
(1999) 12 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16547 of 1999 (O and M) and C.M. No's. 28154, 28101, 29097, 29003 and 29242 of 1999

Dr. Radanandan Jiwan Dash

APPELLANT

Vs

Dr. N.K. Ganguly and others

RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Citation : (2000) 1 ILR (P&H) 386

Hon'ble Judges : Vijender Jain, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : R.S. Mittal and Ms. Palika Monga, for the Appellant; D.S. Nehra and Munish Bhardwaj, for the Respondent

Judgement

Jawahar Lal Gupta, J.—Is Prof. N. K. Ganguly a usurper of the office of Director, Post Graduate Institute of Medical Education and Research ? should Prof. Ganguly be ousted from the office by the issue of a writ of quo-warranto. These are the two short questions that arise for consideration in this writ petition.

2. A few facts may be noticed.

3. The petitioner is the Professor of Endocrinology at the Institute. He is the senior-most Professor at the Institute. On learning that Prof. N. K. Ganguly who was initially working as Professor of Microbiology at the Institute was tipped for appointment as an Acting Director, he had approached this Court for the issue of a writ of quo-warranto. It was alleged that the appointment was not in conformity with the provisions of Rule 7 of the Post Graduate Institute of Medical Education and Research, Chandigarh Rules, 1967 (hereinafter referred to as the rules).

4. The petition was posted for hearing on November 30, 1999. The Bench had directed the issue of notice of motion to the respondents for December 6, 1999. It was further directed that "till then, respondent No. 1 shall not take over as the Director of the Post Graduate Institute". On December 1, 1999, two

applications were filed for issue of directions. On behalf of the respondents, a prayer was made that since Dr. Ganguly had already taken over the charge, the stay order be vacated. The petitioner had prayed that the respondent should comply with the interim direction. These applications were disposed of by the Bench on the same day. Thereafter, CM. No. 29097 of 1999 was filed. It was submitted that the Institute Body had met on December 8, 1999. It had decided to appoint Prof. N. K. Ganguly "as the Acting Director of the Institute." On this basis, it was prayed that the order passed by the Court restraining respondent No. 1 from taking over as Director be vacated. This application was decided by the Bench vide order dated December 13, 1999. The interim orders were vacated.

5. The petitioner had filed C.M. No. 29242 of 1999 for permission to raise additional grounds and to challenge the decision taken by the Institute on December 8, 1999. Notice of this application was given to the counsel for the respondents. Today, the main writ petition as also the misc. application has been posted for hearing.

6. A short reply on behalf of the respondents has been filed by Prof. N. K. Ganguly.

7. Mr. R. S. Mittal, learned counsel for the petitioner has contended that under Rule 7, the senior most Professor has to be appointed as the Acting Director. The Institute can make a departure only for good and relevant reasons. In the present case, the reasons given by the Institute are wholly irrelevant and, thus, the appointment of respondent No. 1 is vitiated. He, thus, contends that Prof. Ganguly is a usurper and prays that he should be ousted from the office of the Acting Director by the issue of a writ of quo-warranto.

8. The claim made on behalf of the petitioner has been controverted by Mr. D. S. Nehra, counsel for the respondents.

9. First the factual aspect. It is the admitted position that initially, Prof. Ganguly had been appointed to act as Director by the Central Government. It is only in the meeting held on December 8, 1999 that the Institute Body had met and decided to appoint Prof. Ganguly. Thus, the short question that arises is - Does the appointment of Prof. N. K. Ganguly conform to the requirements of Rule 7 ?

10. The relevant portion of the rule may be extracted. It reads as under :-

"Creation of Posts and Appointments thereto :-

xxxx xxxx xxxx (3) Appointment to the post of Director shall be made by the Institute with prior approval of the Central Government;

(4) In the event of the Director proceeding on leave or resigning, retiring or the post otherwise falling vacant, till such time anew Director is appointed, the President may appoint the Senior-most Professor to look after the functions of the Director for a period not exceeding six months :

Provided that the Institute may appoint, for reasons to be recorded in writing,

any other person as Director for a period not exceeding six months :

Provided further that if the period of such appointment is likely to exceed six months, prior approval of the Central Government shall be taken before granting extension of such appointment beyond six months".

11. A perusal of the above provision would show that the regular appointment to the Post of Director has to be made by the Institute with the prior approval of the Central Government. In so far as a short-term vacancy is concerned, the provision is contained in Clause (4). It has been provided that the President can "appoint the senior-most Professor to look after the functions of the Director for a period not exceeding six months". It has been further provided that "the Institute may appoint for reasons to be recorded in writing any other person as Director for a period not exceeding six months". Thus, the normal rule appears to be that the President shall appoint the senior-most Professor. However, the Institute which is a larger body has been empowered to appoint any other person. It can do so for good reasons which have to be recorded in writing.

12. In view of the above provision, it is clear that the Institute Body is competent to make an appointment to the post of Director. This appointment can be made for a period not exceeding six months. If the "Institute" decides to overlook the senior-most Professor, it has to give reasons.

13. What is the decision of the Institute in the present case ? It is embodied in the proceedings of the Institute at Mark "A". Item No. 3 reads as under :-

"Appointment of acting Director, PGIMER, Chandigarh consequent to superannuation of Prof. B. K. Sharma as Director, PGI.

The Institute Body observed that of late there has been considerable controversy about the functioning of the Institute. In order to avoid further exacerbation of the controversy, after detailed discussion, it was felt that as an interim arrangement, in the overall Interest of the PGIMER, Chandigarh, it would be appropriate to appoint an Acting Director who is not associated with the recent functioning of the Institute. In this context, the Institute Body felt that the person chosen to be the Acting Director should be an eminent Scientist of high stature who is not a candidate for the post of Director, and is also not presently working in the Institute. For these reasons, the Institute Body did not consider it appropriate to appoint Dr. R. J. Dash as Acting Director. Keeping the requirements for Acting Director in mind, the Institute Body decided that Dr. N. K. Ganguly, Director General, ICMR, be appointed as Acting Director, PGIMER, in addition to his own duties under proviso to Rule 7(4) of the PGIMER Rules, till a regular Director is appointed, or for a period not exceeding 6 months, whichever is earlier.

The Institute Body also desired that the Special Selection Committee should expedite the selection of the regular Director of PGIMER".

14. Perusal of the above decision shows that the Institute Body had considered

the matter regarding the appointment of the Acting Director. It was of the view that the person should be "an eminent scientist of high stature". It was further decided that the person to be appointed should not be "a candidate for the post of Director". Still further, it was also felt that he should not be "presently working in the Institute".

15. On a consideration of the order, we feel that the Institute had considered it appropriate to exclude the contenders and to eliminate controversy. This reason, in our view, was not irrelevant or extraneous to the requirements of Rule 7.

16. Mr. Mittal has vehemently contended that hitherto, the Institute has been always appointing the senior-most person to act as Director. The deviation in the present case would send wrong signals to the Selection Committee and to others. He further submits that no reason for excluding the petitioner has been given.

17. On a perusal of the decision of the Institute, it appears that all the contenders for the office of Director have been excluded from consideration for appointment as Acting Director. This eliminates the chances of any signal being sent either for or against any candidate. Still further, the person who has been temporarily appointed is not an applicant. Thus, the apprehension entertained by the petitioner is wholly unfounded.

18. Even otherwise, if the contention raised on behalf of the petitioner is accepted, the proviso to Clause (4) which authorises the Institute to appoint "any other person" would become wholly redundant. It is not the purpose of Rule 7 that only the senior-most Professor should be appointed. The President has undoubtedly been given that power. However, the rule permits the Institute to appoint any other person. The only embargo is that the reasons should be recorded. This, as already noticed, has been done in the present case.

19. Mr. Mittal has contended that Prof. Ganguly is not an outsider. He has a lien on the post of Professor. He has his office in the PGI, He has four research scholars working under his supervision. Thus, the view taken by the Institute that it was appointing an outsider is not factually tenable.

20. Admittedly, Prof. Ganguly has been working as Director General of the Indian Council of Medical Research at New Delhi for the last few years. He has been on deputation from the PGI for a considerable length of time. He is also not an applicant for the post of Director. In this situation, it is true that he is not a total stranger to the institute. He has a nodding familiarity with the Faculty and the functioning of the Institute, At the same time, he is not competing for the office of the Director. As such, the view taken by the Institute cannot be said to be wholly illegal or to be based on irrelevant considerations.

21. Should a writ of quo-warranto be issued despite the above-noted factual position ? Mr. Mittal has referred to various decisions to contend that whenever the appointment does not conform to law, the Court ousts the incumbent by the

issue of a writ of quo-warranto. Counsel has referred to the decisions of their Lordships in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, *Mahabir Prasad Sharma Vs. Prafulla Chandra Ghose and Others*, and *Mahi Chandra Borah v. Secretary, Local Self Government, State of Assam* AIR 1952 Ass 119.

22. There is no quarrel with the propositions laid down in these cases. The writ of quo warranto in its very nature is meant to save the public from a usurper of public office. However, before it can be issued, it is essential for the petitioner to establish that the appointment is to a public office. Such, appointment has not been made by the competent authority and that the person appointed is not eligible or that the appointment does not conform to law. It is only when these conditions are fulfilled that the Court ousts the incumbent from the office by the issue of a writ of quo-warranto. In the present case, Prof. Ganguly has been apparently appointed by the Institute. Indisputably, the appointment is by the competent authority. It has not been shown that Prof. Ganguly is not eligible to act as a Director. Still further, it is also not established that the appointment does not conform to the requirements of Rule 7.

23. Taking the totality of acts and circumstances into consideration, we do not find any ground to interfere with the order passed by the Institute.

24. Mr. Mittal has pointed out that the Court had initially restrained Prof. Ganguly from taking over charge of the office of Director. Thereafter, the respondents acted with speed. He points out that the competent authority had met immediately to make the appointment. Now if the Court refuses to intervene, the respondents may take long to fill up the post.

25. Mr. Nehra has clearly stated before us that Prof. Ganguly has taken over only after the Court had vacated the interim stay on December 13, 1999. He has further stated that the special selection committee is meeting and that the appointment shall be made without any avoidable delay.

26. In view of the undertaking, we have no doubt that the regular appointment shall be made at the earliest.

27. No other point has been raised.

28. In view of the above, the two questions posed at the outset are answered in the negative. It is held that Prof. N. K. Ganguly is not a usurper of the post of Acting Director. It is further held that he has been appointed by the competent authority. His appointment is in conformity with Rule 7. Therefore, he is not liable to be ousted by the issue of a writ of quo-warranto.

29. As a result, the writ petition is dismissed. However, in the circumstances, there will be no order as to costs.

30. Petition dismissed.