
(2015) 07 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 4217 of 2013

Muftiar Ahmed

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Right to Information Act, 2005 — Section 4

Citation : (2015) 4 GLT 554

Hon'ble Judges : Tinlianhang Vaiphei, J

Bench : Single Bench

Advocate : S.K. Talukdar, for the Appellant; U.K. Goswami, I.H. Saikia, S. Kanungoe, P. Mahanta and Gias Uddin, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tinlianhang Vaiphei, J—This writ petition is directed against the selection of the respondent No. 4 for the post of Chowkidar in BAS Madrassa Higher Secondary School on the grounds that his educational certificate is fake and he is overage and for selecting the petitioner in his place.

2. The fact leading to the filing of the writ petition may be briefly noticed at the outset. Pursuant to the advertisement 13-3-2013 inviting applications from interested candidates who read up to Class X and who are within the age of 38 years for filling up the two vacant posts of Chowkidar of the school. The petitioner applied for the posts and participated in the selection process. The merit list of the candidates shows that the respondent No. 4 stood first by securing 56.25 marks while another candidate, namely, Saiful Haque stood in the second position by obtaining 55.25 marks while the petitioner stood in the third position by obtaining 50.75 marks. Having coming to know that the educational certificate produced by the respondent No. 4 is a fake certificate, the petitioner applied for and obtained information under the Right to Information Act from the respondent No. 3 to the following effect: (i) the educational certificate issued to

him (Annexure-9) showed him to be a student of Class IX of Dolaitula Shaukat Ali High School after his transfer from ADM High School; (ii) the founder-Headmaster of ADM High School of the ADM High School (respondent 9) as well as the present Headmaster of the School (respondent 8) have categorically declared that no student in the name of the respondent No. 4 (Siraj Ali) had ever studied at ADM High School vide Annexure-14 and Annexure-17; (iii) the relevant part of the Attendance Register of the Doaitula Shaukat Ali High School (Annexure-12 series) would go to show that by deleting the relevant portion, the name of the respondent No. 4 was inserted therein; the handwritings of two different persons could be made out; (v) the counter-foil of the educational certificate (Annexure-10) issued to the respondent No. 4 is without any counter signature of the competent authority. Apart from those discrepancies, the relevant voter's list indicates the age of the respondent No. 4 to be 42 years at or about the time of the advertisement thereby demonstrating that he is overage. The contention of the petitioner is that without holding inquiry into these anomalies, the respondent authorities are contemplating to appoint the respondent No. 4 to the post of Chowkidar of the school. According to the petitioner, the respondent authorities, on the facts and circumstances of this case, ought to have cancelled the selection of the respondent No. 4 and instead appoint him to that post. Aggrieved by the inactions of the respondent authorities, he is constrained to file this writ petition for appropriate relief.

3. The State-respondents through the respondent No. 3 (Inspector of Schools, Kamrup District Circle), the respondent No. 4, 5 and 8 filed their respective counter-affidavits. With respect to the allegations that the educational certificate of the respondent No. 4 is a fake certificate, the answering respondent avers that his office conducted an inquiry and asked the Headmaster asked to attend his office along with the relevant documents for verification of the certificate. The Headmaster attended his office and produced copies of the school transfer certificate, admission register and attendance register. On verifying those documents, it was found that: (i) the counter-foil of the certificate did not contain the counter signature of the competent authority; as per the certificate, the respondent No. 4 was said to leave Dolatola Shaukat High School school on 31-12-1995 after passing the promotion examination for Class X, but no mark sheet for the examination was found nor was there any record showing that he had studied up to Class X; (ii) though the respondent No. 4 claimed to have been admitted to Dolaitola Shaukat High School on 11-3-1995, no transfer certificate from this High School was found; (iii) after verifying the attendance register, it was found that the names of the respondent No. 4 and a few other students were deleted thereby casting doubt and confusion about his admission; (iv) One Md. Aatur Rehman, former Headmaster of ADM High School furnished a written statement declaring that he had served as Headmaster of the said school w.e.f. January, 1995 to January, 1996, but no student by the name of Siraj Ali was admitted to Class VIII, IX and X, and no certificate was issued in his name and that if someone had issued such a certificate in the name of the said school, that

would be false or fake; (v) the Principal of Dolaitola High School was asked to produce authentic record to prove the genuineness of the certificate issued to the respondent No. 4, but he could not do so whereupon the Principal of BAS Madrassa H.S. School was asked vide the letter dated 26-6-2013 to instruct the respondent No. 4 to furnish record, if any, to prove the genuineness of his certificate for placing the same before the School Management Committee for discussion, but he also could not do so. No review of the selection was done either and (vi) the present Headmaster of the school was asked to produce the admission register/attendance register of the ADM School for the year 1995, but he did not have the record as he was appointed only in 1999. According to the answering respondent, both the founder Headmaster of ADM School (respondent No. 9) and the present Headmaster of the School (respondent 8) have categorically declared that no student by the name of Siraj Ali ever studied in ADM High School.

4. Coming now to the counter-affidavit of the respondent No. 4, it is his case that he never produced any fake certificate and asserts that the documents annexed by him at Annexures-11 and Annexure-12 series to the writ petition would go to show that he was admitted to Dolaitola Shaukat Ali High School on 11-3-1995 and studied there till Class X. The Headmaster of ADM High School never denied that the answering respondent studied in his school; all that he said is that he has no record since 1999. His transfer certificate and the counter foil clearly established his admission therein. He denies that he was 42 years at the time of the advertisement; the age of a person is determined by his school certificate and not by voters' list. In so far as the counter foil of his certificate is concerned, such counter foil is never counter-signed by the competent authority: the counter foil is usually kept as a record of the certificate, which was issued to the transferee. He, therefore, contends that the writ petition has no merit and is liable to be dismissed with exemplary costs. The respondent No. 5 is the President of the Managing Committee of BAS Madrassa Higher Secondary School. In his affidavit, he avers that all the documents i.e. Annexures-9, 10, 11 and Annexure-12 series produced by the petitioner will show that the respondent No. 4 had studied in Dolaitola Shaukat Ali High School till Class X. The respondent No. 8 is presently the Headmaster of ADM High School and was appointed as such the resolution dated 23-1-2000. According to him, the outgoing Headmaster did not hand over the records to him, and has, therefore, no knowledge about the earlier records. He had informed the respondent No. 3 about this in his letter dated 18-7-2013. He contends that the BAS Madrassa Higher Secondary School is a purely venture school, and has not received recognition or financial assistance from the Government of Assam and is, therefore, not a State within the meaning of Article 12 of the Constitution amenable to the writ jurisdiction of this Court.

5. On perusing the materials on record and after hearing Mr. S.K. Talukdar, the learned counsel for the petitioner, Mr. UK Goswami the learned standing counsel for the Education (Secondary) Department, Assam, Mr. P. Mahanta, the learned

counsel for the respondent No. 4 and 5, Mr. I.H. Saikia, the learned counsel for the respondent No. 8 and Mr. Gias Uddin, the learned counsel for the respondent No. 9 at length, the first question for decision in this writ petition is whether the transfer/educational certificate dated 20-4-2005 produced by the respondent No. 4 when he applied for the post of Chowkidar in terms of the advertisement dated 13-3-2013 is a fake document or not. A writ petition involving serious disputed questions of fact which requires consideration of evidence which is not on record is not normally entertained by a High Court in exercise of its writ jurisdiction under Article 226 of the Constitution. However, there is no absolute rule that in all cases involving disputed questions of fact, the parties should be relegated to a civil court. Under what circumstances a court should entertain a writ petition involving disputed questions of fact are explained by the Apex Court in *Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others*, AIR 1970 SC 802 : (1969) 3 SCC 769 . This is what it said:

"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit in reply from the respondents, and should have

proceeded to try the petition instead of relegating the appellants to a separate suit."

(Underlined for emphasis)

In *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, AIR 1971 SC 1021 : (1970) 1 SCC 582 : (1970) 3 SCR 854 , the Apex Court also observed as follows:

"13. Mr. Gokhale appearing on behalf of the Municipality urged that the petition filed by the Company apparently raised questions of fact which in the view of the High Court could not appropriately be tried in the exercise of the extraordinary jurisdiction under Article 226. But the High Court has not said so, and on a review of the averments made in the petition this argument cannot be sustained. Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary."

6. It is against the backdrop of the parameters laid down by the Apex Court in the aforesaid two decisions that I propose to decide this case. In the instant case, the respondent No. 4 while applying for the post did submit his transfer/leaving Certificate dated 20-4-2005 issued by the Headmaster of Dolaitola Shaukat High School certifying that he had left the school on 31-12-1995 and that he was reading in Class IX and had passed the examination for promotion to Class X. However, the genuineness of this certificate is seriously questioned by the learned counsel for the petitioner on the ground that (i) the counterfoil of the said certificate is not even countersigned by the jurisdictional Inspector of Schools; (ii) both the founder Headmaster of the ADM High School and the current Headmaster of the School declared that no student in the name of Siraj Ali ever studied in ADM High School; (iii) the relevant entry of the attendance register would show that the name of the respondent No. 4 was inserted by deleting the existing entry as could be easily noticed therefrom and also by the difference in the two handwritings appearing therein; (iv) there is no contemporaneous documents to prove that the respondent No. 4 was studying at Dolaitola Shaukat High School: there is thus not an iota of evidence to prove that the respondent No. 4 ever attended any class either in Dolaitola Shaukat High School or ADM High School. The learned counsel also submits that the entry in a voters' list maintained by the Election Commission of India is presumed to be correct until the presumption is duly rebutted and, so understood, as per this entry in the relevant electoral roll, the age of the respondent No. 4 is 42 years at or about the time of the advertisement and, as such, he is definitely overage. As the respondent No. 4 was overage when he applied for the post in question, concludes the learned counsel, he was not eligible for the post and should not have been selected.

7. All the counsels appearing for the Secondary Education, the respondent No. 4,

5, 8 and 9 have made their submissions. The learned standing counsel for the Secondary Education Department, submits that there is nothing on record to show that the respondent No. 4 ever studied at Dolaitola Shaukat High School: no authentic admission register, attendance register or transfer certificate could be produced by the Dolaitola Shaukat High School or by the ADM High School, and the transfer certificate produced by the respondent No. 4 is, therefore, not substantiated by the record. He further submits that no mark sheet of his Class IX examination is also available and, as such, the certificate produced by the respondent No. 4 is suspect and should not have been allowed to participate in the selection process on the basis thereof. Mr. P. Mahanta, the learned counsel for the respondent No. 4 and 5, however, submits that the transfer certificate issued by the respondent No. 7 is a genuine document and that documents at Annexure-10, Annexure-11 and Annexure-12 series will show that the respondent No. 4 was admitted to the said school on 11-3-1995 and continued to study there till he passed the promotion examination of Class IX whereafter he left for ADM High School. If the said certificates were not genuine, contends the learned counsel, the jurisdictional Inspector of Schools would not have counter-signed it. It is also maintained by him that the Headmaster of ADM School by the letter dated 18-7-2013 did not deny that the respondent No. 4 studied in his school: he merely said that he has no record prior to 1999. As for the age of the respondent No. 4, the learned counsel for the respondent No. 4 submits that it is the school register which is relevant and not the entry in the electoral roll, and his date of birth recorded in his transfer certificate as 1-1-1980 is, therefore, conclusive. He submits that the respondent No. 4 has no disqualification or ineligibility to be selected as Chowkidar of the school. Finally, the learned counsel argues that the writ petition involves a question of fact of complicated nature requiring adduction of oral evidence, which cannot be decided in a summary proceeding like Article 226 of the Constitution, and the parties should be relegated to a civil court of competent jurisdiction to decide their disputes.

8. After careful perusal of the materials on record, I am of the view that apart from the self-serving transfer certificate produced by the respondent No. 4, no other conclusive evidence is available to substantiate his case that he ever studied in Dolaitola Shaukat High School or in ADM High School. In the first place, the transfer/school leaving certificate relied upon by the respondent No. 4 is not even a contemporaneous document: this certificate was issued only on 20-4-2004 even though he was supposed to have left the school on 31-12-1995. The case of the respondent No. 4 becomes all the more curiuser and curiuser when the original admission register or attendance register or the record of the issuing school could not be made available by the said school authorities when called upon to do so by the respondent No. 3, who is the jurisdictional Inspector of Schools. To compound his problem, the Headmaster of Dolaitola Shaukat High School in his letter dated 24-6-2013 while replying to the letter of the respondent No. 3 informed the latter that "since the establishment of the school till 2000, the school was in a katcha condition made of mud and bamboo.

Constant rain, thunder storms and book insects have destroyed much of the documents of the school. That I have enclosed all available documents with regard to student Siraj Ali which I could find." Having said that "much" of the documents of the schools had been destroyed, yet the unnamed Headmaster managed to enclose Xerox copies of the admission register 1994/1995, the attendance register and the certificate counterfoil! Even a cursory look at those documents, which are at Annexure-12 series to the writ petition, will show that they are not even dated except the certificate and its counterfoil, which is again of the year 2005 and not even a contemporaneous document. Moreover, under whose authority and when these documents were prepared are not indicated. The respondent No. 8, who is currently the Headmaster of ADM School, where the respondent No. 4 was alleged to have been transferred in the year 1995, in his affidavit, has stated that the outgoing Headmaster did not hand over the records when he took over the post in 1999 and that he had record only for the period after 25-10-1999 and in those records, the name of the respondent No. 4 was not reflected. Thus, it is seen that there are absolutely no unimpeachable contemporaneous documents or records to establish that the respondent No. 4 had studied till, and left Dolaitola Shaukat High School on 31-12-1995 or that he ever read Class X in ADM High School at any time. The transfer/leaving certificate bearing dated 20-4-2005 certifying that the respondent No. 4 left Dolaitola Shaukat High School is not borne out by the record. This, coupled with the fact that the declaration of the current Headmaster of the School that much of the documents of the school had been destroyed, has raised reasonable grounds for suspicion that the transfer certificate relied upon by the respondent No. 4 is a false and fabricated document. Had the respondent No. 4 produced a transfer/school leaving certificate of the year 1995, such document could have substantiated the case of the respondent No. 4. There is no evidence either to prove that the respondent No. 4 was admitted to Class X at ADM High School where, according to him, he was subsequently admitted. Therefore, merely because the respondent No. 4 has raised a dispute with regard to the facts of the case as presented by the petitioner, this Court entertaining the writ petition is not bound to relegate the parties to a civil court. To do so would amount to refusal/failure to exercise its jurisdiction, more so, when the dispute merely involves interpretation of the documents produced by the parties and does not involve a question of fact of complex nature.

9. Coming now to the entry with respect to the age of the respondent No. 4, which is recorded as 42 years in the electoral roll, it must be noted that entry in the electoral roll is prepared by a public officer in the discharge of his official duty and, therefore, carries a lot of weight or, at any rate, creates a rebuttable presumption. This is so held by the Full Bench of the Full Bench of the Orissa High Court in *Kirtan Sahu after him Uma Sahuani and Others Vs. Thakur Sahu and Others*, AIR 1972 Ori 158 : (1972) 38 CLT 82 in the following manner:

"7. The electoral roll being a public document is admissible in evidence and it is not necessary to prove the source of information on the basis whereof the facts

stated in the roll were recorded, nor is it necessary that the person who prepared the electoral roll has to be examined in court to prove the roll. As a public document it is admissible under the provisions of the Evidence Act. As was indicated by the Judicial Committee in *Rani Lekraj Kuar vs. Baboo Mahpal Singh* (1879) L.R. 7 I.A. 63 (Privy Council) .

"The entry having stated that relevant fact, the entry itself becomes by force of the section a relevant fact; that is to say, it may be given in evidence as a relevant fact, because, being made by a public officer, it contains an entry of a fact which is relevant."

We would accordingly answer the question referred to us thus:

The electoral roll prepared under the Representation of the People Act is admissible in evidence without the author thereof and the person supplying the information being examined in the case." It would, therefore, follow that the view expressed by the Division Bench in (1970) 36 CLT 1211 and the three other cases already referred to by a single Judge in this Court with reference to the admissibility of the electoral roll was not correct."

10. Apart from the doubtful transfer/leaving certificate relied on by the respondent No. 4, no other evidence is available on record to rebut the presumption that he was 42 years old as on 1-1-2013; the advertisement was issued on 17-3-2013. The date of birth recorded as 1-2-1980 in the said transfer/leaving certificate cannot be held to be admissible inasmuch as the certificate itself, as found by me, is of doubtful character. In this view of the matter, there is also force in the contention of the learned counsel for the petitioner that the respondent No. 4 was not eligible for the post of Chowkidar as he had crossed 38 years of age when the advertisement was issued. What relief can be granted to the petitioner on the facts so found is the next question for consideration. As already noticed, there are two vacant posts of Chowkidar in the school. The petitioner is undoubtedly in the third position in the select list having secured 50.75 marks whereas the respondent No. 4 having secured 56.5 marks stood in the first position. Another candidate stood in the 2nd position having obtained 55.25 marks above the petitioner. Once it is held that the respondent No. 4 is not eligible for the post and his selection is being cancelled herein, I do not see why the petitioner cannot be considered for the remaining vacant post after appointing the other candidate, namely, Saiful Haque, to one of the two vacant posts. This appears to be just and reasonable and not otherwise illegal and is, therefore, warranted by the facts found by me.

11. For the reasons stated in the foregoing, this writ petition stands allowed. The selection of the respondent No. 4 to the post of Chowkidar of BAS Madrassa Higher Secondary School, Soniadi is hereby quashed. The respondent No. 3 and 5/6 shall now consider the petitioner for appointment to the post of Chowkidar of the said school on the basis of the select list dated 14-4-2013 (Annexure-3 series) and take a final decision in accordance with law within a period of one

month from the date of receipt of this judgment. No cost.