
(2005) 02 AHC CK 0237
In the Allahabad High Court
Case No : Writ Petition No. 716 (M/B) of 2005

Prem Chandra Sharma and Others

APPELLANT

Vs

Milan Banerji

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Constitution of India, 1950 — Article 124, 124(2), 124(3), 132, 145(3)

Citation : (2005) 6 AWC 6174 : (2005) 3 ESC 2001

Hon'ble Judges : M.A. Khan, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : Ashok Pandey, for the Appellant; Dipak Seth and K.D. Nag, for the Respondent

Final Decision : Dismissed

Judgement

1. Sri K.D. Nag, learned Counsel for Union of India has informed this Court that the notice on behalf of opposite party No. 1 was wrongly accepted in the Office of the Senior Standing Counsel and the same is being returned as Senior Standing Counsel has no authority to receive the copies of notice on behalf of opposite party.

2. The inherent essential characteristic to become an Engineer is to be intelligent; to become a Doctor is to be intelligent and diligent both; to become a Defence Officer one has to be brave and one who wants to become a member of Bar, has a responsibility towards the Society at large and towards the administration of justice is not less a person has to inculcate all the above qualities. But now-a-days, the people have adopted short cut methods to come in the limelight and one such method is filing Public Interest Litigation. Of and again, the Hon'ble apex Court and this Court penned down in strongly worded sentences that member of the Bar while filing Public Interest Litigation should be more vigilant and cautious.

3. We are also of the considered opinion that whenever a member of the (Bar

files a writ petition in personal capacity his duty multiplies because he has to do homework first as a Client then as a professional. In the instant case the petitioners, who are four-in numbers, are Advocates by profession.

4. Sri Ashok Pandey, appearing for petitioners has inter alia prayed for a direction by issuing a writ in the nature of Quo warranto calling upon the respondent as to how he is holding the office of Attorney General of India. It has been further prayed that a writ in the nature of certiorari be issued quashing the order of appointment of the sole respondent after summoning the same from him. Further, it has been prayed that a writ in the nature of prohibition be issued thereby prohibiting the sole respondent from functioning as Attorney General of India.

5. It has been contended on behalf of the petitioners that qualification for appointment of Attorney General of India are indicated in Article 76 of the Constitution of India. It has been emphatically argued that the respondent is holding the office of Attorney General of India in contravention of the provisions of the Constitution and has invited our attention towards Article 76 of the Constitution under which Attorney General is appointed which reads as under :

"Attorney-General of India.--(1) The President shall appoint a person who is qualified to be appointed as a Judge of the Supreme Court to be Attorney General of India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all Courts in the territory of India.

(4) The Attorney General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine."

6. To understand further, Article 124 of the Constitution of India is attracted and therefore, we have perused both Articles together to appreciate the arguments advanced by the learned Counsel for the petitioner wherein it is provided that the President of India shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India and further the qualification as provided under Article 124 of the Constitution of India are as follows :

"Article 124(3).... A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and--

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession ; or

(b) has been for at least ten years an Advocate of a High Court or of two or more such Courts in succession ;

(c) is, in the opinion of the President, a distinguished jurist."

7. It has been submitted before us that the Judge of the Hon''ble Supreme Court can hold the office until he attains the age of 65 years. Therefore, no one can be appointed as Attorney General of India if he has already attained the age of 65 years. The respondent who at present is allegedly about 75 years and his date of birth as informed by the Counsel for the petitioner is 27.9.1929, has become ineligible for appointment as Attorney General.

8. Relying upon the decision of the Supreme Court in *B.R. Kapur v. State of Tamil Nadu*, : AIR2001SC3435 , learned Counsel for the petitioner contended that Union of India is not a necessary party and a writ of quo warranto can be issued without impleadment of Union of India i.e. the appointing authority.

9. Before dealing with actual controversy involved in the present case, we have to first examine whether Union of India is a necessary party or not. True, the writ of Quo warranto can be issued in light of *B.R. Kapoor's* case (*supra*). However, if a writ in the nature of Certiorari or Prohibition is to be issued then Union of India is necessary party. No doubt under Article 361 of the Constitution protection is available to the President and the Governor but under Article 300 of the Constitution, the Government of India or the Government of a State may sue or be sued by the name of Union of India or the Government of the State. Further, in view of the prayer No. II and III sought for by the petitioner in which writ of certiorari and Prohibition have been prayed, in our considered opinion, Union of India is a necessary party. Learned Counsel for the petitioners had made a categorical statement that present petition is not a Public Interest Litigation. The next question, therefore, would be the locus of the petitioner, who have come forward to challenge the appointment of the sole respondent as Attorney General and further whether they are really aggrieved persons.

10. Looking at the age and experience of the petitioner and in the absence of any pleadings in this regard we could easily say that the petitioners do not fulfil the minimum requisite qualification for the post of Attorney General for India and on this score, we find that the petitioners have no locus even to challenge the appointment and maintain this petition. In case, we dismiss the petition on any of this technical ground, the petitioners will have another inning. Accordingly, we proceeded and called upon the learned Counsel for the petitioners to address this Court on merits as well.

11. The minimum requisite qualification prescribed for the appointment as Judge of the Hon''ble Supreme Court has already been referred hereinabove. It has not been disputed on behalf of the petitioners that the respondent does not fulfil the requisite qualifications as referred in Article 124(3) of the Constitution. The only grievance of the petitioners is that since the respondent has crossed the age of 65 years and in light of Article 124(2) Wherein 65 years age is provided for the

purpose of holding the office of a Judge of the Hon"ble Supreme Court, the respondent is ineligible to be appointed as Attorney-General for India.

12. Having examined various provisions of the Constitution, it is quite clear that the Constitution of India does not provide the retirement age of various constitutional appointees. No outer age limit has been provided for the appointment of the Attorney General, Solicitor General and Advocate General in the State. In the democratic system, prevailing in our country the Attorney General is appointed on the recommendation of Prime Minister by the President of India and traditionally, he resigns along with the Prime Minister. Learned Counsel for the petitioner could not show any law relating to the age of retirement of Attorney General or embargo provided in Constitution on appointment of a person as Attorney General, who has already attained the age of 65 years. We are of the considered opinion that the letter and spirit of the Constitution as far as appointment of the Attorney General is concerned, looking to significance, responsibility and high status of the post, it lays down certain requirements for a Member of Bar to be appointed as Attorney General of India. It is in this backdrop that the framers of the Constitution thought it necessary to prescribe minimum requisite qualification by laying that a person who is qualified to be appointed as Judge of the Hon"ble Court can be appointed as Attorney-General of India. This situation, however, cannot lead us to the conclusion by any stretch of imagination that the Attorney General cannot hold his office after the age of 65 years. As already indicated herein-above there are various constitutional functionaries where no outer age limit is provided to hold the office.

13. We could lay our hand upon a judgment dealing with the appointment of Advocate General as reported in AIR 1952 Nag 330, wherein a Division Bench of the High Court held that all the provisions relating to a Judge of the High Court cannot be made applicable to the Advocate General. The provision in Clause (1) of Article 217 that a Judge of the High Court shall hold the office until he attains the age of 60 years (at that relevant time age of retirement of Judges of High Court was 60 years) is not to be construed as one prescribed qualification but as one prescribed duration of the appointment of Judge of the High Court as the provision does occur. The first clause of Article 217 of the Constitution cannot be read with the first clause of Article 165 of the Constitution so as to disqualify a person for being appointed as Advocate General after the age of 60 years. The Court held that appointment of the Advocate General is not bad because the person has crossed 60 years so long as he possess the qualifications prescribed in the second clause of Article 217. The aforesaid decision was, later on, approved by the Hon"ble Supreme Court in another case.

14. On the same analogy we find that the age of the sole respondent would not come in the way of his being appointed as Attorney General for India and accordingly, no good ground is made out warranting interference under Article 226 of the Constitution as far as merits of the case is concerned.

15. We would also like to mention that the petitioners would not get any

advantage by placing reliance before us the extract of Constitution of various countries including the Constitution of Russia, This Court being the Court of record however, takes the same on record.

16. In totality, the writ petition fails and is accordingly dismissed.

17. Learned Counsel for the petitioners sought leave under Article 132 of the Constitution of India and submitted that leave should be granted because it is a matter of right and further it was pointed out by the learned Counsel for the petitioners that this Court has no jurisdiction to decide the issue in question because the same is to be decided by a Bench consisting of five Hon"ble Judges of the apex Court in light of Article 145(3) of the Constitution of India.

18. We are of the view that the leave for Supreme Court under Article 132 of the Constitution is not granted as a matter of right to the Counsel. It can only be granted if substantial question of law is involved and in the-present case Counsel for the petitioners have failed to show that substantial question of law, which is to be settled, is involved.

19. Accordingly, the prayer for leave to appeal for Hon"ble Supreme Court is refused.