
(2001) 09 DEL CK 0002

In the Delhi High Court

Case No : CWP No. 4297 of 1999

Delhi State Electricity Workers Union

APPELLANT

Vs

Delhi Vidyut Board and ors

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Municipal Corporation Act, 1957 — Section 511, 96
Electricity (Supply) Act, 1948 — Section 15

Citation : (2001) 09 DEL CK 0002

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : K.K. Sharma, for the Appellant; Raj Birbal Vaishalee Mehra and Neeraj Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—In this writ petition under Article 226 of the Constitution, the Petitioner has prayed for the issuance of a writ of quo warranto in respect of the appointment of Respondents Nos. 2 and 3 as the Deputy Chief Legal Officers of the Delhi Vidyut Board i.e. Respondent No. 1. Consequent upon the repatriation of Respondent No. 2 to his parent Department, Shri R.S. Sharma, who was the third person who had ben empanelled along with these two Respondents has been appointed in place of Respondent No. 2. The Petitioner has styled itself as the Delhi State Electricity Workers Union and has stated that the petition has been filed through its President. The original as well as the amended writ petition has been singed by Shri Hira Lal Sharma, but it has not been disclosed that he is not and was not the President of the Union. Infact there is no averment at all, either in the writ petitions or in its supporting affidavits, that the signatory is the Secretary of the Petitioner Union. This has been stated by its counsel in the midst of arguments. An objection to this effect has been raised by Delhi Vidyut Board but despite several opportunities granted to the Petitioner for filing of a Rejoinder, this has not been done, nor has it been elucidated in any other

manner that the signatory is the General Secretary and has been duly authorised is the General Secretary and has been duly authorised by the Union to sign and verify the writ petition. These facts are dealt with in some detail for the reason that although the Petitioner has prayed for the issuance of the high prerogative writ of quo warranto, a flippant and cavalier attitude on its part is manifested throughout.

2. It should be evident from a reading of the quo warranto petition itself that there is a usurpation of a public office and not a mere irregularity in the appointment of a person to a comparatively ordinary middle echelon post. In the present case it is implicit that not only would there be a Legal Advisor to superintend the work of the Respondents, but that final decisions would rest with the Delhi Vidyut Board. There is Therefore no semblance of a "public office" nature and characteristic that would surround the post of the Deputy Chief Legal Advisor as would justify the filing of a writ of quo warranto. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, , the Constitution Bench has expressed its opinion in the following words:

"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 recognised 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 entitled 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.

Where the appointment of the respondent No. 2 by the respondent No. 1 (university) as a reader was challenged only on the ground that the respondent No. 2, did not have the qualifications advertised for the post and no attempt was made to show that the appointment was illegal on the ground of statutory provisions and the High Court issued a writ of quo warranto quashing the appointment on the grounds alleged, without considering the statutory provision,

in an appeal against the orders of the High Court to the Supreme Court, it would not be open to the petitioner to take a ground about the effect of the statutory rules and ordinances, for the first time."

3. The latter paragraph is especially relevant for the reason that the initial challenge was altered from the absence of the eligibility of Respondents 2 and 3 to the argument that the appointment was illegal because of an alleged infraction of Section 96 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "the DMC Act") as would be clear from the Order dated 27.9.1999 of my Learned Brother Justice A.K. Sikri, J.

"Thus as per the aforesaid Resolution an officer processing the minimum qualification as LLB and legal experience of 10 years in Public Sector Undertaking or other Government Departments in handling departmental cases in various courts of Delhi also becomes eligible for the post of Dy. Chief Legal Officer. It is pursuant to this Resolution that steps were taken to fill-up these posts and Respondents 2 and 3 were appointed on deputation basis.

There is no dispute that Respondents 2 and 3 fulfill the alternate eligibility conditions prescribed as per Resolution dated 621 dated 4.3.98. Thus the entire basis of the writ petition is unfounded.

Counsel for the petitioner faced with the aforesaid situation argued that it was not in public interest to change the eligibility conditions and put alternate eligibility conditions. It is sufficient to observe that it was for the DVB to lay down the eligibility conditions and moreover the intention in laying down alternate eligibility conditions cannot be doubted when the members of higher judicial service for appointment to these post were not available and when High Court of Delhi had particularly expressed its inability to provide these officers. Moreover, there is no challenge to this Resolution No. 621 dated 4.3.98 in the writ petition. Inf act, in the writ petition there is no reference to this Resolution No. 621 at all.

It was next contended by the petitioner that the post of Dy. Chief Legal Officer was Class-A post and, Therefore, no such appointment could be made without prior consultation of UPSC as required u/s 96 of the Delhi Municipal Corporation Act. This point has not been taken up on the writ petition and has been urged in the supplementary affidavit filed by the petitioner, which was filed after the Respondent-DVB filed the documents mentioned above. It would be appropriate, if there is a proper challenge on this aspect by raising appropriate ground in the writ petition itself with proper pleadings.

Since the matter is still at the stage of preliminary hearing, I allow the petitioner to amend the writ petition incorporating the aforesaid point in the writ petition and file an amended writ petition within a period of two weeks. Therefore, notice to show cause be issued to the respondents limited to the point of prior consultancy of the UPSC for appointment of Respondents 2 and 3 to the post of Dy. Chief Legal Officer, returnable on 22nd November, 1999.

September 27, 1999. (A.K. SIKRI) JUDGE"

4. In was on the point on which limited leave was granted that the Hon"ble Division Bench had previously issued a writ of quo warranto in respect of a person who had been appointed by the predecessor of Respondent No. 1 as its General Manager (Electrical). As is evident from the judgment itself, the gravamen of the assault by the present petitioner, apart from the pendency of criminal proceedings against the said person, was that "the appointment to the post of General Manager, D.E.S.U. can be made wither by transfer or on deputation from the Government Departments. He must either be a member of the Indian Administrative Service (I.A.S.) and/or a member of the Central or State Engineering Services Class-I, or suitable officer holding the post of analogous status in the State. Respondent No. 2 is neither on transfer nor on deputation from any government department." This is the distinguishing feature in the two cases.

5. In its Counter Affidavit Respondent No. 1 has taken the stand that the writ petition has been filed with ulterior motives. It has been pleaded that Respondent No. 2 being a Legal Advisor gave a legal opinion which was against the interest of the Petitioners. Opportunity to file a Rejoinder was specifically given on 25.9.2000, 4.1.2001, but despite subsequent adjournments, is not available on the Court file. The Petitioner ought to have rejoined at least to controvert and dispel doubts on the issue that the allegation of mala fides was ill-founded. On this question an adverse inference against the Petitioner must follow. Learned Counsel for the Petitioner has requested for immediate hearing on the repeated premise that a writ of quo warranto had been prayed for. This request was granted and the matter has been heard at length.

6. In A.N. Shastri v. State of Punjab, 1988 (1) SLR 687, the Hon"ble Supreme Court, inter alia, made the following two observations, which are clearly apposite to the present case:

"6. Mr. Rao, counsel for the appellant relied upon a decision of this Court in Statesman (Private) Ltd. Vs. H.R. Deb and Others, ; of the reports, Hidayatullah, C.J. speaking for the Constitution Bench indicated:

"The High Court in a quo warranto proceedings should be slow to pronounce upon the matter unless there is a clear infringement of the law."

In the circumstances which we have narrated, it is indeed difficult to hold that the appellant did not have the requisite qualification.

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8. there is a clear material that the petitioners before the High Court were the once-upon-a-time students of the appellant. Ordinarily one would expect obligations, piety and reverence in the conduct of the writ petitioners towards the appellant. This expectation would be more justified in the traditional system of Ayurved culture. Surprisingly that seems to have been totally wanting. The

appellant has, on the other hand, alleged that the writ petition was the outcome of malice and ill-will. The High Court did not appropriately advert to this aspect."

7. Mr. Raj Birbal, Learned Senior Counsel for the Delhi Vidyut Board has relied on the proviso (c) to Section 96 of the DMC Act, as well as Section 15 of the Electricity (Supply) Act, 1948 which empowers the Board to make appointments as may be required to enable it to perform its functions. The latter provision was not considered by the Division Bench since the Electricity (Supply) Act has subsequently become applicable by virtue of the 1997 Notification. In Rakesh Ranjan Verma and others Vs. State of Biha and others, , the Hon"ble Supreme Court upheld the Board's refusal to carry out appointments on the lines indicated by the State Government. The Apex Court observed that "under the proviso to Section 15, it is only the appointment of the Secretary which is subject to the approval of the State Government. So far as other staff is concerned, it lies with the Board to make appointment of all officers and employees as may be required to enable the Board to carry out its functions under the Act. Thus, we agree with the view taken by the High Court in this regard that the direction given by the State Government to appoint the appellants as Junior Engineers by the Board does not involve any matter of policy and it would be an encroachment on the powers of the Board given u/s 15 of the Act." Thus, once it is the Electricity (Supply) Act that is to be followed and applied, the Board would have the unfettered discretion to make appointments other than of its Secretary. Infact this is exactly what is enunciated with effect from 1.10.1993 by Act 67 of 1993 in the amended Delhi Municipal Corporation Act. When these provisions are considered, there is still no substance in the petition. The relevant provisions thereof read as under:

" 511B Special provisions as to transferred function. --(1) In this Section, "transferred functions" means such functions of the Corporation which immediately before the commencement of the Delhi Municipal Corporation (Amendment) Act, 1993 were the functions of the Corporation but as from such commencement become the functions of any other authority or functionary hereinafter called the "new authority".

8. Simultaneously, amendments were also carried out in Section 96 of the DMC Act. It is contended by Mr. K.K. Sharma. Learned Counsel for the Petitioner, that this Section has been violated since Respondent No. 3 is not in the service of the Government in a Class I post. However, no material evidence is available on the file to substantiate this contention which is Therefore the ipse dixit of Mr. Sharma. It must be borne in mind that the Petitioner has sought the issuance of a writ of quo warranto, and as observed in A.N. Shastri case (supra) the High Court in such proceedings should be slow to pronounce upon the matter unless there is a clear infringement of the law. It is, Therefore, sanguine for Mr. K.K. Sharma to expect the Court to proceed in the matter on an argument which is predicated merely on his ipse dixit. Mr. K.K. Sharma was unable to locate even a bare statement in the writ petition averring that the post of Deputy Chief Legal

Advisor is a category A post and that Respondent No. 3 does not serve the concerned Government in a Class I post.

9. Mr. Raj Birbal has drawn by attention to the fact that although the third empanelled Officer, namely, Shri R.S. Sharma has been functioning in the post of Deputy Chief Legal Advisor for a considerable period subsequent to Respondent No. 2 having been repatriated to his parent Department, Shri. R.S. Sharma's candidature has not been challenged at all. It is his submission, in which I find considerable force, that this failure is deliberate since Shri R.S. Sharma did not give a legal opinion which was contrary to the interests of retired personnel for the Department such as the signatory of this petition. It must be emphasised that in order to succeed in a quo warranto writ, it should be palpably evident that mala fides and personal interests of the Petitioner are wholly absent.

10. In writ petitions of the present genre, the Petitioner cannot expect the Court to embark on a roving enquiry against the legitimacy of the appointment. A clear case of a usurpation of a public office should be disclosed in the petition itself. The appointment should be assailed also on the grounds that it partakes of nepotism or is unconscionable, in contradistinction of it being having possibly irregular. The Delhi Vidyut Board had advertised the vacancy and had considered the candidatures in detail. It has also previously requested the High Court to depute a judicial officer, but this request had not been granted. Prima facie, the Delhi Vidyut Board possesses the power and discretion to make the appointment on a conjoint reading of Section 511B of the DMC Act and Section 15 of the Electricity (Supply) Act. The discretion has been exercised in a responsible and non-partisan manner. It has not been averred in the writ petition nor has any material been shown in the course of arguments that the deputationists, Respondents 2 and 3, (as well as Shri R.S. Sharma whose appointment has not been assailed) are not Class I officers. There is a strong possibility that the Petition has been filed to settle scores because of an unfavorable legal opinion delivered by the Respondents. Quo warranto petitions must have a public interest character, and it is the duty of the Court to expeditiously and firmly dismiss petitions in which personal interests and oblique motives can be detected. Otherwise judicial review can be transformed into a vehicle of oppression against the normal functioning of a public servants, but it is not free from doubt that the post of Deputy Chief Legal Advisor is a public post as envisaged in quo warranto proceedings. The Petition is wholly without merit and is dismissed with cost of Rs.5000/-

C.Ms. 8006/2000, 9477/2001.

11. Writ Petition has already been dismissed these applications do not call for consideration.

13. Dismissed.