

(1956) 03 MAD CK 0028
In the Madras High Court
Case No : Writ Petition No. 531 of 1955

K. Sivaramakrishnan

APPELLANT

Vs

P. Arumugha Mudaliar, Inspector of Registration, Madras-1
and Another

RESPONDENT

Date of Decision : 23-03-1956

Acts Referred:

Constitution of India, 1950 — Article 226, 320, 320(3), 320(5)

Citation : AIR 1957 Mad 17 : (1955) 2 MLJ 460

Hon'ble Judges : Rajagopalan, J; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : S. Mohankumaramangalam and S. Gopalratnam, for the Appellant;
A.G. and Special Govt. Pleader, for the Respondent

Final Decision : Dismissed

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 respondent 1, as the Inspector General of Registration, Madras, by the State Government named

as respondent 2.

2. The ground of attack is based on allegation, that Article 320(3)(b) of the Constitution has been violated, in this 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 17-3-1954 the Government of Madras appointed him to the office of the Inspector General of Registration

with effect from 18-4-1954.

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. No. 499 on 84-1954, excluding the post from the purview of the Commission with retrospective effect from 1-3-1954, 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 & 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 obligations 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, & 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 *In Re: V. Chakkarai Chettiar*, , supporting the preliminary

objection raised by the respondents. In this decision Chandra Reddi 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*, 1916 1 KB 595 where the learned Lord summarised the law on the point. Dealing with the objection similar

to the preliminary objection in the pre-sent 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.

Raym 1409 and *Ibboteon's case* (*Lee Temp. Hardw. 261*) (D), 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 Hardwicks 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 *Bex v. Kemp*, (1789) 1 East 46n, (E) 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 TR 574n, (F) per Ashburst

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) 21 QBD 533 (G) and I see no reason why he should not in a proper

case obtain an information of quo warranto. Sir George Makgill 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 case if the Court has the power, which I think it has. In my opinion the

preliminary objection fails...."" 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 1935 Hyd

36 (I) and it is unnecessary to multiply these dissents.

It is sufficient to state that the decision in *In Re: V. Chakkarai Chettiar*, 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, & that the office is held by one who was not legally Inducted to it.

5. 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 of 1954, dated 8-

4-1954, 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.

6. The appointment of respondent 1, though, notified on 17-3-1954, was to have effect only from 18-4-1954, and the office would therefore be

filled only from the latter date.

7. 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." The proviso to this clause is in these terms:

Provided that the President as respects the all-India services & 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 case, or in any particular circumstances, it shall not be

necessary for a Public Service Commission to be consulted.

8. 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 may be, as soon as

possible after they are made & 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." 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.

No. 499 Public (Services) department dated-8-4-1954. 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 Services (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 (S) 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.

9. Mr. Kumaramangalam, learned counsel for the petitioner, stated that this objection was that the regulation was made retrospective so as to have

from 1-3-1954. That date was obviously chosen because the appointment was gazetted on 17-3-1954. But as we have mentioned earlier the

appointment was to take effect only as and from 18-4-1954.

If the Government had the power of issuing another notification appointing respondent 1 to the office simultaneously with the publication of G. O.

No. 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 8-4-1954.

We are, therefore of the opinion, that G. O. No. 499 of 1954, rendered the consultation of the Public Service Commission in the making of the

appointment unnecessary, and the appointment of respondent 1 which took effect only after 8-4-1954 Was valid.

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