

(1974) 08 KAR CK 0014
In the Karnataka High Court
Case No : C.R.P. No. 1707 of 1974

Narayan

APPELLANT

Vs

R. Vaidyanath and Others

RESPONDENT

Date of Decision : 29-08-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 34, 42

Citation : AIR 1975 Kar 117 : (1974) ILR (Kar) 1275 : (1974) 2 KarLJ 205

Hon'ble Judges : G.K. Govinda Bhat, C.J

Bench : Single Bench

Advocate : V.K. Govindarajulu, for the Appellant; M.R. Janardhana, H.K. Vasudeva Reddy and N. Venkatachala, for the Respondent

Judgement

1. This revision petition brought on behalf of Defendant 3 in O. S. 1257 of 1974 on the file of the Court of the I Munsiff, Bangalore, arises out of an application for temporary injunction filed by the respondent-plaintiff.

2. The matter arises in this way: defendant I Bangalore University, invited applications for one post of Professor of Political Science and one post of Reader in Political Science. The plaintiff and defendants 2 and 3 were the applicants to the said posts, among others. The candidates were interviewed by the Board of Appointments and defendant 2 Dr. K. H. Cheluva Raj was appointed as Professor and defendant 3 Dr. Narayan was appointed as Reader, by a resolution of the Syndicate dated 27-6-1974. Dr. Vaidyanath, the plaintiff, who was an unsuccessful candidate, instituted the suit in the Court of the I Munsiff, Bangalore, as 29-6-1974, wherein he prayed for judgment and decree as follows:

"(a)Declaring that the appointment of defendants 2 and 3 is irregular, void, illegal and inoperative;

(b) Restraining the 1st defendant from appointing the defendants or inducting them into the office of and otherwise allowing them to continue in the posts of

Professor of Political Science and Reader in Political Science;

(c) Restraining the defendants 2 and 3 from assuming office and continuing in the office of the Professor of Political Science and Reader in Political Science."

3. The allegation in the plaint was that the University, defendant 1, had not acted in accordance with the relevant statutory rules, that defendants 2 and 3 do not possess the prescribed qualifications and that their appointments are made fraudulently.

4. It is relevant to state at this stage that orders were issued to defendants 2 and 3 appointing them as Professor and Reader respectively, on 28-6-1974.

5. The plaintiff made an application for an interim injunction restraining defendant 1 University, from giving effect to the appointments of defendants 2 and 3, and restraining defendants 2 and 3 from assuming charge of and performing the functions of the Professor of Political Science and Reader in Political Science respectively, during the pendency of the suit. The Munsiff issued an ad interim order of injunction on that application. After the defendants entered appearance and contested the application, the interim order was dissolved so far as defendants 1 and 2 are concerned, but was made absolute with regard to defendant 3. That order was affirmed by the Court of the Civil Judge, Bangalore City, in M. A. 54 of 1974 by its order dated 9-8-1974, Aggrieved by the said order, defendant 3 has preferred the above revision petition.

6. It is a cardinal principle governing the law of granting interim injunctions that the court granting such an order should come to the conclusion that the plaintiff has a prima facie case, which means a case to go for trial, and that the balance of convenience lies in maintaining the status quo. The defendants have contended, inter alia, that the reliefs prayed for by the plaintiff cannot be granted. Their case is that the plaintiff cannot obtain a declaration to the effect that the appointments made by defendant 1 of defendants 2 and 3 are irregular, void, illegal and inoperative, and that such a relief cannot be obtained under the provisions of the Specific Relief Act. Both the Courts below have failed to consider whether, under the provisions of the Specific Relief Act, a declaratory relief of the nature claimed by the plaintiff can be granted. A suit for declaration and injunction is governed by the Specific Relief Act, 1963, (hereinafter called the Act). The grant of specific relief of declaration or injunction, is a discretionary remedy. Section 34 of the Act states :

* * * *

In a suit under this Section :

(1) The plaintiff must be a person entitled to any legal character or to any right as to any property;

(2) the defendant must be a person denying, or interested to deny, the plaintiff's

title to such character or right;

(3) the declaration sued for must be a declaration that the plaintiff is entitled to a legal character or to a right to property; and

(4) where the plaintiff is able to seek further relief than a mere declaration of title, he must seek such relief.

If any of the first three conditions is not fulfilled, the suit should be dismissed. By the expression "legal character" what is intended to be meant is "legal status". Vide Major General Shanta Shamsheer Jung Bahadur Rana Vs. Kamani Brothers Private Ltd. and Ors, A man's "legal character" is the same thing as his status which is constituted by the attributes the law ascribes to him in his individual and personal capacity. No suit is maintainable u/s 34 of the Act unless the plaintiff is a person entitled to some legal character or to some right as to property and the declaration sought is that he is entitled to such character or to such right. Sir Lawrence Jenkins while delivering the judgment of the Judicial Committee of the Privy Council in Sheoparsan Singh v. Ramnandan Singh 43 Ind App 91 : AIR 1916 PC 78 stated thus:

"A plaintiff coming under this section must therefore be entitled to a legal character or to a right as to property."

He further observed thus :

"This use of a declaratory suit illustrates forcibly the warning in *Narain Mitter v. Kishen Soondory Dasee* (1872) 149 Ind App 162, where it was said : There is so much more danger in India than here of harassing and vexatious litigation that the Courts in India ought to be most careful that mere declaratory suits be not converted into a new and mischievous source of litigation."

7. In the instant case, the plaintiff has not sought for the relief that he is entitled to any legal character. He does not claim any right to any property either. A relief of the nature which has been sought in this case, *prima facie* appears to me, does not lie within the scope of the Act.

8. It was strenuously argued by Sri M. R. Janardhanam, learned counsel for respondent-1 that Civil Courts have the jurisdiction to declare that the acts of statutory authorities are illegal and void, and that a relief of this nature can be granted. I asked the learned counsel to bring to my notice if there are any decided cases of Courts in India where such relief has been granted, not under Article 226 of the Constitution, but in suit for specific relief. The learned counsel relied on some decisions, and particularly he drew my attention to the decision in *Lakshminarasimha Somayajiyar v. Ramalingam Pillay* 39 Mad LJ 319 : (AIR 1920 Mad 573) where it has been observed that Section 42 of the Specific Relief Act is not exhaustive of the declaratory suits entertainable by Civil Courts. There the suit was for a declaration of the invalidity of the election of a member of a Taluk Board and it was held that the Court has a discretion to grant or refuse the declaration sought for, and will, in a proper case, refuse it, even though the

election was invalid.

9. Prima facie, it appears to me that the plaintiff's suit for the reliefs prayed for, is not maintainable; but, I do not want to express any final opinion as that will prejudice the parties in the trial of the suit.

10. I also do not see how the balance of convenience lies in issuing an order of interim injunction restraining "defendant 3 from assuming charge of the post of the Reader in Political Science in the University. He is not going to displace the plaintiff since the plaintiff is not holding that post. If the plaintiff succeeds, defendant 3 will have to vacate the post and a fresh appointment will have to be made. The litigation may take several years before it is finally concluded. Is any Court justified in keeping the post of a Reader in the University vacant by issuing an order of injunction and thereby making the students suffer? In writ petitions under Article 226 of the Constitution where appointments made by Governments, Universities, local bodies etc., are challenged, this Court, to my knowledge, has not issued interim order restraining the candidates appointed from assuming charges of the posts to which they were appointed unless it be a case where by such appointment, the petitioner is going to be displaced. If this Court in exercise of its discretion under Article 226 of the Constitution will not issue an interim order of the nature prayed for by the plaintiff, is a subordinate Court justified in making the order under revision?

11. This case is a clear warning to the High Court of the unlimited mischief caused by the abuse of the power to grant temporary injunctions. Hitherto, litigation in service matters was confined to the High Court in proceedings under Article 226 of the Constitution. If this Court does not interfere with the order made by the Court below, it will encourage parties to start litigation in subordinate Courts challenging appointments made by the State Government or other authorities, and, if the Subordinate Courts indiscriminately issue temporary injunctions, administration may get paralysed.

12. For the reasons stated above, this revision petition is allowed, the order of the Court below is reversed and the application made by the plaintiff is dismissed with costs throughout.

13. Revision allowed.