

(2002) 01 KAR CK 0047
In the Karnataka High Court
Case No : Writ Appeal No. 2334 of 1998 (S)

Dr. R.A. Parangusa Das

APPELLANT

Vs

Dr. N. Ugramurthy and Others

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2002) 2 KarLJ 350 : (2002) 2 KCCR 118 SN

Hon'ble Judges : Kumar Rajaratnam, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : K. Gopal Hegde, for the Appellant; K. Nagaraja, A.G.A. and T.N. Manjula Devi, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This appeal at the instance of the 3rd respondent in Dr. N. Ugramurthy Vs. The Chief Secretary, Government of Karnataka, Bangalore and Others, is directed against the order dated 25-6-1998 passed by the learned Single Judge allowing the petition preferred by the 1st respondent and directing the removal of the appellant from the office of the post of Director, Sanjay Gandhi Accident Hospital and Research Institute, Byrasandra, Jayanagar East, Bangalore - 11 with effect from 20-6-1997 by issuing a writ in this regard. Obviously the learned Single Judge has issued a writ in the nature of quo warranto and declared that the continuation in office of the appellant on and after 20-6-1997 was unauthorised but nevertheless saved the actions and official duties discharged by the appellant by applying the de facto theory recognised and approved by the Apex Court in the case of Gokaraju Rangaraju Vs. State of Andhra Pradesh, .

2. The brief facts leading to the above appeal are that the appellant was working as a Professor and Head of Department of Plastic Surgery, Bowring and Lady Curzon Hospital, Bangalore and in the services of the Government of Karnataka. He was appointed as Director of the Sanjay Gandhi Institute of Accident and

Rehabilitation and Physical Medicine, Bangalore (for short "the Institute") vide Government Order No. HFW/73/PTD/92, dated 19/20-6-1992, Annexure-A to the writ petition. The Institute is a Society registered under the Karnataka Societies Registration Act, 1960 and the Society was known as Bangalore Accidents Rehabilitation and other Services. The administration of the Society is through the Governing Council chaired by the Hon'ble Minister of Health and Family Welfare, Government of Karnataka who is an ex officio member and Chairman of the Council. Secretaries to Government, in the Departments of Finance, Health and Family Welfare and Home are also ex officio members. The Draftsman and ex officio Additional Secretary to the Government, Department of Law and Parliamentary Affairs is also a member. The Commissioner of Bangalore City Corporation and the Commissioner of Police are also likewise ex officio members. The Directors of National Institute for Mentally Handicapped and Neuro Sciences and Health and Family Welfare Services, Government of Karnataka are also ex officio members. The Superintendent of Victoria Hospital is another ex officio member. General Secretary to Indian Red Cross Society, Bangalore, Chief Traffic Manager, KSRT, Assistant Professor of Plastic Surgery, the President, Surgical Society of Bangalore and the Superintendent of St. Marthas Hospital, Bangalore are all ex officio members and the Director of the Institute is the Member Secretary, Majority of the members referred to above are part of the Government and hold office under the Government and are also members of the Council and a member nominated by the Chairman of the Governing Council from among the representatives of a Hospital with 15 or above bed capacity.

3. The Government of Karnataka which had issued an order on 19-6-1992 appointing the appellant as Director of the Institute on contract basis with immediate effect until further orders, modified the same by notification dated 20-6-1.992 deleting the contractual basis mentioned in the earlier order. Another notification was issued on 14th July, 1.993 appointing the appellant as Director of the Sanjay Gandhi Accident Hospital and Research Institute, Bangalore for a period of 5 years or till he attain 62 years of age, whichever is earlier from the date he assumes charge on contract basis as per the Resolution No. 05 of Governing Council of Sanjay Gandhi Accident Hospital and Research Institute. The terms and conditions governing the contract appointment shall be issued in due course, recited the notification. A copy was annexed as Annexure-C to the writ petition. The "period of 5 years" and "on contract basis" was mentioned for the first time in this notification dated 14-7-1993 and it recited the resolution of the Governing Council of the Sanjay Gandhi Accident Hospital and Research Institute. It has also mentioned that the period to run from the date the appellant assumes charge on contract basis as per Resolution No. 05 of Governing Council of the Sanjay Gandhi Accident Hospital and Research Institute.

4. The Government it appears treated the period between 20-6-1992 till 14-7-1993 when it had issued the notification of appointment in respect of the appellant stipulating the term of 5 years as on deputation as the appellant had continued to be an employee of the Government and it was found that he could

not have held the job under the Government as well as Director to an autonomous body simultaneously.

5. The appellant continued to function as Director of the Institute as seen from the pleadings in the writ petition and in the allegations made, it appears the term was not very placid but it was a little turbulent and the appointment had indeed upset many not only because of appointment but also due to other administrative actions that he had taken during the period when he held the post.

6. The 1st respondent herein who claims to be a Doctor Anesthesiologist in the very Institute presented the writ petition contending that the contractual term of 5 years in respect of the appellant came to an end on the expiry of 19th June, 1997 and the appellant had nevertheless continued to be in office contending that the appellant was an usurper of the office and had continued in office without proper authorisation and the appellant in fact had indulged in various malpractices even while in office during his term of office and there being certain enquiries into the conduct of the appellant and there being certain adverse report, continuation in office of such a person was against the larger public interest and even against the interest of the Institution and as such prayed for the Court to issue a direction to remove the appellant from office forthwith and to direct him to hand over charges in favour of the 4th respondent in the writ petition who was working as a Professor and Head of Department Physical Medicine at the Institute and in fact from whom the appellant had taken charge while assuming the office as Director as the said Dr. Nagaraj Rao was acting as in charge Director at that time. The writ petitioner incidentally pleaded that the appellant was a person who was not favourably disposed of towards the petitioner and in fact had placed the petitioner under suspension in his capacity as Director and for the purposes of holding certain enquiry against the writ petitioner in respect of certain allegations that had been levelled against him and being aggrieved by the said order of suspension had in fact filed Writ Petition No. 28296 of 1995 before this Court which came to be dismissed as per order dated 27-7-1995. The contentions of the writ petitioner in that writ petition was to the effect that the action of keeping the petitioner under suspension was vindictive and was tainted by mala fides of the appellant but was not accepted by the Court.

7. The writ petitioner contended that it was the duty of the 1st respondent-Chief Secretary to Government and the 2nd respondent-Health Secretary, Government of Karnataka who had to take corrective steps to ensure that the appellant vacated the office on and after 20-6-1997 and as they had not taken any such action and the continuation in office by the appellant after such date being illegal had approached the Court by filing the writ petition seeking for a writ in the nature of mandamus directing the 1st and 2nd respondents to appoint a new Director and also to recover the damages that has been caused due to the action of the appellant on and after 20-6-1997 till the date of petition/order. A direction was sought to be issued to the appellant to demit the office immediately.

8. The writ petition was contested both by the 1st and 2nd respondent

representing the State and the appellant 3rd respondent on various grounds. The appellant had contended that the Institute is not State within the meaning of Article 12 being a Society registered under the Karnataka Societies Registration Act and being an autonomous body, that the petitioner has no locus standi to file a writ petition of this nature that it was not for espousing any public interest, but was clearly to harm the appellant due to personal vendetta, is the result of vengeance and personal animosity of the petitioner against the appellant, that the petition has been set up at the instance of the 4th respondent in the writ petition and it clearly belied bona fides, that a writ in the nature of quo warranto could not be issued as the Appellant was not holding any public office.

9. The learned Single Judge allowed the writ petition being primarily of the view that the Government did not have power to appoint the appellant-Dr. Das as Director of the Institute as the Institute was an autonomous body, though it could be construed as State within the meaning of Article 12 for purposes of issuing a writ under Article 226 of the Constitution of India, it does not become as part or as a Department of the Government and as such the Government did not have the authority or power to issue appointment in favour of the appellant appointing him as a Director of the Institute as it had done under Annexures-A B and C to the writ petition.

10. One another aspect which was dealt with by the learned Single Judge was that undoubtedly the date of birth of the appellant was 1-6-1937 and as such he would attain the age of 62 years on 31-5-1999 and even assuming the contractual period of 5 years has to run from the date of assuming the office as on 20-6-1992 the period of 5 years will end on 19-6-1997 as per the contract and as the expiry of the period of 5 years contractual period happens earlier than the appellant attaining the age of 62 years, he was bound to vacate the office on and after 20-6-1997 and as such held that his continuance in the post of Director after 19-6-1997 was without any authority of law and he ceased to hold the post of Director in law on and after this date though he had been in fact functioning as such. The learned Single Judge has not accepted the submissions on behalf of the appellant that the date of assumption of charge on contract basis should be reckoned only from 14-7-1993.

11. In this view of the matter the learned Single Judge allowed the writ petition and issued a writ in the nature of quo warranto that the appellant ceased to hold the office on and after 20-6-1997 and was required to be removed from the office on and after 19-6-1997 as the continuation in office thereafter was illegal; however saved the action and decisions taken by the Appellant from 20-6-1997 up to the date of the order by applying the de facto principle.

12. Mr. Gopal Hegde, learned Counsel for the appellant has contended that in the first instance the writ petition itself was not tenable, that the petitioner had no locus standi to maintain the writ petition, that it was only due to mala fides and due to personal animosity and that the writ petitioner has made a prayer to direct the appellant to demit the office and sought for removal from his office

and therefore the writ petition ought not to have been entertained by this Court. He further submits that at any rate a writ in the nature of quo warranto should not have been issued. Firstly, the petitioner approached this Court only to settle the personal scores and with mala fide motives. But more importantly the Institution in which the petitioner was holding the post of a Director was not a governmental organisation, either under the Constitution or under any statutory provisions and that the appointment being governed by a contract between the Institute and the appellant a writ in the nature of quo warranto did not lie and as such this Court could not have issued a writ for removal of the appellant from his post on legal principles.

13. Sri Gopal Hegde, learned Counsel, further submits that the contractual period of 5 years can be reckoned only on and from 14-7-1993 when the appellant was relieved of his duties from the Government and the period of 5 years was mentioned for the first time in the Government Order and this being in pursuance to a resolution that had been passed and approved by the Governing Council appointing the appellant for 5 years on contract basis which is not in dispute. Therefore, the learned Counsel submits that the said period of 5 years can only be reckoned on and after 14-7-1993. If it is so, the appellant was definitely entitled to hold the post of the Director till the completion of his 5 years from 14-7-1993. The learned Counsel has also submitted that issuing of a writ in the nature of quo warranto and removing the appellant from his office even when he was entitled to continue in office is not only denying him his contractual right, but also has attached a stigma which could affect him in respect of his future prospects and as such the order of the learned Single Judge cannot be allowed to stand either on legal principles or on factual basis or even equity. Accordingly, the learned Counsel prays for allowing the writ appeal and dismissing the writ petition.

14. The learned Counsel appearing on behalf of the respondents on the other hand submitted that the order of the learned Single Judge is right and there is no occasion to interfere with the order passed by the learned Single Judge and the writ appeal be dismissed. It is the submission of the learned Counsel for the 1st respondent that the petitioner having actually worked for a period of 5 years from 20-6-1992 and that 5 years period in fact expires on 19-6-1997 and the learned Single Judge was fully justified in entertaining the writ petition and issuing a writ as prayed for and the order of the learned Single Judge does not call for interference.

15. In view of the rival contentions of the parties the point that arises for our consideration is whether the learned Single Judge was justified in entertaining the writ petition and issuing a writ in the nature of quo warranto.

16. Though the learned Single Judge has not stated specifically that a writ of quo warranto is issued nor the petitioner had prayed for issuance of a writ in the nature of quo warranto, in fact the order of the learned Single Judge directing removal of the appellant from his post on and after 20-6-1997 and declaring that

his continuation in office on and after 20-6-1997 is illegal, clearly amounts to issuing of a writ in the nature of quo warranto.

17. It is well-settled that a writ of quo warranto will be issued only if a person holding his office is an usurper of office, is not either entitled or qualified to hold such office and the said office is either created under the Constitution itself or by any other statutory provisions. In the instant case, the post of Director of the Institute is neither a constitutional post nor a statutory post. In fact the Institution is not part of the Government as the learned Single Judge himself has observed in the course of the Order. The Institute is nevertheless treated as State within the meaning of Article 12 for the limited purpose of entertaining the writ petition and to scrutinise its actions inasmuch as majority of the members of the Governing Council are ex officio and hold that position due to their employment under the Government and to certain extent the funding of the Society is by the Government. This concept of the State for the purpose of Article 12 and for including even non-governmental bodies and agencies cannot be extended for all purposes and for all situations and particularly in the context of issuing a writ in the nature of quo warranto for removing a person who is not an usurper of a public office either under the Constitution or under any statutory provisions. It cannot be said that the post of a Director of the Institute is a post in respect of which a writ of quo warranto can be issued, especially on legal and constitutional principles governing the issue of writ in the nature of quo warranto in the light of the ratio of the decisions of the Apex Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, and in *Statesman (Private) Ltd. Vs. H.R. Deb and Others*, .

18. This aspect apart the appointment of the appellant as a Director is by a contract. It is a contract between the Society and the appellant and this contract is for a period of 5 years. Assuming that the Government did not have power to appoint the appellant as Director of the Institute in exercise of its Executive Powers the appointment of the appellant as Director has been approved or ratified by the Governing Council which is the Appointing Authority for a period of 5 years. Even ignoring the governmental orders the appointment of the appellant can take effect from the date the Governing Council of the Institute resolved that the appellant be appointed for a period of 5 years. The starting point of the period of 5 years in itself being in dispute as the date of beginning of the contractual period is sought to be reckoned from 14-7-1993 by the appellant whereas the writ petitioner contends it should be computed from 20-6-1992 itself. In such circumstances it is not proper for this Court to act upon such disputed position of facts to issue a writ affecting the contractual right of the appellant. The net result is that in these circumstances a writ of quo warranto will not lie, as the basis for issue of a writ is not one without dispute on facts also.

19. It cannot be disputed that the order of the learned Single Judge materially affects the appellant's right and also has the effect of affecting his future prospects and attaching a stigma as it was held that he is a usurper of office and

did not qualify to hold the office on and after 19-6-1997.

20. Even if the appellant had completed 5 years the removal cannot be by issuing a writ of quo warranto but it is for the Institute itself to have taken action to relieve the appellant of his duties and to have appointed any other suitable person. In any view of the matter we are of the considered opinion that issue of a writ in the nature of quo warranto not only for directing removal of the appellant from his office but also to declare that his continuation in office on and after 19-6-1997 was illegal is not justified in law.

21. Needless to say that even according to the appellant, his period of Office was up to 13-7-1998. If there are any monetary benefits that the appellant will be entitled to till 13-7-1998, it may be considered in accordance with law.

22. Accordingly, the writ appeal is allowed. The order of the learned Single Judge dated 25-6-1998 is set aside and the writ petition is dismissed. In the facts and circumstances of the case we direct the parties to bear their own costs.