
(2001) 05 DEL CK 0056
In the Delhi High Court
Case No : C.W. No. 5129 of 2000

Farooq Saulat and another	Vs	APPELLANT
Union of India and others		RESPONDENT

Date of Decision : 28-05-2001

Acts Referred:

Citation : (2001) 05 DEL CK 0056

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. R.K. Saini and Ms. Anirudha Konar, for the Appellant; Mr. Raj Birbal Mr. Jayant Bhushan, Ms. Jasleen K. Oberoi, Mr. K.L. Budhiraja, Mr. Manoj Verma, Ms. Deepa Dass and Mr. S.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—This writ petition has been filed challenging the appointment of respondent No.5 to the post of Director (Engg.) in the respondent No.3 Corporation. The petitioners seek for issuance of a writ of quowarranto for quashing the said appointment of respondent No.5 to the post of Director (Engg.). The petitioners also seek for a direction to respondent No.1 to recommend to the President of India to appoint petitioner No.1 to the post of Director (Engg.) in respondent No.3 Corporation with retrospective effects and also to direct the respondent No.3 to initiate necessary action against respondent No.5 and other erring officials.

2. The petition is filed by the two petitioners, who at the time of filing of the writ petition were working on the posts of Executive Director and Deputy General Manager with the respondent No.3 Corporation. The grievance raised in the writ petition is that the respondents colluded with each other and conducted the selection process for the post of Director(Engg.) in the respondent No.3 Corporation in such a manner as to eliminate all other applicants and to promote the candidature of respondent No.5 for the said post.

3. When a vacancy arose in the post of Director (Engg.), which is a Board level post in the respondent No.3 Corporation, the Public Enterprises Selection Board circulated the said vacancy for filling up the said post along with job description and eligibility criteria. According to the said circular, it was open for all officers, who fulfill the minimum eligibility in all various Public Sector Undertakings to apply for the said post. As against the aforesaid circular, five applications were received out of which three were internal candidates, who were already working with the respondent No.3 and the remaining two including respondent No.5 were from other Public Sector Undertakings. All the five applicants fulfilled the requisite eligibility criteria as envisaged in the aforesaid circular and were called for the interview for the said post. The petitioner No.1 and respondent No.5 also fulfilled the requisite eligibility criteria and, Therefore, both of them were called for the interview for the said post whereas petitioner No.2 did not satisfy the eligibility criteria and accordingly he was not called for the interview. In the interview two, out of the three internal candidates, appeared and, Therefore, four out of the five applicants appeared in the interview. The Public Enterprises Selection Board, on the basis of performance in interview and other relevant factors including the confidential reports of each applicant, recommended the name of respondent No.5 and one Sh. B.K. Mandal to the post of Director (Engg.) keeping in view the selection policy in regard to internal candidates, as contained in the Government of India resolution dated 3.3.87. On the basis of the recommendations of the Public Enterprises Selection Board, the appointment of respondent No.5 as Director (Engg.) in the respondent No.3 Corporation was made by respondent No.1 after obtaining the approval of Appointment Committee of the Cabinet (ACC) as required. The said appointment is challenged in the present writ petition seeking for a writ of quo-warranto.

4. In the counter affidavit filed, amongst other grounds, the writ petition is opposed on two preliminary grounds and also on merits. Maintainability of the writ petition was opposed on the ground of delay and laches and also on the ground of locus of the petitioners. It is stated in the counter affidavit that after the aforesaid selection and appointment of the respondent No.5 to the post the petitioner No.1 has gone on voluntary retirement and he is no longer in the service of respondent No.3 Corporation. It is also stated that so petitioner No.2 is concerned, he did not fulfill the eligibility criteria as laid down for filling up the said post of Director (Engg.) and, Therefore, none of the petitioners has any locus to press the present petition.

5. Counsel appearing for the petitioners, however, submitted that both the aforesaid preliminary objections are without any force. He submitted that quo-warranto is always directed against the holder of a public office and, Therefore, the same could be filed by any person who is concerned with the public and good governance. He also submitted that the respondent No.5 has usurped the public office without any legal authority and, Therefore, it is for the court to decide whether such person is to be continued in office and, Therefore, this writ petition is maintainable. So far as delay is concerned, he submitted that in a case of the

nature, when issuance of a quo-warranto is sought for the question of delay is immaterial and irrelevant.

6. Respondent No.5 was appointed as Director (Engg.) with the respondent No.3 Corporation, on 6.9.96. The said appointment is for a period of five years. The appointment, Therefore, is a tenure posting for five years w.e.f. the date the respondent No.5 had joined the said post. The writ petition was filed and notice was issued on the writ petition only on 7.9.2000. So, by the time the writ petition was filed in this court about four years, out of five years period of the tenure appointment, had gone by. The matter was placed before me for arguments on 21.5.2001 and, Therefore, only about another four months period is left for completion of the aforesaid tenure appointment. The question is whether in the aforesaid situation, the present writ petition should be entertained on the ground of delay and laches.

7. In support of his contention, the counsel appearing for the petitioner relied upon the ratio of the decision in Dr. Kashinath G. Jalmi and another Vs. The Speaker and others, and in Baij Nath Singh Vs. The State of Uttar Pradesh and Others, .

8. In support of his contention, learned counsel appearing for the respondents relied upon the decision in Dr. M.S. Mudhol and another vs. S.D. Halegkar and others reported in 1993 SCC (L&S)986.

9. I have considered the rival submissions of the learned counsel appearing for the parties as also the documents placed on record. In Dr. Kashinath's case (Supra), the objection on the ground of delay and laches was rejected on the ground that the writ petition was filed only after about ten months from the date of the order. In the said decision the question that arose for consideration was whether the Speaker of the Legislative Assembly or the Parliament has any power to review his decision on the question of disqualification of a Member of the House, rendered under the Tenth Schedule to the Constitution. On 8.1.92 the writ petition was filed challenging the order of review dated 8.3.1991 passed by the Speaker of Goa Legislative Assembly. The High Court dismissed the writ petition on the ground of delay and laches. On appeal the Supreme Court held that the exercise of discretion by the Court even where the application is delayed, is to be governed by the objective of promoting public interest and good administration and on that basis it cannot be said that discretion would not be exercised in favor of interference where it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality.

10. On the other hand, the decision in Baij Nath Singh's case (supra) has no relevance so far the question of delay and laches is concerned. I have also carefully perused the ratio of the decision in Dr. M.S. Mudhol's case (supra). In the said case, the Supreme Court held that it was not necessary to go into the question as to whether a writ of quo-warranto would lie in a case where the incumbent was discharging his functions continuously for a long period of nine

years and also in view of the fact that it would be inadvisable to disturb the incumbent from the post at such a late stage particularly when he was not at fault when his selection was made. In the present case, respondent No.5 after his appointment to the aforesaid tenure post of five years continued to hold the said post for about four years when the present petition was filed. As of now the respondent No.5 is holding the same for about four years and eight months and only when about four months are left for completion of the tenure period, in my considered opinion, it would be inadvisable to disturb him from the said post at this late stage even if it is found that such a case is made out on merit, particularly when he was selected by Public Enterprises Selection Board, cleared by the Central Vigilance Commission from vigilance angle and thereafter appointed to the post after obtaining approval of A.C.C. The Public Enterprises Selection Board for some reason or the other thought it fit to choose respondent No.5 for the post of Director (Engg.) which was approved by A.C.C. and that he was appointed and the petitioners had chosen to acquiesce in the said appointment for at least four years and, Therefore, in my considered opinion, no such quo-warranto should be issued in the facts and circumstance of the present case, as sought for by the petitioners at this late stage, on the ground of laches and also acquiescence. In view of the aforesaid conclusions, it is not necessary for me to examine the other issues raised in the writ petition, which are with regard to locus of the petitioners and the merit of the petition, The writ petition, Therefore, stands dismissed.