
(2008) 01 AHC CK 0114
In the Allahabad High Court

Dr. Dinesh Kumar Kesarwani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Constitution of India, 1950 — Article 12
Societies Registration Act, 1860 — Section 12

Citation : (2008) 1 UPLBEC 771

Hon'ble Judges : Yatindra Singh, J;Ran Vijai Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Yatindra Singh, J.—These petitions challenge the appointment of Dr. SK Sharma (the contesting respondent) on the post of keeper, amendment in the service rules, and the advertisement for the post of Director in the Allahabad Museum (the Museum).

THE FACTS

2. Allahabad city breaths through a park that was known as Alfred park; after some changes it has been renamed as Chandra Shekhar Azad Park (the Park) as Chandra Shekhar Azad was martyred there. It is situate in the middle of the city. Thousands come here for morning and evening walk. A historical background of the Park can be found in the decision reported in Arun Kumar v. Nagar Mahapalika, Allahabad and Ors. 1987 UPLBEC 665 (See Endnote-1).

3. The Museum is within this Park. It was constructed sometime in 1930's. Initially, it was managed by the Municipal board Allahabad but in 1980's it was decided that it should be managed by the Central Government. In order to give effect to it, a society by the name of Allahabad Museum Society, Allahabad (the AMS) was registered under the Societies Registration Act (the Act) on 6.9.1985. The Committee of management of the AMS included some ex officio and some nominated members from the Central Government. The AMS is funded by the

central Government. It is admitted that it is a State within the meaning of Article 12 of the Constitution of India.

4. At the relevant time, and also at present, there are posts of Director, Keeper, Assistant Keeper, Curatorial Associate, Technical Associate & Guide Lecturer in the AMS. There is dispute between the parties whether the post of curatorial Associate and Technical Associate & Guide Lectures have merged or not but we are not concerned with that dispute in these writ petitions.

First WP

5. The petitioner was appointed as Technical Assistant on 15.4.1988. The contesting respondent was appointed as Curatorial Associate on 9.8.1988; lateron, he was confirmed. An advertisement was published on 27.8.1995 for filling up the post of Keeper and the selection committee was constituted. The interview was fixed for 30.11.1995. The petitioner filed writ petition No. 34300 of 1995 challenging the constitution of the selection committee. In this writ petition, an interim order was passed on 29.11.1995. In substance, the court directed that: Sri US Tiwari, the Director of the Museum may not sit as member of the selection committee; and The Director, BHU Museum may sit as a member of the selection committee.

6. The interview was held on 30.11.1995. In this interview, the petitioner also participated. In view of interim order, Sri US Tiwari did not sit in the selection committee. The Director, BHU Museum who was requested to be a member of the selection committee, also did not sit as the member of the selection committee. In this selection, the contesting respondent was selected for the post of Keeper.

7. The petitioner filed an application for amendment in WP 34300 of 1995. By this amendment application, the selection of the contesting respondent was challenged. However, the counsel for the petitioner made a statement on 12.1.1999 that the petition has become infructuous. On this statement, the writ petition was dismissed as not pressed on the same day. No order was passed on the amendment application.

8. The petitioner filed a representation before the Chairman of the AMS on 8.4.1999, challenging the selection of the contesting respondent. When nothing was done, he filed WP No. 26259 of 2001 challenging the selection of the contesting respondent. This writ petition was disposed on 19.7.2001 directing the Chairman to decide the representation.

9. The aforesaid representation was dismissed on 22.8.2001. The petitioner has filed WP No. 34041 of 2001 (the first WP) challenging the order rejecting his representation and the selection of the contesting respondent as Keeper of the Museum.

Second WP

10. The AMS was registered after filing Memorandum of Association, Rules and Regulation (the Rules) alongwith requisite information contemplated under the Act. Rule 34 of the Rules empowers the AMS to frame bye-laws. In pursuance of this power, the AMS have framed Allahabad Museum Society (Service) Bye-Laws 1986 (the Service Bye-laws). Bye-law 7 of the Service Bye-Laws is titled as "METHOD OF RECRUITMENT". It empowers the recruitment of person for different posts in accordance with the rules to be framed by the AMS. These rules for the recruitment have been framed under bye-law 7 of Service Bye-laws. They are being referred to as the Recruitment-rules. Apart from other things, they provide qualification, method for recruitment for different posts.

11. Under the Recruitment-rules, the post of the Director is to be filled by direct recruitment and the age of the candidate should exceed 50 years; it is relaxable by five years for SC/ST candidates.

12. A meeting of the AMS was held on 6.8.2005; a resolution was passed to amend the Recruitment-rules for giving five years relaxation in age for the departmental candidates also. This was approved by the Central Government on 30.8.2005.

13. An advertisement for recruitment for the post of Director was published on 7.10.2005 in accordance with the amended Recruitment-rules. In this advertisement five years age relaxation was mentioned for the departmental candidates also. The petitioner has filed WP 67613 of 2005 (the second WP) challenging the amendment in the Recruitment-rules as well as this advertisement. An interim order was granted by This Court on 7.12.2005 staying the selection for the post of Director.

Third WP

14. During pendency of the aforesaid WPs, the post of the Director fell vacant. The AMS passed a resolution on 20.12.2005 permitting the senior most person to officiate as the Director till regularly selected candidate joins the post. The contesting respondent was given charge of the officiating Director. Another resolution was passed on 30.3.2007 granting initial pay scale of Director and some allowances to the officiating Director from the date of assuming charge. The petitioner has filed WP 29067 of 2007 (the third WP) challenging the resolution dated 20.12.2005 and 30.3.2007 appointing the contesting respondent as officiating Director and grant of initial pay scale and allowances of Director to him.

POINTS FOR DETERMINATION

15. We have heard Sri Gopal Misra, counsel for the petitioner, Sri Ajay Bhanot counsel for the AMS and Union of India, and Sri Dinesh Kacker for the contesting respondent. The following points arise for determination in these cases:

(i) Whether the petitioner is estopped from challenging the appointment of the contesting respondent as a Keeper in view of the two earlier WPs filed by him

(paragraph 5 and 8 of this judgement).

(ii) Whether the appointment of the contesting respondent as Keeper is illegal.

(iii) Whether the petitioner is an aggrieved person to challenge the amendment in the Recruitment-rules and the advertisement for the post of Director.

(iv) Whether the amendment in the Recruitment-rules granting five years age relaxation to the departmental candidate is illegal.

(v) Whether the advertisement for the post of Director is valid.

(vi) Whether handing over charge of officiating Director, grant of initial pay scale and allowances of Director to the contesting respondent is legal.

1ST POINT: NOT ESTOPPED

16. The petitioner filed WP 34300/95 prior to the selection of Keeper. An interim order was passed in the same. After the selection, the petitioner filed an amendment application challenging the selection. The writ petition was dismissed as not pressed on the statement of the counsel for the petitioner that it has become infructuous. However no order was passed on the amendment application.

17. In WP 34300/95 there was no prayer challenging the selection. The amendment was not allowed. The relief challenging the selection of the contesting respondent was not part of the writ petition. Its dismissal does not bar the petitioner from challenging the appointment of the contesting respondent as Keeper.

18. After dismissal of that writ petition, the petitioner filed a representation before the Chairman on 8.4.1999. And when it was not decided, he filed WP 26259/01. This has been disposed of with a direction to decide the representation. Decision of this writ petition also does not bar the petitioner from challenging the appointment of the contesting respondent.

19. There are no latches on the part of the petitioner in challenging the appointment of the contesting respondent as a keeper. The petitioner had filed amendment application challenging the appointment of the contesting respondent in WP 34300/95. But this was not allowed. After dismissal of this writ petition, he filed representation against the appointment. After decision on the representation, the present writ petition has been filed. There are no latches on the part of petitioner. The petitioner is not estopped from challenging the appointment of the contesting respondent as Keeper.

2nd POINT: APPOINTMENT OF THE CONTESTING RESPONDENT- VALID.

20. The counsel for the petitioner submitted that the selection of the contesting respondent as keeper is invalid because the selection committee was illegal. According to him, the selection committee was illegal because:

(i) It was in violation of order passed by This Court ; it did not include the Director of the BHU Museum.

(ii) It did not include an SC/ST member.

(iii) The Recruitment-rules for the post of Keeper were not notified. None of the submissions are valid.

Violation of the interim order.

21. The interim order dated 29.11.1995 in WP 34300/95 in substance,
(i) Restrained Sri US Tiwari for being as member of the selection committee.
(ii) Requested the Director of BHU Museum, to be part of the selection committee. Admittedly Sri US Tiwari did not sit in selection committee. However, the Director BHU museum also did not sit in the selection committee.

22. The petitioner has asserted that he had gone to serve the copy of the interim order on the Director, BHU Museum, who accepted the copy but refused to sign any endorsement. The Director BHU Museum is not party in the writ petition. It is not known as to what was the reason for his not joining the selection committee.

23. The Service bye-laws and Recruitment-rules are silent regarding constitution of the selection committee for the post of Keeper. Nothing has been shown to us as to what should be constitution of the selection committee. The AMS in its wisdom had provided selection committee of five persons. Out of which, one person Sri US Tiwari (the Director of the AMS at that time) was restrained by the interim order of This Court , but the three persons namely Dr. Vidya Niwas Misra (Chairman of the selection committee and member of the executive committee of the AMS), Dr. SN Pandey Director Museum New Delhi and Dr. TK Biswas, Joint Director, Bharat Kala Bhavan, BHU Varanasi (the two outside experts) constituted the selection committee. In case, the Director BHU Museum Varanasi, who was requested to sit in the selection committee by the High Court did not come then the AMS can not be blamed. The AMS had never requested him to be part of the selection committee. His non-participation does not vitiate the selection. In any case, the petitioner should have raised this grievance in WP 34300/95.

24. The Service bye-laws and Recruitment-rules are also silent regarding minimum number of members that are required to be present in the selection committee. Out of five, one was restrained by This Court but three members were part of the committee that selected the contesting respondent. In absence of any statutory rule or bye-laws it can not be said that absence of any member in the selection committee that too not appointed by the AMS--vitiates the selection.

25. The counsel for the petitioner submitted that in case the Director BHU Museum did not come, then the selection ought to have been adjourned and another date should have been fixed so that he could to be present.

26. The interim order was passed a day before the selection was to be held. It is not disputed that in the selection, departmental as well as outside candidates

were appearing. In these circumstances, the selection committee rightly did not adjourn the selection meeting. The selection cannot be faulted on this ground.

27. The writ petition, in which the interim order was passed (WP 34300/95) has been dismissed on the statement made by the counsel for the petitioner. The interim order passed in the writ petition has also lapsed. No benefit of any interim order can be taken: in fact the position, prior to passing it has to be restored.

28. The petitioner appeared in the interview. He did not object to the interview on the ground that meeting should be adjourned as the Director BHU Museum is not present. He is estopped from raising this point (See Endnote-2). SC/ST Member in the Selection Committee.

29. There is no provision in the Service bye-laws or the Recruitment-rules for including SC/ST member in the selection committee. However, the counsel for the petitioner has brought to our notice an instructions issued by the Central Government which suggests inclusion of SC/ST member in the selection committee for selection of certain posts in the Central Government. According to him, this is applicable for selection in the AMS also.

30. Bye-law 58 of the Service bye-laws states that in respect of any matter not specifically provided for in the Service bye-laws, provisions relating to discipline, Appeals, and Review of, the relevant provisions contained in the Central Civil Services (Classification, Control and Appeals) Rules, 1965 as amended from time to time, shall apply. No other provision has been brought to our notice that any other rule/regulation/instructions of the Central Government will apply. There is nothing to show that this instruction is applicable in the present case.

31. This instructions talks about inclusion of SC/ST member in the Departmental Promotion Committee (DPC). The post of Keeper was to be filled up by direct appointment. This is clear from the advertisement as well as from the fact that outside candidates appeared in the interview. It was not DPC. In view of this it cannot be said that the selection committee was illegal as it did not include SC/ST candidates.

32. However, even if this instruction is applicable, no relief can be granted to the petitioner on this ground: The post was non-reserved and selection post. The petitioner is not SC/ST candidate. There is no assertion that there was any SC/ST candidate in the interview. No prejudice has been caused.

The petitioner had filed the WP 34300/95 prior to the selection. However, he never questioned the constitution of selection committee on the ground that there is no SC/ST member. He filed amendment application in WP 34200/95. In this amendment application also he never questioned the constitution of the selection committee on the ground that it did not include SC/ST member. The petitioner raised this question for the first time in the year 1999 in the representation; 4 years after the selection was held. There is no justification for

permitting the petitioner to raise this plea at this stage.

Recruitment Rules

33. In paragraph 18 and 21 of the second writ petition, it is asserted that the Recruitment-rules for the post of Keeper were not notified. These facts have been denied in the counter affidavit. It is being stated that Recruitment-rules were framed and approved by the Central Government. The counsel for the AMS also produced the relevant documents showing the approval of the Recruitment-rules from the central government. No provision has been shown that Recruitment-rules are also required to be notified.

34. The advertisement for the selection of the post of Keeper was published in the newspaper. The petitioner was one of the candidates. He also filed writ petition 34300/95 on the ground that Sri US Tiwari should not sit in selection committee but he never challenged it on the ground that the Recruitment-rules are neither approved nor notified. The petitioner appeared in the interview; he was unsuccessful: he is estopped from challenging it (see Endnote-2).

35. The petitioner never took the aforesaid plea in the amendment application. It was also not a ground in the representation filed by the petitioner. It is being taken after 6 years in the first WP. We do not think that it is a fit case in which the petitioner should be permitted to raise this plea at this stage. The selection of the contesting respondent as Keeper of the AMS is valid.

3rd POINT: PETITIONER IS AN AGGRIEVED PERSON

36. The post of Director is to be made by direct appointment. The petitioner is also one of the applicant for the post of Director. In case there is any illegality in the advertisement then he is an aggrieved party. It can not be said that the petitioner is not entitled to challenge the advertisement or the Recruitment Rules if they are illegal. 4th & 5th POINT: AMENDMENT IN THE RULE, ADVERTISEMENT VALID

37. The age limit for the post of Director is 50 years. It was relaxable by five years for SC/ ST candidate. A meeting of the AMS was held on 15.5.2005 and it was resolved not to grant age relaxation to any other category. However, a meeting was held on 6th August 2005 in which age relaxation of five years was resolved for the departmental candidates also. This was approved by the Central Government on 30.8.2005. Is it illegal?

38. The counsel for the petitioner submitted that this amendment in the Recruitment-rules is illegal for the following reasons:

(i) There was no justification to pass resolution dated 6.8.2005 especially when it was resolved on 15.5.2005 not to grant relaxation to the departmental candidates;

(ii) The meeting dated 6.8.2005 was illegal;

(iii) The meeting dated 6.8.2005 is violative of Section 4-A and 12 of the Act.

(iv) The government could not approve the proposal of the AMS without minutes being confirmed.

AMS Has Power to Reverse its Decision.

39. It is correct that in the meeting dated 15.5.2005, it was resolved not to give relaxation in age to any other category of candidates. However, the AMS in its wisdom held otherwise in the meeting dated 6.8.2005. This cannot be said to be illegal merely because the AMS had earlier resolved not to give this benefit to the departmental candidates. Nothing has been pointed out to show that resolution passed earlier can not be amended or reversed or modified by the subsequent resolution. Every society, including the AMS, has power to modify or amend or reverse its decision.

Meeting is Valid.

40. The quorum of the AMS is defined in Rule 18; it is of five members. The meeting dated 6th August 2005 was attended by seven members. The quorum was complete and the meeting cannot be invalidated on this account.

41. The amendment in the Recruitment Rules is also not violative of Sections 4-A and 12 of the Act. These sections are not applicable to amendment in the Recruitment-rules. Section 4-A applies to the changes made in the rules of the society. In this case the rules of society are not changed but the change is in the Recruitment-rules. The Recruitment-rules are framed under bye-laws 7 of the Service bye-laws that in turn are framed under Rule 34 of the Rules of the AMS. They are not the rules of the AMS as are contemplated u/s 4-A of the Act. Section 4-A of the Act is not applicable. Section 12 applies to the amendment in the purpose of the society or in case of amalgamation with any other society. The purpose of the society is mentioned in the memorandum of the society. In the present case neither the purpose nor memorandum of the society is being amended nor it is being amalgamated with any other society. The amendment in the Recruitment-rules is not an amendment in the purpose of the Society. Section 12 of the Act is not applicable.

42. It is correct that the Central Government approved the amendment in the Recruitment-rules prior to confirmation of the minutes. Nevertheless, the minutes were not changed when they were confirmed on 12.12.2005. They were confirmed as were sent to the Central Government. In view of this, the approval granted by the Central Government on 20.8.2005 cannot be said to be illegal.

6th POINT: HANDING OVER CHARGE VALID--GRANT OF PAY SCALE NOT DECIDED.

43. By the resolution dated 20.12.2005 the charge is to be handed over to the senior most person. The contesting respondent was appointed as Keeper on 9.12.1995. The post of Keeper is higher than the post of Technical Assistant or

for that matter post of Curatorial Associate. The contesting respondent is senior than the petitioner. In view of the same, the petitioner can not challenge the handing over charge to the contesting respondent.

44. The counsel for the petitioner submitted that the officiating Director can not be given the initial pay scale and allowances of the regular Director.

45. We do not wish to say anything in this regard. It is matter between the AMS and the Central Government. This is not a public interest but is personal interest litigation. The petitioner is not entitled to raise it in this personal interest litigation.

CLARIFICATION

46. Apart from the aforesaid disputes, there are other disputes between the petitioner and the AMS. They relate to, Merging of post of Curatorial Associate and Technical Assistant; The revision of pay-scale and recovery of excess payment made; and Service benefit and allowances to be given to the petitioner during the period he was suspended.

47. These points are involved in other writ petitions (WP 53940 of 2002, WP 45858 of 2000, WP 25584 of 2002 and WP 66763 of 2006). We have separated these petitions from this bunch. We have not touched those disputes. This judgement will not prejudice the rights of the parties in those writ petitions.

48. We have held that the petitioner is a candidate for the post of Director. We have not decided the following questions:

(i) Whether the petitioner has minimum qualification for the post or not.

(ii) Whether the AMS is entitled to short list the candidates or not. We have by this judgement given green signal to the AMS to go ahead with the selection process. The selection may be held in accordance with law.

49. We also clarify that in case the candidature of the petitioner is rejected on any ground then it will be open for him to take such legal proceeding as permissible under law.

A CAVEAT

50. The AMS by resolution dated 30.3.2007 have granted initial pay scale of the Director to the Officiating Director. We have not considered its legality at the instance of the petitioner. Nevertheless, this does not mean that it is valid. The AMS will do well to obtain approval of Central Government before acting upon it.

CONCLUSIONS

51. Our conclusions are as follows:

(a) The selection of Dr. SK Sharma (the contesting respondent) as Keeper is valid.

(b) The petitioner is junior than the contesting respondent and can not challenge

his appointment as officiating Director.

(c) In this personal interest litigation, the petitioner can not challenge grant of pay scale of Director to the officiating Director. Nevertheless, the AMS will be well advised to get approval of the Central Government before acting upon the same.

(d) The amendment in the Recruitment-rules granting five year age relaxation to the departmental candidates is valid and so is the advertisement.

52. In view of our conclusions, the writ petitions have no merit. They are dismissed with the observations as mentioned under the heading "CLARIFICATIONS" and "A CAVEAT".

Endnote-1 : The Supreme Court in Allahabad Ladies Club v. Jitendra Nath Singh and Ors. 2007(2) AWC 1846 has modified the order but historical background of the Park remains untouched.

Endnote-2: The following decisions are relevant to show that a person after participated in the interview, can not turn around after non selection and challenge the same.

(i) G. Sarana Vs. University of Lucknow and Others,

(ii) K.H. Siraj Vs. High Court of Kerala and Others,

(iii) 1983 UPLBEC 406 Chandrabhan Singh v. State of UP (Paragraph 4)

(iv) 1990 UPLBEC 438 Dr. Y.K. Mathur v. VC, CS Azad University, Kanpur (Paragraph 16)