

(2001) 04 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 2752 of 2001

Gulzar Khan

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 16-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 24 (8)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3 (2) (5)

Citation : (2001) CriLJ 3586 : (2001) 3 KCCR 167 SN : (2001) 4 RCR(Criminal) 209

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : S.G. Bhagvan, for the Appellant; A.N. Jayaram, General, Shobha Patil, Govt. Pleader (for No. 1) and H.V. Ramu, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—Petitioner has filed this petition seeking for grant of the relief to declare that the notification as per Annexure-C dt. 2-6-1995 does not empower the second respondent to conduct prosecution case in Spl. C.C. No. 22/96 in the Court of the prl. Dist. and Sessions Judge, Bangalore, Rural District and further sought for issuance of a Writ in the nature of quo warranto or any other writ or writs directing the respondents to specify under what legal authority the second respondent is empowered or entitled to conduct the prosecution case in Spl. C.C. No. 22/1996 in the Court referred to supra in which case the second respondent is conducting the case involving a charge under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 (in short called as "Act") and further to issue a direction ousting him from such conduct and award costs of the proceedings urging various facts and legal contentions.

2. Brief facts necessary for the purpose of considering the rival contentions and

answering the same are stated as hereunder:

The Criminal case is registered under certain offences punishable under the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 was enacted (in short it is called the Act) before the jurisdictional Magistrate Court against the petitioners and others. Same was committed to the Spl. Court Bangalore Rural District which is pending in C.C. No. 22/1996. The altered charge dated 22-5-2000 produced at Annexure-A. The second respondent has been conducting the said case as the Spl. Prosecutor on behalf of the State. It is stated that he could not be construed as a "Spl. Prosecutor" either specified or appointed under the Act and he was neither eligible or entitled to perform the functions and duties of a Spl. Public Prosecutor under the Act; contending that his appointment is not in conformity with Section 15 of the Act r/w Sub-rule (1) of Rule 4 of the SC/ST (Prevention of Atrocities) Rules of 1995 (herein after referred to the Rules in short) which Rules have come into force with effect from 31-3-95 and further it is contended that on learning that the 2nd respondent is functioning as Spl. P.P. without any legal authority, the petitioner filed an application before the Spl. Court in the said case to decide the said aspect of the matter. After filing objections to the said application by the second respondent the Spl. Court has passed an order on 4-12-2000 dismissing the application vide order at Annexure-B. It is stated that the certified copy of the notification dt. 2-6-1995 appointing the 2nd respondent as the Public Prosecutor was issued by the State in the said case arising out of Crime No. 45/95 of Kadugodi Police Station on the file of the Spl. Judge Bangalore Rural District. In exercise of the powers by the State Govt. conferred under Sub-section (8) of Section 24 of the Cr.P.C, vide Annexure-C the 2nd respondent was appointed. It is contended by the learned counsel Mr. S. G. Bhagwan that the Spl. P.P. under the Act is a substantive Public Office and the incumbent 2nd respondent is holding the said post without legal authority and that in appointing him the State Govt. has contravened the statutory provisions and binding rule which are required to be followed mandatorily under the provisions of the Act and the Rules. Therefore the notification Annexure-C is questioned by the petitioner and prayed for issuance of a writ of quowarranto. It is contended by the learned counsel for the petitioner that the Notification at Annexure-C is not issued by the State Govt. in exercise of its powers under the provisions of the Act and the Rules, therefore the same does not confer power upon the 2nd respondent to conduct the prosecution case in the said Spl. case before the Spl. Court in which an offence under the Act is also alleged against the petitioner and others. It is further contended that the 2nd respondent has been appointed by the State Govt. under the impugned Notification in exercise of its powers conferred u/s 24(8) of the Cr.P.C. and not u/s 15 of the Act that too in the absence of the panel of lawyers to be prepared as mandated under Rule 4 of the Rules.

3. The 2nd respondent filed statement of objections interalia contending that the State Govt. appointed a Spl. Prosecutor under Sub-section (8) of Section 24 of

the Cr.P.C. Taking into consideration the gravity of the offences alleged against the accused persons under the IPC as well as the alleged Atrocities committed by them on the SC/ST persons. Further it is stated that the qualification for Spl. Prosecutor under the provisions of the Cr.P.C. is that he should have been in practice as an Advocate for not less than 10 years and that he will conduct any case or class of cases, the Rules under the Act came into effect from 31-3-1995, the State continued its procedure of appointing Public Prosecutor as Spl. P.P. by following the practice with a view to expeditiously dispose of cases pending before the Courts. The procedure required to be followed under Rule 4 of the Rules and under the provisions of the Act is delayed and cumbersome procedure not conducive to give effect to the solitary provisions of Section 15 of the Act. From a careful reading of Section 15 of the Act and Section 24(8) of the Cr.P.C, the object and purpose of appointment of a Spl. P.P. is with a view to provide a better Advocate to conduct cases arising out of the Act by resorting to Sub-section (8) of Section 24 of the Cr.P.C. The petitioner cannot have a say regarding appointment and functioning of the 2nd respondent as the public prosecutor or the same could be the concern of the persons belonging to the victims family.

4. Twenty-five prosecution witnesses have been examined by the 2nd respondent as a Spl. P.P., only one more witness the I.O. has to be examined and the case of the prosecution has to be closed. The examination of the witnesses commenced on 19-7-2000 and continued till the date of filing this petition. At the fag end of the trial the petitioner/accused could not have raised the question of appointment of the 2nd respondent as the S.P.P. for the last 6 years and for the first time in the month of December objection was raised by the petitioner before the Spl. Court regarding the authority of the 2nd respondent in conducting the case of S.P.P. after rejection of the plea of the petitioner the first respondent has issued an addendum dt. 4-12-2000 in exercise of its power under the provisions of the Act adds Section 15 of the Act r/w Rule 4 of the Rules to the impugned notification appointing the 2nd respondent as Spl. P.P. The plea urged by the petitioner's counsel that the 1st respondent has not followed the Rule 4 of the Rules is a curable irregularity and therefore it is prayed for dismissal of the petition.

5. Absolutely there are no bona fides in the petition filed before this Court. Petitioner has not complained of any injustice being caused to him by conducting the case by the 2nd respondent much less appointing him without following the procedure under Rule 4 of the Rules. This Court while considering the prayer of issuing quo warranto has to take into consideration the conduct and motive of the petitioner. Motive of the petitioner is oblique in nature to defeat the justice by protracting the proceedings before the Spl. Court.

6. Further it is contended that the petition is liable to be rejected solely on the ground of delay and laches. Further it is stated that non-following the Rule 4 of the Rules has not vitiated the impugned notification and the addendum issued by

the State Govt. as the rule is not mandatory, therefore prayed for dismissal of the petition.

7. Learned counsel appearing on behalf of the petitioner placed reliance Section 3, 2(v) of the Act. The chargesheet was filed in Crime No. 45/95 in the month of December, 1995. The offence under Sections 3, 2(v) of the Act was altered on 22-5-2000. Impugned Notification addendum is required to be published u/s 3(24)(b) of the Karnataka General Clauses Act, otherwise it has no legal validity as held by the Apex Court, reported in AIR 2001 1102 (sic) and further not following the procedure contemplated under Rule 4 of the Rules and Section 15 of the Act which are mandatory is a fit case for this Court for issue of a writ of quo warranto. Reliance is placed upon the law laid down by the Division Bench of the Allahabad High Court, reported in Rajendra Shankar Tripathi Vs. State of U.P. and Others, at paragraph 5 and Madras High Court A. Mohambaram Vs. M.A. Jayavelu and Others, para 7 Kashinath Laxman Bhide and Others Vs. The State of Bombay, head note (c) at Paragraph 4 as the post of the 2nd respondent is a substantive public office and further contended that not issuing the notification u/s 15 r/w Rule 4 of the Rules and the same amounts to usurper of public office as held by the Apex Court in the case reported in The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others, .

8. The learned Advocate General Mr. A.N. Jayaram appearing on behalf of the first respondent State submits that there is absolutely no merit in the case and the petition is liable to be rejected solely on the ground of delay and laches and there is no locus standi for the petitioner to question the impugned notification as the interest of the petitioner is not suffered. In support of this preposition he has placed reliance on the Division Bench judgment of the Himachal Pradesh High Court, reported in AIR 1977 NOC 246. At the time of issuing the impugned notification Rule 4 of the Rules and the provision of Section 15 of the Act has no application for the reason there was no charge under the Act, when the notification was issued subsequently the charge under the provisions of the Act was altered and therefore non-following the Rule 4 of the Act and Rules has not vitiated the notification. Further the learned Advocate General submits that lack of bona fides and not raising the objections at appropriate stage this Court cannot issue a writ of quo warranto in exercise of its power under Articles 226 and 227 of the Constitution of India in respect of the said legal submission. He has placed reliance upon the judgment of Nagpur High Court, reported in AIR 1952 Nag 330 and Mukhtiar Singh Vs. State of Punjab and others, .

9. Learned Advocate General has placed further reliance under Rule 2(d) of the Rules and also submitted that the provision u/s 3(24) Clause (b) of the General Clauses Act for non-publishing of the impugned Notification and the addendum dt. 4-12-2000 has not vitiated the impugned Notification, hence he has prayed for dismissal of the petition.

10. After hearing the learned counsel for the petitioner and the learned Advocate General on behalf of the respondents this Court has examined the rival legal

contentions urged by them with reference to the impugned Notification and the addendum notification dt. 4-12-2000 and also examined the Sub-section (8) of Section 24 and Section 15 of the Act and Rule 4 of the Rules to answer the legal questions raised in this petition.

11. The following legal questions would arise for consideration and determination of this Court:

(i) Whether the impugned Notification dt. 2-6-1995 issued by the 1st respondent in exercise of its power under Sub-section (8) of Section 24 of the Cr.P.C. 1973 and not following the procedure as contemplated under Rule 4 and Section 15 of the Act and Rules and not publishing the notification in the Karnataka Gazettee u/s 3 Sub-section (24) Clause (b) of the Karnataka General Clauses Act has vitiated the Notification.

(ii) Whether the petitioner is entitled for the declaratory relief at the quo warranto as prayed in this petition?

12. The following reasons are assigned to answer to the point No. i.

It is an undisputed fact that as on the date of appointment of the 2nd respondent by the 1st respondent as S.P.P. in exercise of his power under Sub-section (8) of Section 24 of the Cr.P.C. the charges which were framed against the petitioner and other accused only under the IPC u/s 149 r/w Section 302. The charge of the alleged offence u/s 3, 2(v) of the Act of 1989 was altered u/s 395 of the Cr.P.C. on 1-12-2000. It is also an undisputed fact that the trial of the case was commenced on 19-7-2000 and 25 prosecution witnesses have been examined. At no point of time till the application was filed before the special Court on 1-12-2000 objections were raised either by the petitioner and any other accused person for the appointment of the 2nd respondent as a Spl. P.P. Apart from the said undisputed fact the State Govt. in exercise of its power u/s 15 r/w Rule 4 of the Rules has issued an Addendum to the impugned Notification at Annexure-C dt. 2-6-1995 to add the following words :

And u/s 15 of the SC/ST (Prevention of Atrocities) Act, 1989, read with Rule 4 of the SC/ST (prevention of Atrocities) Rules, 1995.

After the words were to be added to the impugned notification, the same has been sent to the Govt. Press for its publication in the Karnataka Gazette for publication. Therefore the contention urged by the learned counsel for the petitioner that there is no Notification u/s 15 r/w Rule 4 of the Act and the Rules is wholly untenable in law for the reason that the State Govt. has issued the Addendum on 4-12-2000 to add the words incorporating the provisions u/s 15 and Rule 4 of the Act and Rules. The same has been sent to the Karnataka Gazette for its publication, therefore it is open for the petitioner to contend that there is no Notification under the provisions of the Act and the Rules. The further legal contention urged by the learned counsel for the petitioner is that Rule 4 of the Rules had not been followed is also considered by this Court. By reading Rule

4 of the Rules it makes very clear that the State Govt. on the recommendation of the District Magistrate shall prepare for each district a panel of such number of Senior Advocates who have been in practice for not less than 7 years as it may deem necessary for conducting cases in the Special Courts. Similarly in consultation with the director of the Prosecution, a panel of such number of Public Prosecutors as it may deem necessary for conducting cases in the special Courts. By reading the said rules the second respondent has fulfilled with the qualification of having practiced not less than seven years. It is an undisputed fact that the submission that nearly because the name of the 2nd respondent is not in the Panel of Sr. Advocates prepared on the recommendation of the District Magistrate in the Bangalore Rural District, the second respondent should not have been appointed as a Spl. P.P. as provided u/s 15 of the Act is not the object and intentment of the Act and the Rules. This legal position can be gathered by close reading of Section 15 of the Act which reads as here-under :

15. Special Public Prosecutor :- For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an Advocate who has been in practice as an Advocate for not less than seven years, as a Special Public Prosecutor for the purpose of the conducting cases in that Court,

By close reading of Section 15 for appointment of a Spl. P.P. not following the Rule 4 of the Rules would not vitiate the impugned notification issued by the State Govt. appointing the 2nd respondent as a Spl. P.P. Therefore the contention urged by the learned counsel for the petitioner that in not following the mandatory Rule 4 of the Rules has not vitiated the impugned notification Addendum dt. 4-12-2000 has been issued to add Section 15 and Rule 4 of the Act and Rules to the impugned notification.

13. Apart from the said reason the legal contentions urged by the petitioner counsel that the impugned Notification at Annexure-C has not been published in the Karnataka Gazette in compliance with Section 3(24), Clause (b) of the Karnataka General Clauses Act is also not tenable in law for the reason that the non-publishing the same in the Gazettee will not vitiate the Notification as the publication of the Notification is not mandatory, it is only a directory. Similar provisions regarding the legal requirement of laying the notification of fixation of maximum selling prices of various categories of Iron and Steel including Black plain Iron sheets as required u/s 3(6) of Essential Commodities Act, 1955 before the House of Parliament publication of the Notification has been examined by the Apex Court in the case reported in AIR 1979 SC 1149 in Atlas Cycle Industries Ltd. v. State of Haryana. The Apex Court in the aforesaid case has clearly held that non-placement of the notification before the Houses of Parliament under the provisions of the Act referred to supra will not vitiate the same. Therefore the contention urged by the same are not only untenable and further the reliance placed upon the judgment of the Apex Court and the Division Bench of the Allahabad High Court and other High Court referred to in this judgment with

reference to the contention urged are not applicable to the facts of the case, having regard to the law laid down by the Apex Court in the Atlas Cycle Co., case referred to supra.

14. Further it is not in dispute that the petitioner has got more than 10 years of service and further the appointment of the 2nd respondent as S.P.P. is only with a view to safeguard the interest of the prosecution and conduct the same in the better manner to find out the truth or otherwise of the charges made against the petitioner and other accused persons. Therefore the accused persons have no say in the matter of appointment of the second respondent as Spl. P.P. If at all any person would have aggrieved by the appointment of the 2nd respondent is only by the complainant but not the accused persons. As no prejudice has been caused in conducting the case by the 2nd respondent, this Court has also recorded a finding that the appointment of the 2nd respondent by the 1st respondent is in exercise of power u/s 24(8) of Cr.P.C. r/w Section 15 and Rule 4 of the Act and the Rules, therefore the contention of the learned counsel for the petitioner that 2nd respondent is a usurper of the public office is devoid of merit and the reliance placed upon the judgment of The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others, at para 14 is of no assistance to the case of the petitioner. For this reason also the petitioner is not entitled for the relief.

15. The following reasons are assigned in answer to the Second legal point No. II.

The submission made on behalf of the learned counsel for the respondents placing reliance upon the Division Bench Judgment of Mukhtiar Singh Vs. State of Punjab and others, is considered by this Court. In the aforesaid judgment the Division Bench of that High Court has placed reliance upon the judgment of the Apex Court Satya Narain Singh and Others Vs. High Court of Judicature at Allahabad and Others, at paragraphs 6 and 7 with reference to Hallsbury's Laws of England 3rd Edn. Vol. II para 281 and the (1916) 1 KB 595 with regard to an issuance of quo warranto law has been laid down, the said paragraphs are extracted as hereunder :

6. Apart from this, this complaint lacks in bona fide and it appears to have been engineered with ulterior motive by certain interested persons. The respondent was appointed in 1975 and no dispute was ever raised with regard to the correctness of his appointment. The instant move is with some sinister design. A writ of quo warranto is not issued as a matter of right. It is a discretionary....

7. In King v. Speyer (1916) 1 KB 595, it was considered that:

An information in the nature of a quo warranto will lie at the instance of a private....

In the aforesaid judgment it has been clearly held the discretionary relief to be exercised by the High Court under Article 226 of the Constitution for issuing a writ of quo warranto the bona fides, of the party delay and laches should be

taken into consideration. In this case the original notification is of the year 1995. The impugned notification is dt. 2-6-1995 to which notification Addendum has been issued incorporating Section 15 and Rule 4 would go back to the date of original notification. Therefore there is more than 6 years delay in filing this writ petition. On this ground alone the petition is liable to be rejected and further the addendum notification has been sent for publication in the Karnataka Gazette. Therefore the second legal point must be answered against the petitioner.

16. For the reasons recorded on the legal questions by this Court none of the grounds urged by the learned counsel for the petitioner warrants interference with either the impugned notification or issue a writ of quo warranto in this case in exercise of its discretionary power under Article 226 of the Constitution of India. Therefore petition must fail.

17. Accordingly writ petition is dismissed with costs of the proceedings. Having regard to the pendency of the case for the last 6 years before the Special Court it would be proper and appropriate for this Court to direct the Spl. Court to expedite the trial by examining the I.O. on day to day basis and conclude the trial as expeditiously as possible. The petitioner shall pay cost of Rs. 10,000/- for the respondents towards the costs of the proceedings.