

(2015) 01 KAR CK 0146

In the Karnataka High Court

Case No : Writ Petition No. 57090/2014 (GM-RES) PIL

H.M. Farooq

APPELLANT

Vs

The Government of Karnataka and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Protection of Human Rights Act, 1993 — Section 24, 24(3)

Citation : (2015) 145 FLR 860 : (2015) 2 KarLJ 486

Hon'ble Judges : S. Sujatha, J.;K.L. Manjunath, J.

Bench : Division Bench

Advocate : M.R. Balakrishna, for the Appellant; Ravivarma Kumar, Advocate General, R. Devdas, Prl. G.A. and Shweta Krishnappa, H.C.G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The petitioner claiming to be an anti-corruption crusader, social activist and public spirited citizen has filed this petition requesting the Court to issue a writ of Quo Warranto declaring that the third respondent has no authority to hold and continue in the office as Chairman of Karnataka Law Commission and his appointment as Chairman of Law Commission is non-est in law and also quash the notification dated 26.06.2014 issued by the second respondent appointing respondent No. 3 as Chairman of Karnataka Law Commission.

2. Heard the learned Counsel for the petitioner and learned Advocate General for the State.

3. It is the specific case of the petitioner that Karnataka Law Commission has been constituted by the Government of Karnataka in the year 2009 consisting of a full time Chairman, who shall be a retired Chief Justice of High Court or retired Judge of the Supreme Court, a full time member who shall be a retired Judge of the High Court of Karnataka, a full time member Secretary, who shall be retired

District Judge, in addition to that, there would be five ex-officio Hon'ble Members, who shall be Advocate General of Karnataka, Law Secretary of Karnataka, Secretary, Karnataka Legislative Assembly/Council, Dean Faculty of Law, Bangalore University, Secretary, Parliamentary Affairs, Government of Karnataka and one more Ex-Officio Honorary Member viz., Director, Karnataka Institute for Law and Parliamentary Reforms.

4. It is also stated in para-3 of the petition, the main functions and duties of Law Commission. According to the petitioner, Law Commission of Karnataka can suggest amendment, modification in the existing laws, proposed laws, drafting new laws for effective functioning of the market economy, deletion of obsolete laws, providing assistance to the State Legislature in drafting laws, suggesting steps for administrative reforms and providing suggestions of settlement of inter-state disputes.

5. It is the specific case of the petitioner that the third respondent was the Chief Justice of Chhattisgarh High Court and after his retirement, he was appointed as Chairperson of Karnataka State Human Rights Commission in 2007 and served upto July 2012. In the month of June 2014, the third respondent has been appointed as Chairman of Law Commission vide Annexure "A".

6. It is the contention of the petitioner that the third respondent, after ceasing as Chairperson of Karnataka Human Rights Commission, was ineligible for further employment under the Government of the State or under the Government of India. Relying upon Section 24(3) of the Protection of Human Rights Act, 1993, the present petition is filed on the ground that the third respondent could not have been appointed as Chairman of Law Commission and in the circumstances, he requests the Court to allow the writ petition and issue a Writ of Quo Warranto.

7. The learned Advocate General submits that Sub-section (3) of Section 24 of the Protection of Human Rights Act, 1993, has no application to the facts and circumstances of the case. According to him, the third respondent cannot be considered as an employee of the State Government and the post of the third respondent cannot be considered as an employment under the State of Karnataka. Taking us through the entire petition and the grounds urged in support of the writ petition, the learned Advocate General submits that the petitioner has nowhere stated that the post of Chairman of State Law Commission is an employment under the Government. According to him, the post of Chairperson of Law Commission cannot be equated as an employee under the State and it is a special assignment by virtue of the proceedings of the Government of Karnataka, Law, Justice and Human Rights Secretariat dated 12.01.2009 to constitute the Karnataka State Law Commission with Headquarters at Bangalore. According to him, the Chairperson is an independent person and the State Government has no control over him. The duty of the Commission as stated in the petition as per Government Order dated 12.01.2009, reads as hereunder:

"IV. The terms of reference to the State Law Commission are as indicated hereunder:--

- (1) To rectify defects in existing laws;
- (2) Repeat obsolete laws;
- (3) Identify laws, which are no longer needed or relevant and can be immediately repealed;
- (4) Identify laws, which require changes or amendments to bring them in harmony with the climate of economic liberalization;
- (5) Consolidate, modify and reform existing laws;
- (6) Simplify/modernize the laws;
- (7) Enact laws to rectify the defects pointed out by Courts;
- (8) Assist the Legislature to improve drafting;
- (9) To tender advice when sought by the Government in regard to important legal and constitutional issues;
- (10) To suggest measures for securing quick and quality Justice;
- (11) To suggest measures for ensuring good Governance;
- (12) To suggest measures for improving Administration;
- (13) To provide training to officers of Legislative Wing and also Legislators in legislative process;
- (14) To suggest measures to improve standards of performance of Government functionaries;
- (15) To suggest legislation to implement Directive Principles of State Policy;
- (16) To suggest legislation with a view to promoting gender equality;
- (17) To interact with other Law Commissions and research Institutions at the State, National and International levels;
- (18) To assist in interstate disputes;
- (19) To recommend measures to improve administrative Accountability;
- (20) To recommend measures to eliminate corruption;
- (21) To participate in National and International Forums engaged in Reforms of law and administration of justice;
- (22) To assist in implementation of International treaties and conventions relevant to the State administration;
- (23) Other matters referred by Government;"

8. Relying upon the aforesaid Government Order, the learned Advocate General submits that the Government can refer the matter to the State Law Commission and based on such reference, it is the concern of the Law Commission to give its opinion and suggest and ultimately, it is for the Government to accept the suggestions and implement the same. Therefore, any recommendations made by the Law Commission are more recommendatory in nature and the post of the Chairman or its member cannot be considered as an employment under the Government. According to him, the tenure of the Chairman and its Member shall be five years and his pay, allowances and all other conditions of service shall be the same as that of Chief Justice of High Court. When the pay, allowance and all other conditions of service shall be the same as that of Chief Justice of High Court, by no stretch of imagination the post of the Chairman, Law Commission can be considered as an employment under the State and the State has no control over the Chairman of Law Commission. In the circumstances, he requests the Court to dismiss the writ petition.

9. The learned Advocate General has also brought to our notice about the criminal cases pending against the petitioner herein in various Police Stations. Relying upon these documents, he submits that the petitioner is not a pro bono person and that the petition has been filed with a malafide intention and therefore, such petition shall not be entertained.

10. Having heard the learned Counsel for the petitioner and the learned Advocate General for the State, what is to be considered by this Court in this petition is:

"Whether the post of Chairman, Karnataka State Law Commission has to be considered as an employment under the Government of the State?" 11. In order to appreciate the contention, we have to consider how far sub-section (3) of Section 24 of The Protection of Human Rights Act, 1993, would be applicable to the facts of this case. Sub-section (3) of the Section 24 of the Protection of Human Rights Act, 1993 reads as hereunder:

"On ceasing to hold office, the Chairperson or a member shall be ineligible for further employment under the Government of the State or under the Government of India." 12. According to the learned Advocate General, the appointment would be different from employment under the Government either under Annexure "A" or under the Government Order dated 12.01.2009. It is not stated that the post of Chairman of State Law Commission as an employment. It is only an appointment for a period of five years and the Commission has been established for the benefit of the State and based on the suggestions and recommendations made by the Law Commission the State Commission would implement for the benefit of the State.

13. Learned Advocate General, has also cited a decision of Kerala High Court in W.P. (C) No. 5345 of 2009 decided on 22.05.2009, in the case of Sreenivasan Venugopalan v. M.M. Pareed Pillai, Retired C.J. of Kerala High Court and Anr. In the aforesaid case, the former Chief Justice of High Court of Kerala after

retirement was holding the post of Chairperson of Kerala Human Rights Commission and after demitting the office, he was appointed as Lok Ayukta of the State and the appointment of the former Chief Justice of Kerala High Court was challenged by the Members of the Bar relying upon sub-section (3) of Section 24 of the Protection of Human Rights Act, 1993, on the ground that there is a prohibition for a person to occupy another post when he ceases to be the Chairperson of the State Human Rights Commission. The Kerala High Court while deciding the matter, came to the conclusion that sub-section (3) of Section 24 of the Protection of Human Rights Act, 1993, has no obligation to appoint a person as Lok Ayukta after demitting the office of the Chairperson of Kerala Human Rights Commission. In para-3 of the judgment, Kerala High Court has ruled as hereunder:

"3. In this regard, several decisions have been cited. As held by Apex Court in several pronouncements, the writ of quo warranto lies only against the person, who is not entitled to hold the office of public nature and is an usurper of the office. Broadly speaking, the writ of quo warranto proceedings affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the office."

14. The word "employment" in Article 319(3) if understood to mean the relationship of employer and employee does not include the Office of Governor because the Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties. This we are quoting from the judgment of the Hon"ble Apex Court in Hargovind Pant Vs. Dr. Raghukul Tilak and Others, . Relying upon the aforesaid judgment, we have to consider whether there exists a relationship of master and servant between the Chairperson of Karnataka Law Commission and the State in order to consider the case of the petitioner. According to us, there is no relationship of master and servant between the Chairperson of Karnataka Law Commission and the State. Relying upon the judgment of the Kerala High Court, we are of the view that the aforesaid judgment is squarely applicable to the facts of this case. The only difference in the instant case and that of the case decided by the Kerala High Court is that after demitting the office of the Chairperson of Human Rights Commission, the former retired Chief Justice was appointed as Lok Ayukta. In the instant case, instead of Lok Ayukta, he has been appointed as Chairman Law Commission of Karnataka State. According to us, there is no difference between the facts involved in the aforesaid case and the present case.

15. Without considering the contention of the Advocate General with regard to the conduct of the petitioner in approaching the Court and his bonafide, we hold that there are no merits in this petition.

16. Accordingly, this writ petition is rejected.