
(1985) 07 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 182 of 1984

Jagram

APPELLANT

Vs

Gwalior Town and Country Development Authority Gwalior
and Others

RESPONDENT

Date of Decision : 24-07-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 47

Citation : (1985) 30 MPLJ 773

Hon'ble Judges : T.N. Singh, J;R.C. Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

T.N. Singh, J.

Issue a writ of Quo Warranto or of Mandamus, the petitioner demands of this Court. Counsel vocally and vociferously pleads petitioner's case to invoke our jurisdiction on Writ Side to serve what he calls a "public cause". Public money is being squandered, which must stop. Third respondent is a public functionary, who must not be allowed at public cost, to oblige his friend, the fourth respondent. Appointment of fourth respondent as the Financial Advisor of Gwalior Town and Country Development Authority is challenged in this petition. But, the question is, can we accept petitioner's claim that by this challenge, he is fighting "Public Interest" litigation?

We heard counsel for the petitioner at length. We also heard counsel who appeared on behalf of the respondents pursuant to the notices, issued to them. Returns having also been filed, it presented us no difficulty in disposing of the matter at the threshold. But, the petitioner having agitated question of general importance, we assured counsel that we shall write reasoned judgment though we had taken the view that the petition merits dismissal at the threshold.

Now, the facts, there are few, but pregnant. Petitioner admits in his petition that he is an ex-employee of first respondent, Gwalior Town and Country Development Authority, hereinafter the "Authority". The admitted position also is that third respondent holds the Office of the Chairman of the Authority. The crucial allegation in the petition that the third and fourth respondents are friends is, however, not admitted by the said respondent in their returns. On the other hand, there is a lot written in the returns about petitioner's "motive". His bona fides are challenged stating that petitioner was discharged as a result of "disciplinary enquiry" held by the fourth respondent and he is now trying to settle scores abusing this Court's process.

Because the petitioner based his claim on the violation of the Proviso to Section 47 of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short, the Act) that the fourth respondent's appointment was without prior sanction of the State Government, on behalf of Respondent 2, State of Madhya Pradesh, return is filed to controvert this fact. In the second return at page 11, in sub-para (vi), it is averred that the appointment of fourth respondent was duly approved although no prior sanction of the State Government for such appointment, made in advisory capacity purely on temporary basis, was at all necessary. Indeed, our attention was drawn also to Annex. R/7 of the return filed on behalf of Respondents 1 and 3. It is a letter D/- 20-3-84 by the second respondent (State of Madhya Pradesh) to the Authority (first respondent) communicating Government's approval of terms and conditions of the appointment of the fourth respondent made by the Authority for a period of six months from 1-11-1983. Our attention was drawn to Annexures H/7 and H/8 of fourth respondent's return which support his claim of the terms of his appointment being further extended.

Let first Section 47 of the Act be extracted on which implicit reliance is placed by the petitioner:

"47. Other Officers And Servants. Every Town and Country Development Authority may appoint such other officers and servants as may be necessary and proper for the efficient discharge of its duties :

Provided that no post shall be created save with prior sanction of the State Government:

Provided further that the power of appointment shall be subject to such restrictions as the State Government may, from time to time, impose".

Law is well-settled that writ of quo warranto shall not issue against a person who does not hold a public office, created under a statute or the Constitution. Section 47 does not create the post of "Financial Advisor". It merely authorises the Authority to "appoint such other officers and servants as may be necessary and proper for efficient discharge of its duties" though the Proviso circumscribes this power envisaging that no post shall be created save with prior sanction of the State Government" and that "the power of appointment shall be subject to

restriction as State Government may, from time to time, impose". It is unnecessary for us to consider the question as to whether the fourth respondent was holding the post of "Financial Advisor" in contravention of the mandate of the two provisos on which much stress was laid. Still, we may say that AnnexureR/7 clearly demonstrates the hollowness of the contention and pre-empts further debate on this aspect of the case.

However, it has to be made clear that "officers and servants" who could be appointed in terms of Section 47 by any Town and Country Development Authority cannot be said to hold any "Public Office". Only when a person holds an "independent substantive public office, or franchise, or liberty" he may be called upon to show, by the writ of quo warranto, his title to the office, franchise or liberty. This is what is stated about the Writ in Halsbury. This view has also found favour with, and has secured the endorsement of, our apex court in the case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, . The Court, in that case, held that before a citizen can claim a writ of quo warranto, two conditions must be satisfied that the office in question is a public office and that it is held without legal authority. Ministerial officers whose rights and obligations are governable according to law of master and servant would not, in our opinion, be entitled to be called persons holding any "public office", whether such employment be purely contractual or does have statutory trappings. It is the statutory status which makes the difference in that the "office" or assignment becomes "independent and substantive" as distinguished from an assignment which is easily terminable at the pleasure of a non-statutory functionary. Accordingly, holding a post to which one may be appointed in virtue of statutory power (of recruitment) or even the fact that, service conditions of such a person is determinable according to statutory rules, will not entitle him to claim that he is holding a "public office."

The demand for a mandamus, obviously is based on the claim that the petitioner is pursuing "public interest" litigation. To test the validity of petitioner's contention, we have ample and high authority to guide us. We have to consider two questions. Whether, in the instant case, the petitioner has a standing to challenge the appointment of fourth respondent? Whether the instant lis is at all a "public interest" litigation? What appears to us firmly established by now on the question of standing is what the Constitution Bench has stated in *S.P. Gupta Vs. President of India and Others*, , as follows : --

"..... the individual who moves the Court for Judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court."

We have no doubt that no person, having an axe to grind or a personal interest

promoted or one who is actuated into malice would be allowed to seek the aid of this Court under the garb of pursuing "public interest litigation". Because, promotion of a "public cause" must have an altruistic base. Therefore, purity of motive of the promoter must be the hallmark of such litigation.

It was also held in *S.P. Gupta* that such litigation is permissible merely to ensure access to justice to those who either singly or as a class, are unable to approach the Court for relief by reason of "poverty, helplessness or disability or socially or economically disadvantaged position" to enable him or them to obtain necessary relief for legal wrong or legal injury caused to him or them. In their subsequent decisions in the *Asiad Workers' case* by *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, and *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, this view was buttressed, in the last mentioned decision, it was observed that "Court would not, in exercise of its discretion, intervene at the instance of a meddlesome interloper or busybody and would ordinarily insist that only a person whose fundamental right is violated should be allowed to activate the Court."

Whose cause is the petitioner promoting? Whose fundamental right or other right, if any, has been infringed? Who has to be relieved against any wrong and injury caused to him for which he cannot come to this Court owing to social, economic or any other handicap? These indeed are some of the vital questions which are to be answered to test maintainability of any petition which purports to be in "public interest" and for a "public cause". Shri Jain submits that public money is squandered because fourth respondent's appointment is illegal and is product of nepotism. Public cause would be served if that is stopped, Shri Jain vocally contends. However, such an action, in our view, would not come within the ambit of public interest litigation. No interest of the general public or even of any determinate class or group of persons has suffered due to the fourth respondent's holding the post illegally or improperly, as contended. Fiscal discipline of life and its activities whether private or public, cannot, generally, be enforced by courts. Other avenues and measures exist to enforce public accountability of those who are entrusted with public fund. No functionary of the Authority, concerned in the instant case, can act despotically even in matter of dealing with the funds placed at its disposal by the Government for rendering public service. Fiscal control, however, is exercised on the Authority, as is done in cases of other public authorities, by means of audits and other measures. In the instant case, no violation of any of the provisions of the Act in this regard has been complained or agitated before us. The charge of nepotism would also not be technically germane to the question of public interest. At best, it would be a question of Public morality. But, as held in *Gregg v. Georgia* (1976) 49 Law Ed. 2d.859, in a democratic society Legislature, not courts, are constituted to respond to the moral values of the people. If prison reforms are ordered (in *Sunil Batra Vs. Delhi Administration and Others etc.*, or bonded labour freed (as in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, or legal aid for under-trials directed (as in *Sheela Barse Vs. State of Maharashtra*, in those

cases, the Court issued mandamus to enforce Constitutional mandates of Articles 21, 23 and 39A to relieve determinate groups of people against wrongs or injuries to prevent social injustice. No public cause is served or public interest promoted, in our opinion by challenging validity of employment of any individual in any public post and indeed, such action does not in any case prevent any social injustice. In such a case, it maybe only possible and indeed, proper, for any contender to the post to initiate private action should such an appointment be made in violation of any statutory provision or of the Constitutional mandates of Articles 14 and 16.

We are, therefore, of the opinion that the petitioner's claim for mandamus must fail on both grounds. He lacks standing as the petition is not bona fide. There is preponderance of material in this case to suggest oblique motive of the petitioner in preferring the instant application. But, also, the litigation has no semblance of "public interest" and it is not meant to serve any "public cause".

In the result, the petition fails and is dismissed.