
(2004) 06 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 8460 to 8466 of 2004

Karnataka State Pollution Control Board Officers' Association
and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Water (Prevention and Control of Pollution) Act, 1974 — Section 4, 4 (2)

Citation : (2004) 4 KarLJ 426 : (2004) 3 KCCR 2041

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : G.S. Visweshwara, for Aaren Associates, for the Appellant; Jayaram, General and N. Basavarajaiah, High Court Government Pleader for Respondents-1, 2 and 4, C.K. Venkatesh and V.R. Datar for Respondent-3 and Rashmi V. Mahesh, for Respondent-4, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—These petitions are filed seeking for a writ of quo warranto and for various prayers.

2. The petitioners state that the 3rd respondent is a Statutory Board constituted for the State of Karnataka in terms of the provisions of Section 4 of the Water (Prevention and Control of Pollution) Act, 1974. The State Board is governed by Section 4(2) of the Act. Clause (f) of Section 4(2) empowers the State Government to appoint the Member-Secretary. The 3rd respondent is required to perform its duties in terms of the Act with regard to pollution. The petitioner states that the 2nd respondent has issued a notification bearing No. Apajee 23 EPC 2004, dated 23-2-2004 appointing the 4th respondent as the Member-Secretary of the 3rd respondent-Board with immediate effect. Annexure-A is the notification. The petitioners state that the 4th respondent is an IAS Officer. She has held different posts in various Governmental Departments and under Local Authorities, The 4th respondent holds the educational qualification of B.A. and

IAS. She joined the service of the Government and has held the following posts;

1. Assistant Commissioner, Sagar
2. Chief Executive Officer, Mysore Zilla Parishad
3. Managing Director, Women Development Corporation
4. Joint Registrar of Co-operative Societies
5. Deputy Commissioner, Bangalore Mahanagara Palike.

3. According to the petitioner, the 4th respondent does not has the educational qualifications and that she cannot be said to have acquired any knowledge or experience of scientific, engineering or administrative aspects of pollution control in terms of Section 4(2)(f) of the Act. They say that a declaration has to be issued declaring that she is not qualified to hold the post and consequently direct her to vacate as Member-Secretary in the Board.

4. Notice was issued. Respondents have entered appearance. State Government has filed a very detailed objection statement opposing the prayers. They deny the allegation with regard to disqualification in terms of the Act. They say in para 9 that the 4th respondent is a directly recruited Indian Administrative Service Officer of 1996 batch. Rule 9 of the Administrative Service (Pay) Rules, 1954, the post of Member-Secretary, Karnataka State Pollution Control Board, Bangalore has been declared as equivalent to the cadre post of Deputy Secretary to Government in the senior scale of IAS included in Schedule III-B thereof published in the Gazette, Extraordinary, dated 25-6-1999. It is stated that the 4th respondent has served as the Deputy Commissioner (Development), Bangalore Mahanagara Palike and she was responsible for the collection, segregation, transportation of solid waste, and was also closely associated with all other aspect of the health and sanitation programme of the Bangalore Mahanagara Palike. As Joint Secretary of Co- operative Societies, she was associated with the management of the effluents of the Co-operative Sugar Factories. They want the petition to be dismissed.

5. The respondent 3 has filed a statement of objections. In the objections, it is stated that the contesting respondent is not any way disqualified to hold the post of Member-Secretary. They say that the 4th respondent served in various departments of Government, Corporations etc., in various capacities which also involved managerial aspect of pollution control. The 4th respondent was assigned to monitor traffic problems and noise level in Sakleshpur Town. As an Assistant Commissioner, Sagar Sub-Division, she was closely involved with four Municipalities of Sagar, Sorab, Shikaripur and Hosanagara and Solid Waste Management issues thereof. As a Sub-Divisional Magistrate, she was exercising the power u/s 133 of the Cr. P.C. monitoring public nuisance, noise, water/air pollution etc. She had organised cleaning campaign around Jog Falls and taken steps to" promote it as an Eco-Tourism Destination. As a Deputy Secretary in the Planning Statistics, Science and Technology Department during 2000-01, the 4th

respondent was closely working with the Jawaharlal Nehru Planetarium, Karnataka Rajya Vignana Parishat (KRVP) and Drought Monitoring Cell During this time KRVP had organised a lot of activities involving school children etc. As a Deputy Commissioner of Bangalore Mahanagara Palike, the 4th respondent. The 4th respondent was in charge of health and sanitation reporting directly to the Commissioner, BMP. At the Head Office the Chief Health Officer, BMP and the Executive Engineer in charge of Solid Waste Management were to directly report to the 4th respondent who oversaw sanitation, removal of solid waste, segregation, transportation, discharge of solid waste and landfill sites. The 4th respondent was associated with the Solid Waste Management Programme with the Bangalore Agenda Task Force. They further say that the 4th respondent satisfied each one of the conditions in terms of the provisions. They want the petition to be dismissed.

6. An affidavit is filed in Court by the 4th respondent. She has stated in para 2 that she did a Project on the traffic problem and noise levels in Sakleshpur. She submitted a report to the Lal Bahadur Shastri Academy of National Administration at Mussoorie as an Assistant Commissioner. She was involved with the Municipalities of Sagar, Soraba, Shikaripura and Hosanagara and the Solid Waste Management issues thereof. As a Deputy Commissioner, she was in charge of Health and Sanitation and the Chief Health Officer of the BMP and the Executive Engineer in charge of solid waste, segregation transportation etc. She also says that she was involved in various activities. As Chief Executive Officer, Mysore Zilla Panchayath, she assisted in the implementation of the Rs. 40 crores Rajiv Gandhi National Drinking Water Programme, a massive programme for providing access to water for villagers and undertook studies for checking groundwater and contamination of groundwater. The Swachha Grama Yojane for wholesome development of villages was undertaken by her. She says that she has good experience and she fulfills the qualification. She wants the petition to be dismissed.

7. Heard the Counsels for the parties.

8. Sri Visweshwara, learned Senior Counsel appearing for the petitioners invites my attention to the provisions of the Act to say that the 4th respondent lacks required educational qualification/experience in terms of the provisions itself. He refers to a judgment of this Court in Dr. B. Shivalingaiah Vs. State of Karnataka, to contend that in the event of no qualification, the Member Secretary cannot continue and any continuation would be nothing but usurpation of office. He says that the 4th respondent does not have any achievement in the relative field. Learned Counsel says that a degree in engineering is a required qualification in terms of the Act.

9. Per contra, learned Advocate General says that the 4th respondent was appointed after taking into consideration the principle requirements in terms of the Act. He refers to the earlier history of the section to contend that no case is made out.

10. After hearing the learned Counsel, I have carefully perused the material on record.; According to me, the only question that is required to be considered is as to whether the 4th respondent fulfills the conditions in terms of Section 4(2)(f). Section 4(2)(f) reads as under:

"A full-time Member-Secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government".

11. The argument of the petitioners is that the 4th respondent neither has the educational qualification nor she can said to have acquired any knowledge and experience of scientific engineering or administrative action of Pollution Control in the matter. To consider the argument of the petitioners, it is necessary to notice the section prior to the present one. The Water (Prevention and Control of Pollution) Act came into force on 23-3-1974. Section 4(2)(f) at the relevant point of time stood as under:

"A full-time Member-Secretary qualified in public health engineering and having administrative experience in matters relating to environmental protection to be appointed by the State Government".

Section 4(2)(f) was amended by Act No. 44 of 1978. The amended provision is reading as under:

"A full-time Member-Secretary, qualified in public health engineering and having practical experience in matters relating to environmental protection, to be appointed by the State Government".

It was further amended in terms of the Act reading as under;

"A full-time Member-Secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government".

12. A combined reading of these provisions would show that earlier the qualification of public health engineering was found to be necessary. The Legislature in its wisdom thereafter has omitted to specify any specific qualification in this regard. What is clear therefore is that the intention of the Legislature is not to prescribe any Engineering qualification as argued by the petitioners. Therefore, it is not possible for this Court to accept the arguments of the petitioners that the 4th respondent ought to have an engineering qualification for appointment of Member-Secretary. The petitioner further submitted that the earlier Member-Secretary had the necessary engineering qualification. It may be so. That by itself does not disqualify the 4th respondent in the absence of any specific statutory requirement in terms of the Act. A writ of quo warranto is serious in nature. It results in usurpation of office. Usurpation would arise only if somebody occupies a public office without there being any requisite condition/qualification, experience etc., in terms of the Statute. Therefore, in the absence of any specific requirement of any engineering degree

qualification in terms of the Act, it is not possible for this Court to oust the 4th respondent in terms of Section 4(2)(f) in this petition under Article 226 of the Constitution of India. This argument of the petitioner is therefore requires to be rejected.

13. The petitioners further refer to the report of the High Powered Committee on Management of Hazardous Wastes. It is seen from the said report that the Committee has thought fit to say that scientific qualification must be considered as an important factor when persons are appointed to positions in such departments. It is no doubt a welcome measure and a desirable one. A desire cannot partake a statutory-requirement for the purpose of quo warranto proceedings. The report therefore cannot form the basis to oust the 4th respondent as argued by the petitioners in the absence of statutory requirements.

14. I must also notice that Section 4(2)(f) provides for possessing qualification. Qualification need not be educational qualification always. Qualification in terms of the Random House Dictionary of the English language second edition would show:

1. A quality, accomplishment, etc., that fits a person for some function, office or the like.
2. A circumstance or condition required by law or custom for getting, having, or exercising a right, holding an office, or the like.
3. The act of qualifying, state of being qualified.
4. Modification, limitation or restriction: to endorse a plan without qualification.
5. An instance of this: He protected his argument with several qualifications

New Oxford Illustrated Dictionary would show qualification:

1. Modification, restriction, limitation; restricting or limiting circumstance.
2. Quality, accomplishment, etc., fitting person or thing (for post etc.).
3. Condition that must be fulfilled before right can be acquired or office held; document attesting such fulfillment.
4. Attribution of quality.

Qualification in terms of the Black's Law Dictionary would mean "the possession by an individual of the qualities, properties, or circumstances, natural or adventitious, which are inherently or legally necessary to render him eligible to fill an office or to perform a public duty or function. Thus, a qualified voter is one who meets the residency, age and registration requirements.

Qualification in terms of K.J. Aiyer's Judicial Dictionary is that which makes a man eligible to do an act or to assume a certain character, a limitation, a condition.

The Oxford Reference Dictionary states that qualification is an accomplishment fitting a person for a position or purpose, a thing that modifies or limits a meaning etc.

15. None of the Dictionaries both Judicial and non-judicial would show that qualification has to be only an educational qualification as argued by the Counsel. The word qualification is only an eligibility to fit into an office. In the case on hand, in the absence of any specific educational qualification in terms of the Rules, it cannot be said that the 4th respondent is ineligible to assume the office in terms of Section 4(2)(f) of the Act.

16. At this stage, I must also notice the powers of the 4th respondent. The 4th respondent is only a Member-Secretary.

Chapter IV provides for powers and functions of Boards. Section 12 provides for Member-Secretary and Officers and other employees of the Board. The Member-Secretary is to exercise powers and perform such duties as may be delegated to him by the Board or its Chairman.

Sub-section (4) provides for appointment of a consulting engineer to the Board with such conditions as and when necessary.

A reading of the provisions would show that the Member-Secretary is to carry out the functions as assigned to him by the Board. The Board consists of Engineers. In addition the Board offices also consists of environmental officers with scientific or engineering qualification. Therefore, for proper implementation of the Act, there are sufficient/environmental persons available in the service of the Board. A mere non-possession of a degree in engineering or a degree in science does not in any way come in the way of proper implementation of the Act by the Secretary. However, I deem it proper to observe that the Government in its wisdom may as far as possible appoint persons with engineering/scientific qualification for the post of Member-Secretary for better working as Member-Secretary. Looking from any angle this argument does not appeal to me. This argument is rejected.

17. The petitioners further argue that the 4th respondent does not have knowledge and experience of scientific engineering or management aspect of pollution control in the matter. It is seen from the material on record that the petitioner is a qualified graduate in addition to her having a qualification of IAS.

The respondent has filed an affidavit and in the affidavit it is stated that the petitioner did involve herself in air pollution, water pollution while working as Assistant Commissioner in Sagar Sub-Division from August 1998 to January 2000. She has sworn to an affidavit that she had done the implementation of the Water and Air Acts. She has also stated that she was in charge of health and sanitation and Chief Health Officer of the Bangalore Mahanagara Palike and the Executive in charge of solid waste, segregation, transportation, discharge of solid waste were reporting to her. She was also involved with the solid waste

management programme at the Bangalore Agenda Task Force. She has also undertaken to do other works in terms of the affidavit. A reading of the affidavit would show that it cannot be said that she is a novice to this subject. She has experience of pollution in the matter. She was managing in her various capacity certain aspects of pollution. Therefore, it cannot be said that she lacks neither knowledge nor experience as sought to be made out by the petitioners. This argument also does not appeal to me.

18. Lastly, the petitioners strongly rely on a judgment of this Court rendered in Dr. B. Shivalingaiah's case, *supra*. I have carefully perused the said judgment. A reading of the said judgment would show that this Court has nowhere stated that engineering qualification is necessary as I see from the judgment itself. On the other hand, the Advocate General in the said case has stated that if the Court finds that the Member-Secretary does not possess the required qualification the department would make alternative arrangement by posting a fully qualified person. This judgment does not in any way help the petitioners.

19. No grounds are made out. Petitions are rejected. Parties are to bear their respective costs on the peculiar facts and circumstances of this case.

20. Ordered accordingly.