
(1956) 04 MAD CK 0010
In the Madras High Court

K. Sivaramakrishnan

APPELLANT

Vs

P. Arumugha Mudaliar, Inspector-General of Registration and
Another

RESPONDENT

Date of Decision : 23-04-1956

Acts Referred:

Constitution of India, 1950 — Article 320(3)(b)

Citation : (1957) ILR (Mad) 158 : (1956) 69 LW 713 : (1956) 2 MLJ 460

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—This is a petition for the issue of a writ of quo warranto questioning the validity of the appointment of Sri P.

Arumugha Mudaliar, who has been impleaded as the first respondent, as the Inspector-General of Registration, Madras, by the State Government named as the second respondent.

2. The ground of attack is based on the allegation, that Article 320(3)(b) of the Constitution has been violated, in that the State Government did

not consult the Public Service Commission before making the impugned appointment. Arumugha Mudaliar was an Assistant Secretary to the

Government, and by an order, dated 17th March, 1954, the Government of Madras appointed him to the office of the Inspector-General of

Registration with effect from 18th April, 1954. The affidavit in support of the petition conceded that under Article 320(3)(b) of the Constitution the

Madras Public Service Commission had to be consulted when recruitment was made to the post of Inspector-General of Registration by transfer

from the cadre of Deputy Collectors and Assistant Secretaries to Government, though no consultation was necessary when the office was filled up

by promotion of a holder of an office of a District Registrar. It was further stated that, when this violation was brought to the notice of the

Government by the Madras Public Service Commission, the Government published G.O. 499 on 8th April, 1954, excluding the post from the

purview of the Commission with retrospective effect from 1st March, 1954, this G.O. being passed under the proviso to Article 320(3), and in

conformity with the terms of Sub-clause (5) of that Article. The legality of this retrospective validation was challenged.

3. In answer to the petition four matters were stated by the respondents namely (1) that the petition for the issue of a writ of quo warranto was not

maintainable as the petitioner had no personal interest in the appointment and therefore had no locus standi to maintain the petition; (2) that

consultation with the Public Service Commission was not needed in respect of this appointment; (3) that the provision of Article 320(3) and the

obligation laid upon the State Government to consult the Public Service Commission were merely directory in their nature, and that the failure to

make the consultation did not invalidate the appointment and (4) that, in any event, the G.O. passed under the proviso to Article 320 (3) in

conformity with the formalities prescribed by Article 320 (5) validated the appointment and the same could no longer be questioned.

4. We shall first deal with the preliminary objection that has been raised to the maintainability of the petition, based on the petitioner not having a

personal interest in the appointment sought to be questioned. We are of the opinion, that, though a writ of quo warranto is not a writ of right, in the

sense that the Court is bound to grant the relief prayed for, still if the validity of an appointment or a claim to an office by a person is challenged by

an applicant for a writ, and the Court is satisfied that the petition has been filed bona fide, i.e., without improper motives and without delay, it has a

right to investigate the matter and decide on the validity of the appointment, notwithstanding that the petitioner is not a rival applicant to that office,

and in that sense does not have a personal interest in the issue of a writ. So far as we are aware there is only the decision of a single judge of this

Court in Chakkarai Chettair, In re (1952) 2 M.L.J. 779, supporting the preliminary objection raised by the respondents. In this decision Chandra

Reddy, J., held that, where an applicant for the issue of a writ of quo warranto was not able to establish his personal interest in the outcome of the

proceeding, he had no right to maintain the petition. This decision has been dissented from subsequently in several decisions of other High Courts,

and we are of the opinion that it does not correctly express the law on the point. It is unnecessary for us independently to trace the history or the

incidents of this writ, but it is sufficient to extract a passage from the judgment of Lord Reading, C.J., in *Rex v. Speyer : Rex v. Cassel* (1916) 1

K.B. 595, where the learned Lord summarised the law on the point. Dealing with the objection similar to the preliminary objection in the present

case, the learned Chief Justice said : (at page 613):

The last ground is that the remedy in this case can only be sought at the instance of the Attorney-General by an information ex-officio, and that the

order should be discharged because it is made at the instance of a private person. In support of this contention Sir William Lowther's case 2 Ld.

Rayam. 1409 and Ibbotson's case Lee Temp. Hardw. 261 were cited. In both cases the grievance was of a private nature and the Court thought

they ought to be prosecuted only by the Attorney-General. Lord Hardwicke, C.J., said : "We never grant these informations for private

usurpations of franchises but the way is to apply to the Attorney-General in such cases.

The distinction is pointed out in *Kyd on Corporations*, page 416, to the effect that the power of the Master of the Crown Office is confined to

cases concerning the public Government, whereas the power of the Attorney-General extends also to cases concerning the private rights of the

Crown. In *Rex v. Kemp* 1 East. 46, Lord Kenyon, C.J., said : "I do not mean to say that a stranger may not in any case prefer this sort of

application; but he ought to come to the Court with a very fair case in his hands," just as the Court thought it right to inquire into the motives of the

applicant to see that the application was not made merely to disturb the local peace of Corporations : *Rex v. Brown* 3 T.R. 574, n. per Ashurst, J.

It cannot be doubted that the application concerns public Government and there is no ground for impugning the motives of the relator. A stranger

to the suit can obtain prohibition see *Brood v. Perkins* (1888) L.R. 21 Q.B.D. 533 and I see no reason why he should not in a proper case obtain

an information of quo warranto. Sir George Macgill appears to have brought this matter before the Court on purely public grounds without any

private interest to serve and it is to the public advantage that the law should be declared by judicial authority. I think the Court ought to incline to

the assistance and not to the hindrance, of the applicant in such a case if the Court has the power, which I think it has. In my opinion the

preliminary objection fails.

5. In our opinion it is the principle that is laid down in the above passage that has to be followed by the Indian Courts also. The decision of

Chandra Reddy, J., was dissented from inter alia by Bose, J., of the Calcutta High Court in *Biman Chandra Bose Vs. Dr. H.C. Mukherjee*,

Governor and Others, , and also by a Bench of the Hyderabad High Court in *V.D. Deshpande v. Hyderabad State* AIR 1955 Hyd. 36, and it is

unnecessary to multiply these dissents. It is sufficient to state that the decision in *Chakkarai Chettiar In re* (1952) 2 M.L.J. 779, has not been

followed by any Court so far as we are aware. We are of the opinion that in the present case, as the bona fides of the petitioner are not challenged,

he is entitled to file this writ petition and ask the Court to consider the correctness of his submission, that the appointment is invalid, and that the

office is held by one who was not legally inducted into it.

6. We shall now proceed to consider the merits of the case. In view of the conclusion that we have reached, that G.O. No. 499/54, dated 8th

April, 1954, validates the appointment, we consider it unnecessary to decide (1) whether the appointment to the office of the Inspector-General of

Registration of a person who previously held the office of an Assistant Secretary to the Government needed consultation of the Public Service

Commission under the relevant rules and (2) whether Article 320(3)(b) is directory or mandatory.

7. The appointment of the first respondent, though notified on 17th March, 1954, was to have effect only from 18th April, 1954, and the office

would therefore be filled only from the latter date.

8. Article 320(3) enacts:

The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted:

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to

another and on the suitability of candidates for such appointments, promotions

or transfers.

9. The proviso to this clause is in these terms:

Provided that the President as respects the All-India Services and also as respects other services and posts in connection with the affairs of the

Union, and the Governor or Rajpramukh, as the case may be, as respects other services and posts in connection with the affairs of a State, may

make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be

necessary for a Public Service Commission to be consulted.

10. Sub-section (5) of that Article provides the manner in which these regulations, have to be made. Its terms are:

All regulations made under the proviso to Clause (3) by the President or the Governor or Rajpramukh of a State shall be laid for not less than

fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case maybe, as soon as possible

after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the

House or both Houses of the Legislature of the State may make during, the session in which they are so laid.

11. It is in pursuance of the power conferred by the proviso to Sub-section (3) and after conforming to the requirements of Sub-clause (5), that the

State of Madras issued the G.O. 499, Public (Services) Department, dated 8th April, 1954. The notification is in these terms:

Whereas doubts have been raised as to whether appointment to the post of Inspector-General! of Registration by transfer from the Madras Civil

Services (Executive Branch) or from the Madras General Service, Class IX, should be made in consultation with the Madras Public Service

Commission;

And whereas it has not been the practice in the past to consult the Madras Public Service Commission in making an appointment to the post of

Inspector-General of Registration by transfer from. the Madras Civil Service (Executive Branch) and it was considered that such consultation was

not necessary;

And whereas it is necessary for the removal of doubt to make an express Regulation declaring that such consultation is not necessary;

Now, therefore, in exercise of the powers conferred by the proviso to Clause (3) of Article 320. of the Constitution of India, the Governor of

Madras hereby makes the following Regulation.

The Regulation hereby made shall be deemed to have come into force on the 1st March, 1954 Regulation.

It shall not be necessary for the Madras Public Service Commission to be consulted as respects any of the matters mentioned in Sub-clauses (a)

and (b), Clause (3) of Article 320 of the Constitution, in the case of the post of Inspector-General of Registration in the Madras Registration

Service.

12. Mr. Kumaramangalam, learned Counsel for the petitioner, stated that his objection was that the regulation was made retrospective so as to

have effect from 1st March, 1954. That date was obviously chosen because the appointment was gazetted on 17th March, 1954. But as we have

mentioned earlier the appointment was to take effect only as and from 18th April, 1954. If the Government had the power of issuing another

notification appointing the first respondent to the office simultaneously with the publication of G.O. 499, we do not see any legal obstacle in the

way of our holding that, even if the Government had no power to validate an appointment retrospectively, on the date when the appointment took

effect, it was valid by reason of the amended regulation passed on 8th April, 1954. We are, therefore, of the opinion, that G.O. 499 of 1954

rendered the consultation of the Public Service Commission in the making of the appointment unnecessary, and the appointment of the first

respondent which took effect only after 8th April, 1954, was valid.

13. The writ petition therefore fails and is dismissed; but in the circumstances there will be no order as to costs.