropped as this Court vide order dated 18.01.2014 passed in the said contempt case did not find that the respondent opposite party therein

was in deliberate disobedience of the judgment under offence.

7. In the aforesaid litigious background between the parties, in the present writ application, the question posed is to be answered within the framework of the provisions of 2012 Rules. It is to be examined as to whether termination of the petitioner's appointment as Chairman, Jharkhand State Youth Commission on the grounds that he did not fulfil the eligibility criteria as conceived under rule 4(iii) of Rules are justified or not? 2012 rules framed under the proviso to Article 309 of the Constitution of India provides for constitution of Jharkhand State Youth Commission. It comprises a Chairman and two Members with a Member Secretary being in the rank of Deputy Secretary of the Government. Rule 4(i, ii and iii) lay down the tenure of the post, upper age limit within which a person have to be appointed and eligibility criteria for such appointment. Tenure of such Chairman/Member of Jharkhand State Youth Commission on his appointment, would be of three years; upper age limit of Chairman or Member of the Commission would be 40 years. Rule 4(iii) provides eligibility criteria for such appointment. A candidate should be a resident of the State of Jharkhand and should have been working towards the welfare and development of youth in the State for the last five years. As per notification dated 08.01.2013 under which the petitioner was nominated as a Chairman, tenure of the Chairman would be of three years or up to the age of 40 years from the date of joining.

8. By the show-cause notice dated 17.07.2013, issued by the Secretary, Department of Art, Culture, Sport and Youth Affairs, Government of Jharkhand (Annexure-8), petitioner was asked to submit his reply as to why his appointment be not terminated as he did not have necessary eligibility criteria and qualification for the said post. It is alleged that in the application form, though he had mentioned place of his birth as Ranchi, but no document in support thereof were furnished. It further alleges that though, he had made a claim that he had been working for the welfare and development of youth in the State for the last five years, but he had failed to substantiate his claim by any supporting documents. Petitioner in his reply dated 12.08.2013 (Annexure-9) said that in his application, he had enclosed the Bio-data with which he enclosed a photocopy of the passport showing his place of birth as Ranchi, photocopy of the ration card and matriculation certificate which establishes that he is the resident of the State of Jharkhand. In his reply, he has also said that he has been engaged with a non-governmental organization called BISWA for the last seven years. He further stated that he had been actively engaged in the conduct of the national games in the State of Jharkhand. He is also a Director in the I.T. Company and has been involved in imparting training in information and technology to several youth in the State. Reply of the petitioner has enclosed photocopy of the passport, ration card, school certificate, certificate of experience from the NGO BISWA, his felicitation in 2008 by AJSU, a political party, letter showing his involvement in the national games and other certificates showing his work in the field of information technology.

9. However, it is the definite case of the respondents that at the time of making application on 05.01.2013, petitioner had enclosed a photocopy of the matriculation certificate and five page resume without any proof of residence or any proof of his experience in the welfare and development of youth for the last five years. No documents were enclosed to show that he fulfils the necessary eligibility criteria as laid down under rule 4(iii) of 2012 Rules. The undisputed fact is that no advertisement inviting application from the interested candidates for being appointed as Chairman/Member of the Youth Commission was issued. Petitioner on the basis of newspaper reports, had made the application on 05.01.2013. It is the case of the respondents that on 07.01.2013 itself, in hasty manner, decision was taken by the competent authority to appoint the petitioner as Chairman and Ashok Kumar Nag as Member of the Youth Commission. The notification of appointment was issued on 08.01.2013 itself upon which, the petitioner submitted his joining on 09.01.2013. The case of the respondents is that the entire exercise was conducted in such a hasty manner and none of the eligibility criteria and qualification were satisfied by the petitioner. Therefore, after the judgment rendered in WPC No. 1181/2013 by this Court and the review petition being Civil Review No. 56/2013 being dismissed by the judgment dated 22.10.2013, respondents have issued the order of termination as it was found that the petitioner had failed to fulfill eligibility criteria and qualification as prescribed under 2012 Rules for appointment to such a post. It is further submitted by the learned A.A.G. on behalf of the respondents that though, petitioner was furnished with a notice to appear in person vide annexure-B dated 24.08.2013, but he failed to appear.

10. Counsel for the petitioner, on the other hand, has assailed the impugned order with the submission that it shows complete non-application of mind to the categorical reply furnished by the petitioner vide annexure-9. It is his case that he fulfilled all the eligibility criteria and qualification prescribed under 2012 Rules for such appointment and it were duly supported by necessary certificates and documents enclosed with his reply. It is submitted that the requirement relating to his experience in the field of welfare and development of youth in the State for the last five years was satisfied. It is submitted "that no opportunity of hearing was given to the petitioner before his appointment was cancelled. In support of his aforesaid submissions, the petitioner has relied upon judgments rendered by the Hon"ble Supreme Court in the case of ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, ; Bhagwan Dass and Another Vs. Kamal Abrol and Others, ; The State of Punjab and Others Vs. Bakhtawar Singh and Others, and in the case of C.B. Gautam Vs. Union of India and Others, .

11. In the aforesaid factual matrix of the case, with the litigating history behind it, the present legal conundrum is, whether petitioner did have the eligibility criteria and qualification for appointment to such a post, and whether at the time the decision making process was undertaken by the competent authority, did they have sufficient materials on record to come to a conclusion on the petitioner's appointment? Petitioner's application made on 05.01.2013 which is

annexed to the rejoinder at page-47 shows the only enclosure as his resume. In the said application, addressed to the Hon''ble Dy. Chief Minister, Minister of Art, Culture, Sport and Youth Affairs, Government of Jharkhand, he states that from the newspaper report, he had come to know that Government will nominate one Chairman and two Members for functioning of the Youth Commission. He enclosed the details in his resume for consideration of his case for Chairman of Jharkhand State Youth Commission. He made an assurance that he will try his level best to compete with the challenging responsibilities. Resume of the petitioner is at annexure-10 which gives details of his educational career as M.B.A. and experience in the field of Information Technology, Computer Skills, Business Development. It further details his engagement in volunteering and community involvement, youth encouragement for better society, patron of Jharkhand Youth Front, Bokaro, Jharkhand. Further credentials indicated therein are his endeavour in I.T. and software training and that he was conferred with a number of awards such as, Mother Teresa Excellence Award, 2012 for his contribution in the overall progress of the society, Udyog Bharti Award, 2012, Indian Achievers Award, 2010 for Corporate Leadership and Excellence in Software and Technology Award. From the information furnished under the R.T.I., which is enclosed as annexure-12 to the writ petition and notings on the file relating to the decision making process, it appears that the proposal was initiated by the Deputy Secretary of the Art, Culture, Sports and Youth Affairs Department, Government of Jharkhand on 07.01.2013, whereafter, Departmental Minister gave his opinion on the same date and was approved by the competent authority on the same date i.e. 07.01.2013. From perusal of the notings of Deputy Secretary of the Department, it is evident that the application form enclosed a matriculation certificate Which Showed that the petitioner was less than 40 years of age. The noting therefore concluded with the observation that the petitioner did have the eligibility to be appointed as a Chairman of the Youth Commission. In the same notings, observations were also made in respect of the other two candidates. From the notings of the Departmental Minister of the same date, it is again evident that the Bio-data of the petitioner was enclosed on which, opinion was rendered that he had been engaged in the activities related to the youth. From these two notings, it is clear that only a matriculation certificate and Bio-data were enclosed with petitioner's application. Only on these materials, recommendation was made for appointment of the petitioner and one Ashok Kumar Nag as Chairman and Member respectively. Based upon this recommendation, the competent authority approved the nomination of the petitioner as Chairman, while other person, as aforesaid, was nominated as Member of the Youth Commission. The aforesaid materials which have been noticed at the time of decision making process clearly show that they were no documentary evidence or materials to substantiate the claim of the petitioner as required under the provisions of Rule 4(iii) of 2012 Rules, while the decision was being taken to appoint him as Chairman of the Youth Commission. It can therefore be concluded without any iota of doubt that the entire decision making process was vitiated in law as well as on facts. The sequence of dates starting

from 05.01.2013 when the application was made and the entire decision making process being concluded on the same date i.e. 07.01.2013 and the notification of nomination being issued on 08.01.2013 therefore clearly lead to inescapable conclusion that the entire exercise for such nomination/appointment of a Chairman/Member of the State Youth Commission have been done without following the mandate of law and with complete non-application of mind as to whether the interested candidate at all satisfied the required laid down eligibility criteria and qualification for appointment to Such an important body i.e. Chairman, Jharkhand State Youth Commission. Jharkhand State Youth Commission was constituted in terms of 2012 Rules with an object to making recommendations and advise to the State Government on issues relating to youth for their welfare and improvement; for making recommendations for providing opportunity and avenues for their development as also protection of the youth from falling prey to such social evils like drugs and HIV, Aids etc. The impugned notification has however been issued after issuance of show cause and upon consideration of his reply filed on 12.08.2013 (Annexure-9).

12. It is also true that for appointment to such a post, no widespread notice was given, nor advertisement were issued inviting application from interested and eligible candidates who are sincerely involved in the welfare and development of youth, which is one of the uppermost objectives for constitution of the said body. It further appears that there was no search committee constituted to short list the eligible and qualified candidates for appointment to such a post. The State Government though terminated the appointments made by the earlier notification of 16.02.2013, invoking rule 4(iv) of 2012 Rules, but failed to substantiate such exercise of powers despite sufficient time being granted and the writ petition challenging the said termination was allowed only on the grounds of violation of principles of natural justice and as the decision was unsupported by any foundational facts; being a non speaking order which could not stand the test of judicial scrutiny. This Court never had the occasion to test the legality of the appointment itself as the State had miserably failed to produce relevant materials and records before it when such matter was being heard and decided. Such lapse on the part of the State has unnecessarily added to repeated litigation before this Court consuming its precious time. On being asked at the time of hearing of the instant writ petition as well, it has transpired from the submission of the learned Additional Advocate General that no detailed procedure has yet been framed for nomination/appointment of the Chairman/Member of the State Youth Commission even after the said exercise was found by them to be flawed on various counts including lack of transparency, failure to invite application from all eligible and qualified candidates and also failure to abide by a well laid down procedure for arriving at a decision. The learned Additional Advocate General has later placed on record a letter No. 1729 dated 22.12.2014 of the Secretary of the Department of Art, Culture, Sports and Youth Affairs, Government of Jharkhand on the aforesaid issue which states that application will be invited and a transparent process would be adopted for nomination of

Chairman and that with the model code of conduct in operation now, due procedure will be constituted after the election process is over. It is therefore not without reasons that the Court is anguished with the way appointment to such a post are being made by the State Government.

13. Coming back to the main issue and the question posed at the outset, from the entire discussions made hereinabove, coupled with the reasons and principles of law discussed, termination of the petitioner's appointment as a Chairman of the State Youth Commission on the ground that he did not fulfil the required eligibility criteria and qualification at the time of appointment, cannot be said to suffer from any legal infirmity or non-application of mind. In view of the specific finding recorded herein-above, the judgments relied upon by the petitioner do not come to his aid. The mandate of law for making such appointment has obviously been carried out in breach and such appointment cannot have legal sanctity to continue. Therefore, this Court finds that there is no reason to interfere with the impugned notification in exercise of powers of judicial review under Article 226 of the Constitution. The writ petition is therefore dismissed, however, with the observations made hereinabove.