
(1995) 12 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 12684 of 1994

Mathew Daniel

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 04-12-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Consumer Protection Act, 1986 — Section 10
Criminal Procedure Code, 1973 (CrPC) — Section 9

Citation : AIR 1996 Ker 222 : (1996) 2 ILR (Ker) 639

Hon'ble Judges : P.K. Balasubramanyan, J

Bench : Single Bench

Advocate : Anchal C. Vijayan and P.K. Ravikrishnan, for the Appellant; S. Narayanan Poti and S. Gopakumaran Nair, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, J.—Respondent No. 2 herein who was a member of the Criminal Judicial Service and who retired on 28-2-1990 was appointed as the President of the Consumer Disputes Redressal Forum, Kollam. The petitioner who claims to be a social worker engaged in consumer protection activities, a member of Chathanoor Panchayat and the President of Kerala Karshaka Sanghom Chathanoor Panchayat committee has filed this Original Petition praying for the issue of a writ of a Quo Warranto challenging the appointment of respondent No. 2 as President of the Forum on the ground that respondent No. 2 is not qualified to be appointed as its President. Under S. 10 of the Consumer Protection Act each District Forum shall consist of "a person who is, or has been, or is qualified to be a District Judge, who shall be its President" (the rest omitted as being not relevant at this stage). According to the petitioner since respondent No. 2 is not a District Judge, was not a District Judge and is not qualified to be a District Judge he cannot be appointed as President of the District Forum. There is no case for the State or for respondent No. 2 that respondent No. 2 was at any time a District Judge or that he is a District Judge. The appointment of

respondent No. 2 as President of the District Forum is sought to be justified on the ground that he is qualified to be a District Judge. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, it has been stated:

It is thus clear that before a citizen can claim a writ of quo warranto he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

A Division Bench of this court (to which I was a party) in *Raghavan Nair v. Padmakumar* (ILR 1992 (3) Ker. 677) has summed up the principles thus:

A writ of quo warranto postulates an answer to a query to the holder of a public office. The query in plain language is, where is your warrant of appointment by which you are holding this office? In short, it is an enquiry as to under what authority, the person in question is holding his office, franchise or liberty as the case may be. The court has to take into consideration public interest, the consequences to follow the issue of a writ of quo warranto and all the other circumstances of the case. Unlike the other prerogative writs, the issue of writ in the nature of quo warranto was purely a discretionary writ. The English principles which govern the writ still apply in India, particularly, in view of the fact that the writ of quo warranto as referred to is expressly provided in Arts.32 and 226 of the Constitution of India. The principles of which have been followed by the Supreme Court and other courts in India. They are: (i) a stranger whose motives were not improper could apply for a writ of quo warranto; (ii) a quo warranto will lie if there is a public office of a substantive character even if such office is held at pleasure; (iii) even if an appointment to the office is made by the Crown, and the court cannot, even in appearance, command the Crown, the writ of quo warranto operates on the holder of the office; (iv) it is not to be supposed that the Crown would reappoint a person to an office from which he has been ousted on a writ of quo warranto on the ground that his appointment was illegal.

(Headnotes)

2. There is no dispute that the office in question is a public office. In a sense the motive of the petitioner in approaching this court is questioned by submitting that he has no locus standi. But considering that what is questioned is the right of respondent No. 2 to be the President of Consumer Disputes Redressal Forum dealing with the grievances of consumers in general, I am inclined to the view that the petitioner has sufficient locus standi to approach this court. The only question that has seriously to be considered is whether the appointment of respondent No. 2 is so illegal as to deem him to be an usurper in the post. On that aspect, as noticed earlier, the only question is whether respondent No. 2 could be said to be qualified to be a District Judge at the time of his appointment.

3. Respondent No. 2 was appointed on 21-7-1995. On that day he was not in service. Respondent No. 2 was born on 22-2-1935. He retired from service as a

Chief Judicial Magistrate by 22-2-1990. He attained the age of 60 years on 22-2-1995. At the time the second respondent retired, he was governed by the Kerala Criminal Judicial Service Rules, 1988. As per the said rules, respondent No. 2 was not in Category 1 which was Selection Grade Chief Judicial Magistrates. Respondent No. 2 was only in Category No. 2 of Chief Judicial Magistrate. There is no dispute that as on the day he retired, respondent No. 2 could not have been appointed a District Judge since at that time the integration had not taken place and only a Subordinate Judge could be promoted or appointed as a District and Sessions Judge as per the Kerala State Higher Judicial Service.

4. With effect from 1-1-1992, Kerala Judicial Service Rules 1991 were brought into force. By R.3 a common service called the Kerala Judicial Service in the place of the existing Civil Judicial Service and Kerala Criminal judicial Service was constituted. The service was to consist of Subordinate Judges/Chief Judicial Magistrates in Category 1 and Munsiff-Magistrates in category 2. The service was to be first formed by integrating the members of the Kerala Civil Judicial Service and the members of the Kerala Criminal Judicial Service. Appointment to the category of Chief Judicial Magistrate which was bracketed with Subordinate Judge was to be either by direct recruitment or by transfer from Munsiff-Magistrates. According to respondent No. 2 under R.2 of the Kerala State Higher Judicial Service appointment to the post of District and Sessions Judge Category 2 therein was to be made by transfer through the category of Subordinate Judges/Chief Judicial Magistrates. Thus the second respondent submits that as on the date of his appointment he could have been appointed as a District Judge and consequently he would qualify to be appointed as President of the District Forum.

5. Two aspects cannot be ignored at this stage. One is that the second respondent has retired from service by 22-2-1990 on which date he could not have been appointed as a District Judge. The second is that he had attained the age of superannuation on 22-2-1995 and even he had continued in service, he would have retired on that day. According to counsel for the petitioner therefore when on 21-7-1995 respondent No. 2 was sought to be appointed as President of the District Forum, he could not have been appointed a District Judge by any stretch of imagination. According to learned Advocate General and learned counsel for respondent No. 2 the question to be considered is whether on the day he was appointed, respondent No. 2 could be said to be qualified to be appointed as a District Judge. It is pointed out that he was in the feeder category for District Judge/Sessions Judge as per the Kerala Higher Judicial Service Rules and that would be sufficient to sustain his appointment as a person qualified to be appointed a District Judge. In other words according to them the fact that on the day he retired from service, respondent No. 2 could not have been appointed a District Judge or that on the day he is now appointed he had already attained the age of 60 years are not relevant in considering the competency of respondent No. 2 to hold the post of the President of the District Forum. Consumer Protection Act was enacted with a view to provide for better protection of

interests of the consumers as is indicated by its preamble. Different fora are created by the Act. Section 9 of the Act deals with the establishment of consumer disputes redressal agencies and envisages the establishment of a District Forum, a State Commission and a National Consumer Disputes Redressal Commission. The National Commission is to be presided over by a person who is or has been a Judge of the Supreme Court and the State Commission is to be presided over by a person who is or has been a Judge of the High Court. It can be noted that a third category as a person qualified to be a Supreme Court Judge or a High Court Judge is not included in the matter of appointment of the Presidents of the National Commission and the State Commission. Consistent with this, Section 10 of the Act provides that the District Forum shall be presided over by a person who is or who has been a District Judge. These words are followed by a person qualified to be a District Judge. The argument of learned counsel for the petitioner that the person qualified to be a District Judge is normally confined to Advocates with sufficient standing who are competent to be appointed District Judges cannot be brushed aside as untenable. Looking at the scheme of the composition of the National Commission, State Commission and the District Forum, it is possible to infer that the Parliament intended these respective fora to be presided over by a sitting or retired Supreme Court Judge, a sitting or retired High Court Judge and a sitting or retired District Judge with the addition that in the case of a District Forum it can also be a person who was qualified to be a District Judge. A person who has retired from service but not as a District Judge and a person who could not have been promoted as a District Judge at the time of his retirement could not be held to be a person qualified to be a District Judge. This is all the more so when we see that a Chief Judicial Magistrate became capable of being promoted as a Sessions Judge only by the integration of the services brought into force in the year 1992 long after respondent No. 2 had retired. It appears to me that when a retired person is sought to be appointed on the ground that he is qualified to be a District Judge, the question of qualification will have to be determined not only with reference to the date of the appointment as President of the District Forum under the Act but also with reference to his competency to be appointed on the day he retired from service. In that view I hold that respondent No. 2 is not competent to be appointed President of the District Forum.

In the result, I allow this Original Petition and declare that respondent No. 2 is not qualified to be appointed President of the District Consumer Disputes Redressal Forum and restrain him from acting as such on the basis of his appointment notified by Notification dated 21-7-1995.