

(2009) 06 KAR CK 0097
In the Karnataka High Court
Case No : Writ Petition No. 14495 of 2008

H.S. Mahesha, Advocate

APPELLANT

Vs

The State of Karnataka and K. Ravikumar @ Rock Line
Ravikumar

RESPONDENT

Date of Decision : 22-06-2009

Acts Referred:

Karnataka Home Guards Act, 1962 — Section 3 (2), 3 (2A), 3 B (3)
Karnataka Home Guards Rules, 1963 — Rule 14 (1), 3A, 3B

Citation : (2009) ILR (Kar) 2442 : (2010) 1 KarLJ 702

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : Ashok B. Patil, for the Appellant; Shashidhar S. Karamadi, HCGP for R1 and R2 and Ravivarma Kumar, for H.V. Manjunatha, Manju and Manju A/S for R3, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—In this case, the petitioner has challenged the validity of the order at Annexure C dated 21.10.2008 whereby the third respondent was appointed as the District Commandant of Home Guards ("District Commandant" for short) of Tumkur District with immediate effect.

2. The brief facts of the case are as follows:

One B. Shivakumar was appointed as the District Commandant of Home Guards by an order dated 22.3.2007 till 17.5.2008. The petitioner herein was appointed as the District Commandant by an order dated 21.7.2007 (Annexure "A") B. Shivakumar challenged the said order appointing the petitioner as the District Commandant of Home Guards of Tumkur District in W.P. No. 11706/2007. This Court granted an interim stay of the said order. The third respondent herein was appointed as the District Commandant by an order at Annexure "C" dated 21.10.2008 with immediate effect. W.P. No. 11706/2007 filed by B. Shivakumar was disposed of as having become infructuous by an order dated 18.11.2008. It

is contended that appointment of the third respondent as the District Commandant was illegal and opposed to the Karnataka Home Guards Act, 1963 (for short "Act") and the Rules made thereunder (for short "Rules"), it is further contended that the procedure prescribed for appointment of District Commandant has not been followed while appointing the third respondent under the notification at Annexure "C".

3. First and second respondents have filed the statement of objections contending that the Director General of Police and Commandant General, Home Guards and Director Civil Defence in her letter dated 19.8.2008 has forwarded the names with their bio-data through the Deputy Commissioner, who had applied for the post of District Commandant, Home Guards, Tumkur, with a request to call a meeting of the selection committee to select suitable candidate as District Commandant for the Tumkur District from among the candidates applied for the said post. Accordingly, the selection committee meeting was convened on 20.8.2008 under the Chairmanship of Secretary, Home Department. The Superintendent of Police, Tumkur District, vide his letter dated 15.10.2008 has reported that there is no black mark on the third respondent though he had participated in an agitation to protest against the act of garlanding the Bharatha Matha image with chappal garland. As per the powers delegated u/s 3(2) of the Act the State Government has appointed Sri R. Ravikumar - the third respondent as the District Commandant of Tumkur District. It is further contended that the petitioner herein belongs to Janatha Dal (Secular) party.

4. The third respondent has filed statement of objections inter alia contending that petitioner has no locus standi to file this writ petition. It is contended that the appointment of the petitioner as District Commandant under Annexure "A" order is illegal and opposed to the procedure prescribed in the Act and the Rules made thereunder. In exercise of the powers conferred u/s 3(2-A) of the Act the competent authority had invited applications from the candidates for appointment to the post of District Home Guards, Tumkur District vide press note dated 14.7.2008 and in pursuance thereof the third respondent made application for appointment to the post in question as per Annexure "R1". He has also produced the list of aspiring applicants as per Annexure "R2". In exercise of the powers vested u/s 3-B(3) of the Act, the Secretary to the Government vide notification dated 21.10.2008 appointed the third respondent as District Commandant, Tumkur District as per the order at Annexure "R3". The third respondent took the charge and reported the same to the second respondent as per Annexure "R5".

5. The petitioner has filed a rejoinder to the said statement of objections contending that the Deputy Commissioner has not invited applications for appointment to the post in question. Therefore, the press-note inviting application itself is illegal. It is further contended that the third respondent is involved in criminal cases and he was released on bail on 28.10.2008 i.e. one week after the impugned order was passed. There are three other cases pending

against the third respondent in CC Nos. 851/2008, 854/2008 and 1949/2007 all relating to certain protest raised by the third respondent. Petitioner has denied that he belongs to JD (S) party. Petitioner has tiled another rejoinder dated 25.2.2009 contending that the notification inviting application for appointment to the post in question has not been issued in accordance with law.

6. The third respondent has filed additional statement of objections reiterating that petitioner is a member of JD (S) party.

7. Sri Ashok B. Patil, learned Counsel for the petitioner mainly contends that the press note at Annexure "H" dated 20.7.2008 inviting application for appointment to the post in question is not in accordance with law. It is argued that notification should have been issued by the Committee constituted under Sub-section (2-A) of Section 3 the Act through the respective Deputy Commissioner as provided under Rule 3-B of the Rules. It is further contended that the petitioner was appointed as District Commandant as per the order at Annexure "A" dated 21.7.2007 with immediate effect until further orders. The said order was stayed by this Court in W.P. No. 11706/2007 on 27.7.2007 until further orders. The writ petition was disposed of as having become infructuous on 18.11.2008. Before the disposal of the writ petition itself; the third respondent was appointed as the District Commandant under Annexure "C" order dated 21.10.2008. Without annulling the order at Annexure "A" question of appointing the third respondent under Annexure "C" order as District Commandant does not arise. On this ground also, Annexure "C" order is liable to be quashed. It is argued that though the petitioner has not applied for appointment as District Commandant as per the press note (Annexure "H"), he has locus standi to challenge the order appointing the third respondent as District Commandant.

8. Sri Ravivarma Kumar, learned Senior Counsel appearing for the third respondent has sought to justify the impugned order whereby the third respondent was appointed as the District Commandant. It is argued that the petitioner could not have been appointed as the District Commandant because the said order runs counter to Rule 3-A. It is argued that the petitioner belongs to JD (S) party and he does not ordinarily reside in the District Headquarters. It is further argued that there is no bar for the Commandant General to issue the notification inviting applications for appointment to the post in question. Rule 3-B does not mandate the Deputy Commissioner of the concerned District to issue the notification. He has taken me through the various documents in support of his contention that petitioner was a member of JD (S) party during the relevant point of time. It is submitted that the petitioner has contested Taluk Panchayath election, Hirehalli Taluk. He has filed his nomination in accordance with Rule 14(1) of Karnataka Panchayath Raj (Conduct of Election) Rules, 1993. He has also filed "B" Form issued by the President of the said party along with the said application. It is submitted argued that the petitioner has no locus standi to file the writ petition because he is not an applicant for appointment to the post in question pursuant to the press note at Annexure "H".

9. Sri Ashok B. Patil, learned Counsel at this stage, submits that petitioner is not a member of JD (S) party. He further submits that the President of the JD(S) party, Tumkur District has issued the certificate as per Annexure "L" dated 9.12.2008 stating that petitioner is neither a primary member of the said party nor is he participating in any of the activities of the party.

10. Before dealing with the other contentions raised by the learned Counsel for the parties, let me first consider the contention of Sri Ravivarma Kumar, learned Senior Counsel relating to the "locus standi" of the petitioner to maintain the writ petition. In Blacks Law Dictionary, the meaning assigned to the term "locus standi" is "the right to bring an action" or "to be heard in a given forum". One of the meanings assigned to the term "locus standi" in Law Lexicon of Sri P. Ramanatha Aiyar, is "a right of appearance in a Court of justice". It is settled that right under Article 226 can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner, which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under Article 226. Legal right that can be enforced by this Article must be ordinarily be the right of the petitioner himself.

In S.V. Krishnamurthy v. Deputy Commissioner, Chikmagalur 1972 (1) My.L.J. 629, relied on by the learned Counsel for the third respondent, a Division Bench of this Court has held that the circumstances under which the right to question the appointment arises must be determined by the application of normal considerations of necessity or the existence of persona) grievance before jurisdiction under Article 226 is invoked. To acquire such personal grievance entitling a person to question a selection under Article 226 of the Constitution, the normal rule is that he must have competed at the selection which he questions because by invoking jurisdiction of Article 226, the petitioner seeks redressal of a personal grievance resulting in a relief being conferred upon him. Such a relief in the case of an attack or challenge against the selection made for purposes of appointment could only be in the nature of a farther consideration of the petitioner's case along with others with a possibility of the petitioner himself getting selected for appointment. In J. Ranga Swamy Vs. Government of Andhra Pradesh and Others, , relied on by Sri Ravivarma Kumar, the Apex Court has held that a person who is eligible to be appointed for the post alone can complaint against his non-selection.

11. However, the orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in India and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper-technical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition tiled by such a person

cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having locus standi.

In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , the Apex Court has observed that a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof.

In *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, the Apex Court has held that a writ petition was maintainable even if the right to relief arises out of an alleged breach of contract, where the action challenged as of public authority invested with statutory power.

In *Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others*, the Apex Court has held as under:

Having considered the submissions, we do not find any of the observations made hereinbefore is applicable in the present case. We find Dr. Mehrotra has filed the writ petition being concerned with the anomalies and illegalities in the procedure adopted by the University in making selection and regularising the various posts in contradiction to the Acts, Statute and Ordinances. He was aware fully of all what was happening with full grip of all the materials. Facts reveal he was genuinely concerned to rectify the wrongs without any personal animosity against anyone. His feelings were bona fide, being professor of History in the same University. He had all the details, fully equipped with facts and the law pertaining to the University. It was not for any personal gain. It was neither politically motivated nor for publicity. The golden key for public interest litigation was delivered in the landmark decision of this Court in *S.P. Gupta Vs. President of India and Others*, This was devised for increasing citizens participation in the judicial process for making access to the judicial delivery system to such, who could not otherwise reach Court for various reasons. But it is also true, since then this Court repeatedly has been cautioning its misuse laying down restrictions to scuttle out undesirable persons or body. It is in this context the above observations were made by this Court as relied by the appellants but that very authority accords approval for filing such public interest litigation.

In *Ghulam Qadir Vs. Special Tribunal and Others*, the Apex Court has again held as under:

There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding

the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases of dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.

12. In the present case, admittedly, the petitioner has not applied for appointment as the District Commandant pursuant to the press note at Annexure "H". His grievance is that the authorities concerned having appointed him under Annexure "A" order dated 21.7.2007 could not have appointed the third respondent before the expiry of his term. That is how he is aggrieved by the order at Annexure "C" appointing the third respondent as the District Commandant. It is his farther contention that the appointment of the third respondent to the post in question is contrary to the provisions of the Act and the Rules made thereunder. Therefore, it cannot be said that petitioner does not have locus standi to challenge the order at Annexure "C".

13. That brings me to the next question as to whether the appointment of the third respondent to the post in question is in conformity with law? The Karnataka Home Guards Act, 1962, provides for appointment of District Commandants. Sub-section (1) of Section 3 states that the State Government shall constitute a voluntary body called "Home Guards", the members of which shall discharge such functions and duties in relation to protection of persons, the security of property and the preservation of public order or tranquility, as may be assigned to them in accordance with the provisions of the said Act and the Rules made thereunder. Section 3 of the Act has been amended by Karnataka Act No. 19 of 2003, which has come into force w.e.f. 22.4.2003, whereby for the words "The State Government may", the words "The State Government may from the list of eligible persons sent by the Committee under Sub-section (2-B)" has been substituted. Sub-section (2-A) provides for constitution of the committee, Sub-section (2-B) provides for the procedure for preparation of the list of eligible persons to be appointed as Commandants, Sub-section (2-C) provides for the terms and conditions of office of the Commandants and Sub-section (2-D) provides for the terms and conditions of appointment of the Commandants. The said provisions are as under:

(2-A) There shall be a Committee consisting of the following members for selecting persons possessing prescribed qualification to be appointed as Commandants under Sub-section (2), namely:

(a) The Secretary to Government Home and Transport Department

(b) The Commandant General Home-guards and Civil Defence.

(c) The Deputy Commandant General, Home-guards and Civil Defence.

(2-B) The Committee referred to in Sub-section (2-A) shall after following such procedure as may be prescribed prepare a list of eligible persons to be appointed as Commandants under Sub-section (2) and send the list of such eligible persons to the State Government.

(2-C) Subject to the pleasure of the State Government, term of office of the Commandants shall ordinarily be for a period of five years and it may be extended for a further period of five years.

(2-D) The terms and conditions of appointment of the Commandants shall be such as may be prescribed.

14. Section 12 of the Act provides for making of Rules to effectuate the purpose of the Act Rule 5 provides for constitution of the Home Guards Selection Committee. It states that the State Government shall appoint a committee to be called the "Home Guards Selection Committee" for each of the areas for which Home Guards are constituted under the Act. The Rules have been amended w.e.f. 4.9.2003. Rule 3-A as amended, provides for the qualifications, terms and conditions for appointment of Commandant and Rule 3-B provides for the procedure for appointment of Commandant Home Guards Incharge of the District, which are as under:

3-A Qualifications, Terms and Conditions for appointment of Commandant - The qualifications and terms and conditions for appointment of a Commandant are as specified below:

(1) He shall be a responsible person and belonging to the District to which he is to be appointed.

(2) He shall be a graduate from the recognised University established by law.

(3) He shall not belong to any political party.

(4) He shall not have been convicted for any criminal offence.

(5) He shall not be more than fifty years of age.

(6) He shall be ordinary resident of the District Headquarters.

(7) He shall be physically fit

3-B Procedure for appointment of Commandant, Home-guards in-charge of District:

(1) The Committee referred to in Sub-section (2-A) of Section 3 shall invite applications from eligible candidates for appointment as Commandant of the District through the Deputy Commissioner of the concerned District.

(2) After receipt of the applications, the Deputy Commissioner shall prepare a list of candidates who have applied and shall forward the same to the Committee for scrutiny of those applications for selection. The Committee shall after scrutiny of the applications, prepare a list of eligible candidates to be appointed as Commandant and the same shall be forwarded to the State Government along with its recommendation, if any, for appointment of Commandant Home-guard.

(3) After the receipt of the list of eligible candidates from the Committee, the State Government may appoint one of the candidates mentioned in the list as Commandant Home-guards for the District concerned.

15. It is clear from the aforesaid provisions that in order to be appointed as the District Commandant, the person concerned shall not belong to any political party, he shall not have been convicted for any criminal offence and he shall be ordinary resident of the Headquarters amongst others. Rule 3-C provides for termination of the Commandant.

16. Annexure "H" is the press note issued by the Deputy Commandant General Home-guards, Civil Defence, Karnataka, Bangalore, inviting applications for the Honorary District Commandant Home-guards Post in the Districts of Bangalore, Chickmagalore, Dakshina Kannada, Gulbarga, Ramanagara and Tumkur. Deputy Commandant General Home Guards and Director, Civil Defence, is one of the members of the Committee constituted for the purpose of appointment of the District Commandant. As stated above, Rule 3-B provides for the procedure for appointment of the District Commandant, Home Guards Incharge of the District. It states that the committee referred to in Sub-section (2-A) of Section 3 shall invite applications from the eligible candidates for appointment as Commandants of the District through the Deputy Commissioner of the concerned Districts. In other words, the committee has to invite applications and not the Deputy Commissioner of the concerned District. The press note at Annexure "H" states that bio-data with the attested copy of the testimonials with reference to the date of birth, educational qualification, address, phone numbers, along with two reference from respectable persons of the locality and Head of Office (if employed) should be submitted to the concerned Deputy Commissioner. It further states that the interested persons shall submit their applications to the Deputy Commissioner of the concerned Districts on or before 28.7.2008. Therefore, the applications for appointment as Commandant of the District have been invited through the Deputy Commissioner of the concerned District. One of the Committee members, namely, the Deputy Commandant General has issued the notification. It is true that under Rule 3-B, the Selection Committee should have invited application from the eligible candidates for appointment as District Commandant. It is not the case of the petitioner that because the press note was issued by the Deputy Commandant General, he has lost the opportunity to make application within the prescribed period. Therefore, no prejudice whatsoever has been caused to the petitioner on account of the Deputy Commandant issuing the notification. As a matter of fact, he is not an applicant to the post in question

pursuant to the said notification. The Apex Court in Sardara Singh and others, etc. Vs. State of Punjab and others, , has held that though the procedure adopted by the Collector in inviting application is not commendable, but the grievance would be voiced only by the persons who did not have the opportunity to make applications within the prescribed period But no such grievance could be raised by persons like the appellants. It is held that the procedure adopted, though irregular, does not vitiate the selection of candidates, ultimately made by the Committee. It is held as under:

It was next contended that instead of calling the applications by publication in the newspapers, only notice was put on the Notice Board of the Collector's office and some candidates submitted their applications in pursuance thereof and that is not a proper notification. Though we find that the procedure adopted by the Collector, in inviting applications is not commendable, but the grievance would be voiced only by the persons who did not have the opportunity to make applications within the prescribed period. But no such grievance could be raised by persons like the appellants. Under those circumstances, the procedure adopted, though irregular, does not vitiate the selection of candidates, ultimately made by the Committee.

Therefore, I am of the view that merely because some error has crept in while issuing the notification, that by itself will not vitiate the selection of the third respondent as the District Commandant.

17. It is no doubt true that petitioner was appointed as the District Commandant as per the order at Annexure "A" dated 21.7.2007 in place of B. Shivakumar and it is also evident that B. Shivakumar was removed from the post in question under the same order. Petitioner has not taken charge of the office because of the interim order granted by this Court in W.P. No. 11706/2007 tiled by B. Shivakumar. Thus, the order at Annexure "A" was not implemented. The term of office of B. Shivakumar came to an end on 17.5.2008. The third respondent was appointed as the District Commandant as per the order at Annexure "C" on 21.10.2008 until further orders. It is also clear from the order at Annexure "C" that there is no order to remove the petitioner from the post in question because he has never taken charge of the said post. The third respondent has taken charge of the post on 24.10.2008 as per Annexure "R5" and the writ petition was filed on 19.11.2008 and interim order was obtained on 21.11.2008. Thus, before the filing of the present writ petition challenging the impugned order, the third respondent has taken charge.

18. It is argued by the learned Counsel for the petitioner that since certain criminal cases are pending against the third respondent, he is not eligible for appointment to the post in question. He points out from the notification at Annexure "H" that the eligibility criteria for appointment of the said post is that no criminal cases should be pending against the applicant It is not in dispute that criminal cases are pending against the petitioner in connection with certain protest in respect of certain public issues. Rule 3-A provides for the qualification,

terms and conditions for appointment of the District Commandant The said Rule does not state that any person against whom criminal cases are pending is not qualified for appointment as the District Commandant It clearly states that the person concerned should not have been convicted for any criminal offence, which is not the case put forth by the petitioner. The advertisement is nothing but a procedural aspect for recruitment and it cannot be a substitute for the statute. Therefore, there is no disqualification for the third respondent for appointment as the District Commandant

19. It is evident from the material on record that petitioner was not eligible for appointment as the District Commandant during the relevant point of time. The material on record clearly discloses that he was an active member of Janata Dal (Secular) party. In fact, he has filed his nomination under Rule 14(1) of Karnataka Panchayath Raj (Conduct of Election) Rules, 1993 to contest the Taluk Panchayath election of Hirehalli Taluk as a nominee of the said party and the National President of the said party has issued Form-B permitting him to contest in the said election, which is clear from Annexure "R12". The petitioner has produced a certificate issued from the District Party President of JD (S) as per Annexure "L" dated 9.12.2008 which only states that petitioner is serving as an Advocate and that he is not a primary member of the party and that he is not even an office bearer of the party. The said certificate has been issued on 9.12.2008. It only indicates that he may not be a member of the party when the letter was issued. But, it is clear from the material on record that during the relevant point of time, petitioner was the member of a political party and that he has tiled his nomination to contest the election and the Party President has issued B-Form enabling him to contest the election as the nominee of the said party. It is immaterial whether he has actually contested the election or not. It is also evident from the paper reports and the photographs at Annexures "R6 R7, R8 and R9" that petitioner was actively involved in the activities of the said party. Taking a over all view of the matter, this Court is of the view that petitioner was a member of the JD (S) during the relevant point of time. It is also evident that petitioner is not even a resident of the District Headquarters of Tumkur District, which is clear from the address famished by him in the writ petition. He is a resident of Hirehalli, Tumkur Taluk. Thus, it is clear that petitioner should not have been appointed as the District Commandant because he was not eligible to be appointed to the said post.

20. There is no merit in this writ petition and it is accordingly dismissed. No costs.