
(2013) 08 OHC CK 0019
In the Orissa High Court
Case No : Writ Petition (C) No. 4451 of 2013

Debendranath Sahoo

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Citation : (2013) LabIC 4510

Hon'ble Judges : M.M. Das, J;C.R. Dash, J

Bench : Division Bench

Advocate : Er. Nagendra Ku. Mohanty, B.K. Mohanty, S.K. Dash, B.K. Mohapatra, Rakesh Sahu, Sukanta Kumar Dalai and S. Mohapatra, for the Appellant; Ashok Mohanty, General, R.K. Rath, N.R. Rout, Pami Rath and J.P. Behera, for the Respondent

Final Decision : Dismissed

Judgement

C.R. Dash, J.—As facts involved and questions raised in both the writ petitions are same, both were heard analogously on 12.07.2013 and are taken up for disposal by this common judgment. Rabi Narayan Senapati, I.A.S. (opposite party No. 3 in both the writ petitions) retired on superannuation from the post of Development Commissioner on 30.11.2012. Vide notification dated 16.02.2013 issued by the Government of Odisha in Co-operation Department by order of His Excellency the Governor (Annexure-1 in W.P. (C) (P.I.L.) No. 4839 of 2013 and Annexure-4 in W.P. (C) No. 4451 of 2013), he was appointed as State Co-operative Election Commissioner, Odisha for a period of five years from the date of his appointment or he attains the age of 65 years whichever is earlier.

2. Debendranath Sahoo claiming himself to be a Co-operator involved in different Co-operative Movement for long years filed W.P. (C) No. 4451 of 2013 and Biswajit Parida claiming himself to be a public spirited person interested in development and upliftment of the State, who has participated in several Co-operative Movements for farmers besides his profession as an advocate filed W.P. (C) (P.I.L.) No. 4839 of 2013 challenging the appointment of Sri Rabi Narayan

Senapati as State Co-operative Election Commissioner.

3. The prayer in W.P. (C) No. 4451 of 2013 is as follows:--

(I) Under the facts and circumstances of the case, it is, therefore, prayed that this Hon"ble Court may graciously be pleased to issue a writ of quo warranto or any other writ(s) declaring the appointment of opposite party No. 3 as State Co-operative Election Commissions, Odisha, Bhubaneswar is illegal and non est in the eye of law.

In W.P. (C) (P.I.L.) No. 4839 of 2013, the prayer is to the following effect:--

It is therefore, humbly prayed that this Hon"ble Court may kindly graciously be pleased to admit the P.I.L. writ petition, issue rule nisi calling upon the opposite parties to show cause;

(A) why the appointment of State Election Cooperative Commissioner under Annexure-1 dtd. 13.2.2013 shall not be quashed declaring the same as illegal, arbitrary, mala fide, unconstitutional and contrary to the Sub-section (2) of Section 28(AA) of the O.C.S. Act, 1962;

(B) why writ of quo warranto shall not be issued, calling upon to opposite party No. 3 as to under what authority he is holding the post;

(C) why a writ shall not be issued directing to opposite party Nos. 1 & 2 to make fresh appointment for larger interest of the public.

4. In both the writ petitions the petitioners essentially have sought for issuance of writ of quo warranto to quash the appointment of Shri Rabi Narayan Senapati, I.A.S. (Retd.) as State Co-operative Election Commissioner. The ground on which such a prayer has been made are two fold:--

(I) Number of Vigilance cases were initiated against Shri Rabi Narayan Senapati, I.A.S. (Retd.) during his incumbency as Secretary to Government in Water Resources Department;

(II) his appointment is not in conformity with Sub-section (2) of Section 28(AA) of the Odisha Co-operative Societies Act, 1962, as amended, vide Odisha Act 1 of 2013 ("O.C.S. Act" for short).

5. Opposite-party Nos. 1 and 2 have filed counter-affidavits in both the writ petitions denying the allegation made in the writ petitions. They have also asserted that Shri Rabi Narayan Senapati having retired from the post of Development Commissioner has had sufficient experience, so far as the matter relating to Co-operative Department is concerned.

6. Mr. Sukanta Kumar Dalai, learned counsel appearing for the petitioner in W.P. (C) (P.I.L.) No. 4839 of 2013 taking us through Annexure-4 to the writ petition submits that at least eight Vigilance Cases namely, Bhubaneswar Vigilance P.S. Case No. 49 dated 27.10.2000, Cuttack Vigilance P.S. Case No. 30 dated 03.06.2003, Cuttack Vigilance P.S. Case No. 32 dated 09.06.2003, Cuttack

Vigilance P.S. Case No. 38 dated 04.07.2003, Cuttack Vigilance P.S. Case No. 39 dated 10.07.2003, Cuttack Vigilance P.S. Case No. 41 dated 28.07.2003, Cuttack Vigilance P.S. Case No. 42 dated 31.07.2003 and Cuttack Vigilance P.S. Case No. 35 dated 13.06.2003 were initiated against Shri Rabi Narayan Senapati and in that view of the matter his appointment as State Co-operative Election Commissioner for lack of his integrity is liable to be quashed. Quoting from the judgment of the Hon''ble Supreme Court in the case of State of Punjab Vs. Salil Sabhlok and Others, Mr. Dalai submits that integrity and honesty of the person to be appointed to high Constitutional position are of paramount importance. Hon''ble Supreme Court in the case of State of Punjab v. Salil Sabhlok and others supra has quoted with approval the observation made by Hon''ble Mr. Justice Dalbir Bhandari in the case of Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others,) in paragraph-31 of the judgment in State of Punjab v. Salil Sabhlok supra and Mr. Dalai draws our attention to the said observation, which reads thus:--

This unfortunate episode teaches us an important lesson that before appointing the constitutional authorities, there should be a thorough and meticulous inquiry and scrutiny regarding their antecedents. Integrity and merit have to be properly considered and evaluated in the appointments to such high positions. It is an urgent need of the hour that in such appointments absolute transparency is required to be maintained and demonstrated. The impact of the deeds and misdeeds of the constitutional authorities (who are highly placed), affect a very large number of people for a very long time, therefore, it is absolutely imperative that only people of high integrity, merit rectitude and honesty are appointed to these constitutional positions.

Mr. Dalai also relies on the case of Centre for PIL and Another Vs. Union of India (UOI) and Another, to draw our attention how recommendation for appointing Shri P. J. Thomas as Central Vigilance Commissioner was quashed, as a vigilance case was pending against him.

It is further submitted by Mr. Dalai that Shri Rabi Narayan Senapati, I.A.S. (Retd.) having no experience regarding Co-operative matters, he should not have been appointed as State Co-operative Election Commissioner, as it is violative of Section 28(AA) of the O.C.S. Act.

7. Er. N.K. Mohanty, learned counsel appearing for the petitioner in W.P. (C) No. 4451 of 2013 adopts the arguments advanced by Mr. Dalai and adds that Shri Rabi Narayan Senapati has had the uncanny neck of getting the cases in his name cleared at the Government level though number of Vigilance cases were initiated against him and such a person having obliged the political bosses in power whose benefit he had availed may not be in a position to do justice to the post in which he has been appointed. It is also alleged that Shri Rabi Narayan Senapati having taken no oath as provided in Section 28(AA) of the O.C.S. Act, his continuance as State Co-operative Election Commissioner is non est in the eye of law.

8. Mr. Ashok Mohanty, learned Advocate General supports the impugned notification and submits that there is pendency of no vigilance case against Shri Rabi Narayan Senapati. I.A.S. (Retd.), as in no case which were initiated against him Government had ever recommended the case to Government of India for sanction of prosecution. It is further submitted by Mr. Mohanty, learned Advocate General that Shri Rabi Narayan Senapati, I.A.S. (Retd.) in his capacity as Development Commissioner was the supervisory authority of the Co-operative Department and all the files of Co-operative Department, were being routed through him. In that view of the matter and in view of the vast experience he had in administration, he cannot be said to have no experience, so far as Co-operative matters are concerned.

Mr. R.K. Rath, learned senior counsel appearing for Shri Rabi Narayan Senapati, I.A.S. (Retd.) submits that as the matter relates to issuance of writ of quo-warranto in respect of a public office, no P.I.L. is maintainable. There is no pending vigilance case against Shri Rabi Narayan Senapati. Mr. Senapati possesses sufficient experience in the Co-operative Department to man the post of State Co-operative Election Commissioner.

9. The petitioners in both the writ petitions having sought for issuance of a writ of quo-warranto, it is apposite to find out the conditions for the issue of quo-warranto in relation to public office. A writ of quo-warranto will be issued in respect of an office only if the following conditions are satisfied:--

(I) The office must be public.

(II) The office must be substantive in character, which, in other words, means an office independent in title.

(III) It must have been created by statute or by the Constitution itself.

(IV) The respondent must have asserted his claim to the office. The application is premature until the respondent has resumed his office or asserted his claim to it.

(V) The respondent is not legally qualified to hold the office or to remain in the office or some statutory provisions have been violated in making appointment which cannot be cured as an irregularity so that the title to the office becomes invalid or without legal authority. In other words, invalidity of the appointment may arise not only from want of qualification but also from violation of such legal conditions or procedure for appointment, as are mandatory, and as a result of which the appointment becomes void.

10. In short, quo-warranto will not be issued unless there is a clear infringement of the provisions having the force of law, as distinguished from mere administrative instructions or some provisions from the constitution itself. The question to be determined before issuing quo-warranto is whether the impugned appointment has contravened the binding rule of law and not whether it has involved a "manifest error", which is relevant in a proceeding for certiorari.

11. So far as condition Nos. (I), (II), (III) and (IV) are concerned, there is no dispute at the Bar to the effect that the office of the State Co-operative Election Commission is a Public Office; the office is substantive in character; it has been created by the O.C.S. Act, 1962 as amended by Odisha Act 1 of 2013 and opposite party No. 3 has already asserted his claim to the office. We are concerned, therefore, with condition No. (V) to find out as to whether there has been clear infringement of the provisions of O.C.S. Act, 1962 as amended by Odisha Act 1 of 2013, as claimed by learned counsels for the petitioners in both the writ petitions. We are to further find out whether the allegation of lack of qualification of opposite party No. 3 Mr. Rabi Narayan Senapati has any legs to stand, in view of the clear assertion by the State in the counter-affidavit filed in the case and non-traverse of the same by the petitioners in both the writ petitions by filing any rejoinder.

12. Section 28(AA) of the O.C.S. Act, 1962 as amended by Odisha Act 1 of 2013 contains the provisions regarding superintendence, direction and control of elections to a society vesting in the State Co-operative Election Commissioner.

Sub-section (2) provides for qualification of the person to be appointed as State Co-operative Election Commissioner and the provisions is as follows:--

No person shall be qualified for appointment as State Co-operative Election Commissioner unless he is or has been an officer of the Government not below the rank of Secretary to the Government having experience in co-operative sector.

Sub-section (3) of Section 28(AA) provides for an oath or affirmation by the State Election Commissioner before he enters upon his office and the provision reads thus:--

A person appointed as State Co-operative Election Commissioner shall, before he enters upon his office, make and subscribe before the Governor on oath or affirmation in the form as may be prescribed.

13. Mr. Dalai, learned counsel for the petitioner in W.P. (C) (PIL) No. 4839 of 2013 alleges that Mr. Rabi Narayan Senapati having not worked at any point of time in co-operative sector, he cannot be held to have experience in co-operative sector and he is thus not qualified to hold the post of State Co-operative Election Commissioner, his appointment being violative of sub-section (2) of Section 28(AA) of the O.C.S. Act 1962, as amended by Odisha Act 1 of 2013.

Er. Nagendranath Mohanty, learned counsel appearing for the petitioner in W.P. (C) No. 4451 of 2013 adopts the same argument.

14. Mr. Ashok Mohanty, learned Advocate General and Mr. Rajat Kumar Rath, learned senior counsel appearing for Mr. Rabi Narayan Senapati, submit that experience in co-operative sector, as outlined in sub-section (2) of Section 28(AA) does not require that a person must have worked in Co-operative sector or must have experience in co-operative organization. If the rank of the officer

for becoming the State Co-operative Election Commissioner to be not below the rank of Secretary to the Government is read jointly with "having experience in Co-operative sector" together as occurring in sub-section (2) of Section 28(AA), it would be clear that a person of the rank of Secretary to the Government, who must be an I.A.S. officer cannot be expected to be having any direct experience in cooperative organizations. They however must have worked in co-operative department in different capacities with their direct involvement or with their supervisory involvement.

It is further submitted by Mr. Mohanty, learned Advocate General and Mr. Rath, learned senior counsel that opposite party No. 3 having worked as Development Commissioner has had the scope to work as a supervisory authority so far as the Co-operative Department is concerned, and in that view of the matter Mr. Rabi Narayan Senapati (opp. party No. 3) can be held to have sufficient experience to satisfy the condition of sub-section (2) of Section 28(AA).

15. The State in its counter affidavit, referring to Mr. Rabi Narayan Senapati, in paragraph 7 has asserted thus:--

.....he was an officer in the rank of Chief Secretary and served as Agricultural Production Commissioner, he was the supervisory officer of the Co-operative Department and therefore involved in the functioning of the Co-operative Department.

In reply to the averments made in this paragraph, it is further stated and submitted that opposite party No. 3 was the supervisory officer of the Co-operative Department and was therefore involved in the functioning of the Co-operative Department. All files of the Co-operative Department were routed through him for orders of the Government. He also acted as the Chairman of State Level Co-ordination Committee on Crop Insurance (SLCCCI) and he was the Chairman of the State Level Implementation and Manufacturing Committee (SLIMC) for implementation of the restructuring and reform measure for revival of the Credit Co-operative Societies. He had chaired the meeting of these committees regularly.

16. The aforesaid facts culled from the counter-affidavit filed by opposite party Nos. 1 and 2 make it clear that Mr. Rabi Narayan Senapati (opp. party No. 3) had experience so far as co-operative department is concerned. Such assertion of opposite party Nos. 1 and 2 have not been traversed by the petitioners in both the writ petitions in any manner by filing rejoinder affidavits. In view of such fact and otherwise, assertions made by opposite party Nos. 1 and 2 in their counter-affidavit have to be held to have been accepted by applying the doctrine of non-traverse. Even otherwise an officer of the rank of Chief Secretary, who has had varied experience and has acted as supervisory authority of the State Co-operative Department can be held to have sufficient experience regarding the functioning of the said Department and functioning of co-operative sectors under the said department.

In the premises as aforesaid, we do not find any merit in this contention raised by learned counsels for the petitioners in both the writ petitions.

17. Er. N.K. Mohanty, learned counsel appearing for the petitioner in W.P. (C) No. 4451 of 2013 submits that Mr. Rabi Narayan Senapati having not taken any oath as required under sub-section (3) of Section 28(AA) of the O.C.S. Act, 1962 as amended by Odisha Act 1 of 2013, his continuance in the post of Odisha Co-operative Election Commissioner is non est in the eye of law.

18. Contrary to what is alleged by Er. N.K. Mohanty, learned counsel, it is averred in paragraph-5 of W.P. (C) (PIL) No. 4839 of 2013 that opposite party No. 3 has taken oath on 18.02.2013. Mr. Dalai, learned counsel appearing for the petitioner in W.P. (C) (PIL) No. 4839 of 2013 however does not dispute taking of oath/affirmation by Mr. Rabi Narayan Senapati (opp. party No. 3). Mr. Ashok Mohanty, learned Advocate General and Mr. R.K. Rath, learned senior counsel appearing for Mr. Rabi Narayan Senapati assert with emphasis that Mr. Rabi Narayan Senapati has taken oath in compliance of sub-section(3) of Section 28(AA) before he assumed office as State Co-operative Election Commissioner.

In view of such fact, this contention raised by Er. N.K. Mohanty on the point of oath must fail.

19. Mr. Ashok Mohanty, learned Advocate General and Mr. R.K. Rath, learned senior counsel appearing for Mr. Rabi Narayan Senapati (opp. party No. 3) are right in their submissions to the effect that there is nothing on record to show that Mr. Rabi Narayan Senapati possesses no qualification as provided in Sub-section (2) of Section 28(AA) of the O.C.S. Act, 1962, and there is nothing further to show that he (Mr. Rabi Narayan Senapati) has not taken oath before assuming his office, as provided in sub-section (3) of Section 28(AA) of the said Act.

20. Hon"ble Supreme Court in the case of Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others,) considered the position of law and, after referring to several earlier decisions, including the case of R.K. Jain Vs. Union of India and Others,) The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another, , High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712: (AIR 2003 SC 1201) and B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees" Association and Others, , held that even for issuance of a writ of quo-warranto, High Court is to satisfy itself that the appointment is contrary to the statutory rule, This principle was framed positively in Mahesh Chandra Gupta Vs. Union of India (UOI) and Others, wherein it was said "In cases involving lack of "eligibility" writ of quo-warranto would certainly lie."

21. In view of the position of law, as enunciated regarding issue of the writ of quo-warranto in the aforesaid decisions, it is clear that writ of quo-warranto shall never lie unless there is statutory violation in appointing the respondent or unless there is lack of eligibility of the respondent as prescribed under any

statute or the Constitution. Our discussion supra shows that there is no contravention/violation of Sub-sections (2) and (3) of Section 28(AA) of the O.C.S. Act, 1962 so far as the appointment of Mr. Rabi Narayan Senapati as State Co-operative Election Commissioner is concerned. In view of such fact, no writ of quo-warranto can be issued to quash the appointment.

22. The next question that arises for consideration is, whether any other writ or direction can be issued for quashing the appointment of Mr. Rabi Narayan Senapati (opp. party No. 3), who is alleged to be involved in number of vigilance cases and is alleged to be not eligible to hold the statutory post like the State Co-operative Election Commissioner for lack of integrity on his part.

23. Hon''ble Supreme Court in the case of State of Punjab Vs. Salil Sabhlok and Others, was in seisin of the matter where appointment to the post of Chairperson, Punjab Public Service Commission was challenged. Hon''ble Supreme Court, referring to different stages of development of law as to the remedy available to a person aggrieved by an appointment to a constitutional post like the Chairperson of a Public Service Commission, relied on the case of R.K. Jain Vs. Union of India and Others, B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees'' Association and Others, , Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, Girjesh Shrivastava and Others Vs. State of M.P. and Others, , Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, , Ashok Kumar Pandey Vs. The State of West Bengal and Others, , Shri Kumar Padma Prasad Vs. Union of India and others, N. Kannadasan Vs. Ajoy Khose and Others, 1 Centre for PIL and Another Vs. Union of India (UOI) and Another, and held that if there is prayer in the main writ petition for issuance of any other writ, direction or order, which the court may deem fit and proper in the facts and circumstances of the case to be issued, nothing prevent the court if so satisfied, from issuing a writ of declaration.

24. Taking a clue from the discussion in the case of State of Punjab Vs. Salil Sabhlok and Others, if the position of the State Co-operative Election Commissioner in the light of O.C.S. Act, 1962 as amended by Odisha Act 1 of 2013 is taken into consideration, appointment of Mr. Rabi Narayan Senapati to the post of State Co-operative Election Commissioner cannot be treated as a "service matter" in the generic sense of the term, as defined in Section 3(q) of the Administrative Tribunal Act, 1985, inasmuch as there is no master and servant relationship between the State and Sri Rabi Narayan Senapati, and specific provisions have been provided in the O.C.S. Act, 1962 as amended by Odisha Act 1 of 2013 for his appointment, continuance and removal, etc. The post, in which Mr. Rabi Narayan Senapati has been appointed, may be held to be a statutory post only with statutory responsibility for him to discharge, as prescribed under the O.C.S. Act, 1962, as amended by Odisha Act 1 of 2013. In view of such fact, though a writ of quo-warranto is incompetent or inappropriate in view of our discussion supra, any other writ of declaration can be issued if the

conditions as discussed supra are satisfied.

25. If the prayers in both the writ petitions are taken into consideration, it is found that in both the writ petitions there has been prayer for issuance of any other order/orders, direction/directions to give complete relief to the petitioners. In that view of the matter and in view of the dictum of the Hon"ble Supreme Court in the case of State of Punjab Vs. Salil Sabhlok and Others,) it is to be found out whether initiation of vigilance proceeding against Sri Rabi Narayan Senapati (opp. party No. 3) otherwise disqualifies him to hold the post of State Co-operative Election Commissioner.

26. As discussed supra, Annexure-4 to W.P. (C) (PIL) No. 4839 of 2013 shows that 8 (eight) number of vigilance cases, vide Bhubaneswar Vigilance P.S. Case No. 49 dated 27-10-2000, Cuttack Vigilance P.S. Case No. 30 dated 03.06.2003, Cuttack Vigilance P.S. Case No. 32 dated 09.06.2003, Cuttack Vigilance P.S. Case No. 38 dated 04.07.2003, Cuttack. Vigilance P.S. Case No. 39 dated 10.07.2003, Cuttack Vigilance P.S. Case No. 41 dated 28.07.2003, Cuttack Vigilance P.S. Case No. 42 dated 31.07.2003 and Cuttack Vigilance P.S.; Case No. 35 dated 13.06.2003 were initiated: against the petitioner (Mr. R.N. Senapati). In all the cases, the State Government have been pleased to pass order not to recommend the case to Govt. of India as there is no sufficient proof of criminal misconduct or criminal conspiracy found against Sri Rabi Narayan Senapati and majority of cases is based on suspicion and in some cases there is definite finding by the State Government to the effect that even prima facie case is not made out. In view of such fact, though the aforesaid vigilance cases were initiated against others including Sri Rabi Narayan Senapati, in no vigilance case charge-sheet was filed against him and no vigilance case was pending against him on the date his case for appointment as the State Co-operative Election Commissioner was taken into consideration.

27. Learned counsels for the petitioners in both the writ petitions rely heavily on the case of Centre for PIL and Another Vs. Union of India (UOI) and Another,), which deals with appointment of Sri P.J. Thomas as Central Vigilance Commissioner. In the said case, Hon"ble Supreme Court interfered with the appointment, as a vigilance case was pending against; Sri P.J. Thomas on the date of his consideration for appointment as Central Vigilance Commissioner. The fact of the said case can be clearly distinguished so far as the fact of the present case is concerned, inasmuch as, in no vigilance case charge-sheet was filed against Sri Rabi Narayan Senapati (opp. party No. 3) and no vigilance case was pending against him on the date of consideration of his case for appointment to the post of State Co-operative Election Commissioner.

28. Mr. Dalai, learned counsel for the petitioner in W.P. (C) (PIL) No. 4839 of 2013 relies heavily on certain observations given by the Hon"ble Supreme Court in State of Punjab Vs. Salil Sabhlok and Others,) as has been quoted in paragraph-7 of this judgment supra.

But the fact of the aforesaid case of State of Punjab v. Salil Sabhlok and others can be distinguished so far as the present case is concerned, in as much as, Hon"ble Supreme Court on consideration of different aspects, held that Mr. Harish Dhanda had no knowledge or experience whatsoever either in administration or in recruitment nor had he any quality to perform the duties as the Chairman of the State Public Service Commission under Article 320 of the Constitution of India. Contrary to the facts obtained in the aforesaid case of State of Punjab v. Salil Sabhlok and others, Mr. Rabi Narayan Senapati (opp. party No. 3) in the present case had necessary experience in administration, as he had retired from the post of Development Commissioner, he had necessary experience in the Co-operative Sector, as he had worked as the Supervisory Officer of Co-operative Department, and besides such qualities and experience he had served the State as a senior administrator in different capacities.

29. In view of such facts, we do not find any justification to hold that Mr. Rabi Narayan Senapati has had no requisite qualifications, experience and qualities to man the post of State Co-operative Election Commissioner.

30. In fine, we therefore find no justification to interfere so far as appointment of Sri Rabi Narayan Senapati as the State Co-operative Election Commissioner is concerned.

Both the writ petitions are accordingly dismissed.

M.M. Das, J.

I agree.