
(1998) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13202 of 1998

M.T. Khan and others

APPELLANT

Vs

Government of A.P., Hyd. and others

RESPONDENT

Date of Decision : 13-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 124, 14, 148, 153, 162
General Clauses Act, 1897 — Section 13

Citation : (1998) 3 ALD 625 : (1998) 3 ALT 508

Hon'ble Judges : Umesh Chandra Banerjee, C.J.;C.V.N. Sastri, J

Bench : Division Bench

Advocate : Mr. Mallikarjuna Sarma, for the Appellant; Adovocate-General, for the Respondent

Judgement

Umesh Chandra Banerjee, CJ.

1. Conferment of power under Article 226 of the Constitution insofar as the High Court is concerned is of widest possible amplitude. The language of the Article itself depicts the same and it does not require any external aid for such a conclusion. The High Court has the authority to issue appropriate writs including the writ of quo-warranto and certiorari for enforcement of any of the rights conferred by Part III or for any other purpose. While it is true that the powers under Article 226 have the widest possible amplitude, as noted above, the judicial review-ability ought to have certain limits and the Court ought to use proper circumspection in the matter of entertaining petitions under Article 226 of the Constitution of India. A petition for issuance of a writ of quo warranto is one such petition where the powers of the Court ought to be exercised with extreme care and caution while entertaining the same and rather sparingly. Procedure of qua-warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. It also protects a citizen from being deprived of public office to which he may have a right (vide Gajendragadkar, J (as His

Lordship then was) in The University of Mysore and Another Vs. C.D. Govinda Rao and Another,

2. Availability of the writ of quo-vjarranto is said to protect the public from usurpers of public office or from persons who are not entitled to public office but has been allowed to occupy them or allowed to continue to hold them as a result of the executive convenience or with active help of the executive and the jurisdiction of the Courts to issue a writ of quo-warranto if properly invoked, an usurper can be uprooted or ousted and the person entitled to the post would occupy the position. The Supreme Court in The University of Mysore and Another Vs. C.D. Govinda Rao and Another, , went on to observe:

".....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."

3. It would be convenient, however to note the contextual facts in the matter under consideration. The writ petitioner No.1 is a Journalist and the writ petitioner Nos.2, 3 and 4 are the learned Advocates of this Court. It has been a definite case of the writ petitioners that the petitioners are the socially concerned citizens of Hyderabad, civil rights" leaders and they are very much agitated by the unconstitutional and unethical impugned proceedings of the Government dated 6-4-1998 appointing one Shri Prakash Reddy and Shri N. V. Ratnana as Additional Advocates-General, purportedly under Article 165 of the Constitution. It has been strenuously contended by the learned Advocate appearing in support of the writ petitioners that Article 165 of the Constitution does not contemplate a plurality of positions for Advocate-General, neither there is any scope under Article 165 for appointment of Additional Advocate-General for the State of Andhra Pradesh.

4. The contentions of the learned Advocate appearing in support of the writ petitions at the first blush seem to be rather attractive : But, however, on a closer scrutiny of facts the same loses its efficacy. Article 367 of the Constitution categorically records the adaptation of the General Clauses Act, 1897 for the purposes of interpretation of the provisions of the Constitution and Section 13 of the General Clauses Act provides that the words used in singular could be read and include in plural and vice versa. It has been the specific contention of the learned Advocate appearing in support of the writ petitioners that Article 165 does not envisage the post of any Additional Advocate-General and as such question of appointment of any Additional Advocate-General is totally alien to the Constitution. The issue raised by the learned Advocates in the matter under consideration involves interpretation of the language used by the framers of the Constitution in Article 165 and as such assistance from the General Clauses Act is required in regard thereto. Having regard however to the submissions as above, made by the learned Advocate appearing in support of the writ petitioners, we do

not feel in any way constrained to invoke the assistance and aid of the General Clauses Act for proper interpretation of Article 165. It is true Article 165 speaks of singular in number so far as the post of Advocate-General is concerned. But having due regard to the provisions of Section 13 of the General Clauses Act, question of there being any embargo in the matter of appointment of an Additional Advocate-General, in our view, does not and cannot arise.

5. The appointment to the post of Additional Advocate General came up for consideration from time to time before different High Courts. The Kerala High Court in *M.K. Paclmanabhan v. State of Kerala*, 1978 Lab. I.C. 1336 has had the occasion to deal with one such incident, wherein the petitioner sought a writ of quo warranto challenging the appointment of an Additional Advocate-General for the State. The Kerala High Court in paragraphs 4 and 5 of the report observed as follows:

"4. The petitioner's Counsel contended that a duplication of the office of the Advocate-General or the appointment of more than one person to that office would provoke a serious conflict in the discharge of the important constitutional and statutory responsibilities and functions of the Advocate-General; and for that reason, it was contended that a duality of the office was not intended or contemplated by the framers of the Constitution. If two or more Advocates-General were to be appointed under the Article, who, it was asked, was to address the Assembly under Article 177 of the Constitution, if the Assembly decided to hear the Advocate-General, on any particular aspect? Who, in such a case, was to be the ex-officio Chairman of the Bar Council? (so long as the Bar Councils Act required such a choice); who again, was to discharge the important function of entering a nolle prosequi under the Criminal Procedure Code? or act as protector of public charities u/s 92 of the CPC? or discharge the special responsibility in respect of Contempt of Court? These and other aspects were expatiated at great length to impress on us that a plurality of Advocates-General, functioning under the Constitution, was not to be envisaged at all. Our attention was drawn to Article 76 of the Constitution providing in almost similar terms of the appointment of the Attorney-General. With lesser degree of appropriateness, our attention was also called to the following Articles of the Constitution, providing for certain constitutional offices namely, Article 52 (President); Article 63 (Vice-President); Article 93 (Speaker and Deputy Speaker); Article 124 (Chief Justice of India) Article 148 (Comptroller and Auditor-General of India); Article 153 (Governors); Article 178 (Speaker & Deputy Speaker of the Legislative Assembly); Article 280 (Finance Commission); Article 315 (Public Service Commission); and Article 338 (Special Officer for Scheduled Castes, Scheduled Tribes, etc) With varying degree of emphasis and effect, it was argued that a duplication of these constitutional offices was not intended or contemplated.

5. We have given these arguments our very careful thought and consideration. We should not be understood as belittling the importance and the relevancy of these considerations in duplicating a responsible constitutional office such as that

of the Advocate-General. But the policy and the propriety underlying the duplication is on? thing, and its legality, quite another. We are concerned only with the latter aspect of the question. The scheme of Article 165 of the Constitution appears to us, also, to some extent, at any rate, to keep the appointment to the office as separate from the functions and responsibilities appertaining to it. As noticed already while clause (1) of the Article deals with the appointment, clause (2) provides functions and responsibilities, and clause (3), for the duration of the office. It is here that we have to take note of Article 367 of the Constitution, which provides :

"367. Interpretation .-(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under Article 372 apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. xxx xxx xxx No adaptations and modifications having relevance have been brought to our notice. Turning to the General Clauses Act, 1897, Section 13 thereof enacts :

"13. In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,--

- (1) words importing the masculine gender shall be taken to include females; and
- (2) words in the singular shall include the plural, and vice versa."

The above provision was relied on by the State to contend that the provision in the singular for appointment of an Advocate-General would include the plural. Both on the terms of Article 367 and on the language of Section 13 of the General Clauses Act, this implication is to be read "unless there is anything repugnant in the subject or context." Is there, then, anything repugnant in the subject or context preventing the appointment of two incumbents to the office of Advocate-General ? May be, such appointment/appointments may provoke unseemly scrambles or conflicts or clashes in the discharge of functions. These, however, are not insurmountable, and may be left to resolve themselves by adjustment of human relationships, by development of healthy conventions, or by the delineation by rules and instructions....."

6. Be it noted that the posts of Additional Advocates-General are no longer in the realm of consideration but a practical reality and, as a matter of fact, these posts are available in some other High Courts as well. Information was furnished to the Kerala High Court and the appellate Bench in the M.K. Padmanabhan's case particularly in paragraph 6 thereof recorded that "we cannot blind our eyes to the disclosed facts in at least two of the States." For convenience sake, paragraph 6 is set out hereinbelow:

"6. We were also informed at the Bar that at least in two States of this Country, (Rajasthan and Jammu & Kashmir) Additional Advocates-General have been functioning without demur or challenge. Counsel for the petitioner contended

that these appointments have not been shown to be under Article 165 of the Constitution; the Government Pleader countered stating that there is no reason to think that these would not have been under the said Article. Beyond these statements neither Counsel could supply more tangible information or material, in regard to the genesis of the appointments or the source of power to which they could be traced. We do not propose to overstress the circumstances; but, at the same time, we feel we cannot blind our eyes to the disclosed facts in at least two of the States."

7. The Rajasthan High Court also in *Regional Transport Authority, Jodhpur Vs. Sita Ram*, ; in the similar vein, upon interpretation of Article 165 read with Section 13 of the General Clauses Act and Article 367 of the Constitution negated the contention as regards the powers of the Additional Advocate-General. For convenience sake paragraph 5 of the Rajasthan High Court is set out herein below :

"5. The first question for consideration is whether the special appeals filed under the signatures of the then Additional Advocate-General Shri J.P. Joshi, Advocate are not maintainable. In all the special appeals, the Regional Transport Authority of a particular region is the appellant. In some of the special appeals, State Transport Appellate Tribunal has also been impleaded as one of the appellants. Reliance was placed by the learned Counsel for the petitioner on *Firm Mohanlal Ramchandra Vs. The Union of India (UOI)*, C. In this reported case, Shri Raj Narain, Assistant Government Advocate filed the appeal for and on behalf of the Union of India. Admittedly, he was an advocate of the Government of Rajasthan and not of the Union of India and as such the provisions of Order 3 Rule 4(6) CPC (Rajasthan Amendment) were not held applicable. In the instant case, it is not in dispute that Shri J.P. Joshi was then the Additional Advocate-General of the Government of Rajasthan. He was Government Pleader within the meaning of Section 2(7), CPC. Under Order 3 Rule 4(6) CPC he was not required to present any document empowering him to act. It has been held in *K.J. Antony v. State of Kerala*, 1975 Ker. LT 678, that it is not possible to make inference that Article 165 of the Constitution does not contemplate appointment of a second person as Additional Advocate-General as such. Merely because the singular is used in Article 165 it may not be positively held in view of Section 13 of the General Clauses Act that any second person could not be appointed as Additional Advocate-General. Article 367 of the Constitution of India has made applicable the provisions of General Clauses Act for interpreting the provisions of the Constitution of India. Article 165, Constitution of India states that it shall be the duty of the Advocate-General to perform such other duties of a legal character, as may from time to time referred or assigned to him by the Governor and to discharge the functions conferred on him by any other law for the time being in force. The Rajasthan Law and Judicial Department Manual contains executive instructions issued by the Government of Rajasthan from time to time under Article 162 of the Constitution of India in respect of Government litigation. Rule 7 of this Manual contains the duties of the Advocate-General. It includes the duty

to represent the Government in the High Court in appeals against the judgment of any Judge of the Court exercising jurisdiction on the original side.

Be it noted that the Rajasthan High Court noted with approval the earlier decision of the Kerala High Court reported in 1975 Ker. LT 678.

8. In a similar vein the Gauhati High Court in Bhadreswar Tanti Vs. S.N. Choudhury and Another, , negated the contention as regards the post of Additional Advocate-General being repugnant to the Constitution and in particular Article 165.

9. The learned Advocate appearing for the writ petitioners, relying upon the provisions of Section 302 of the Code of Criminal Procedure as also Section 92 of the CPC together with the provisions of the Andhra Pradesh Bar Council Rules and the Advocates Act, submitted that the statutory functionary as envisaged in the above noted legislations does not and cannot possibly imply or infer plurality of posts and as such question of there being an Additional Advocate-General does not and cannot arise. It is on this count Mr. Advocate-General appearing for the respondents contended that the statutory functionary shall have to act as a statutory functionary. There is neither any confusion nor any repugnancy in the matter of appointment of an Additional Advocate-General since Advocate General and Additional Advocates General are working upon proper adjustments and it has been the practice also to work amongst themselves in such a manner so as to give fullest possible efficacy to the legislative intent. A legal fiction may be introduced in the instant case insofar as the post of Additional Advocate-General is concerned.

10. We do find some substance in such a contention. Merely because there is a post of Additional Advocate-General, that does not mean and imply that the statutory provisions would be held repugnant to Article 165 in the event of there being Additional Advocate-General or Additional Advocates-General. Three High Courts of the Country have negated such a plea. We do adopt such a reasoning and record our concurrence in regard thereto.

11. Lastly the learned Advocate appearing in support of the writ petitions strenuously contended that the Governmental action in the matter of appointment of the Additional Advocates-General, as has been effected by a Government Order, is violative of provisions of Article 14 of the Constitution. On a plain reading of the language of Article 165, it appears that it is a matter of appointment and not selection. These officers are so appointed by the Governor and in the event Governor feels it expedient that one particular person would otherwise be able to advise the Government in an effective manner, question of interference in the appointment by the Court as being violative under Article 14 of the Constitution does not and cannot arise. It has been further contended that traditionally only leaders of the Bar are appointed as the Advocate-Generals and as such, appointment of these two young persons as the Additional Advocates-General violates the entire ethics of the Bar and tarnishes the image of the post.

12. We do not, however, wish to make any observations in regard thereto. But it is for the Governor to decide as to who should be appointed as Additional Advocates-General and not for the Court to direct.

13. The other submission that the appointment can only be effected upon suitable amendments being effected to the Constitution does not, however, find any substance with us.

14. In that view of the matter, this writ petition fails and is dismissed.

15. During the course of hearing, Mr. Advocate-General drew the attention of the Court that there exists certain uncharitable comments in paragraph 9 of the Affidavit in support of the petition and which in all fairness should be expunged. The statement in paragraph 9 as above reads as follows :

"There is also a talk the Respondent No.3 is going all out and entering into a deal with the present Central Government which is in too great a need of his political support to have persons of his choice as Judges in this High Court and all this is only a measure in that direction.""

16. Be it recorded that the learned Advocate appearing in support of the petitioners, in his usual fairness, immediately thereafter informed this Court that the statement ought to be expunged and should be treated as if it was not there in the original affidavit. We record our appreciation on the gesture of the learned Advocate appearing in support of the writ petitioners and direct that part of paragraph 9 be and hereby stands expunged.

There shall be no order as to costs.