

(1969) 06 CAL CK 0037
In the Calcutta High Court
Case No : A.F.O.O. No. 49 of 1968

Puranlal Lakhanpal

APPELLANT

Vs

Dr. P.C. Ghosh and Others

RESPONDENT

Date of Decision : 16-06-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1970 Cal 118 : (1970) 1 CALLT 360 : 74 CWN 228

Hon'ble Judges : D. Basu, J;Ajay K. Basu, J

Bench : Division Bench

Advocate : A.P. Chatterjee and Rathin Bhattacharyya, R.C. Deb and D. Gupta, for the Appellant; S.C. Bose, for Respondents Nos. 1 to 12, for the Respondent

Final Decision : Dismissed

Judgement

D. Basu, J.—This appeal is against the order passed by B.C. Mitra, J. dated February 6, 1968 by which the petition brought by the appellant under Article 226 of the Constitution was dismissed in limine. In that petition, the petitioner challenged the title of respondents 1 to 11 to constitute and to act as the Council of Ministers for the State of West Bengal headed by respondent No. 1, P.C. Ghosh as the Chief Minister, and asked for a writ of quo warranto "quashing the warrant of their appointment dated November 21, 1967 and December 4, 1967 in respect of the various members of the Council of Ministers." The main ground upon which this petition was founded was that the Governor had no power under Article 164 of the Constitution of India to dismiss the previous Council of Ministers, on the ground that they had ceased to lose the support of the majority of the Legislative Assembly of this State, -- as a result of which vacancy was created for the appointment of respondents 1 to 11 as the succeeding Council of Ministers. This application was contested by the respondents and the Union of India also intervened with leave of the Court. The Court rejected the application on the findings, inter alia, that the dismissal of a Council of Ministers was in the discretion of the Governor with which the Court could not interfere and that the

charge of mala fides which was brought in the instant application against the Governor was not substantiated. Since the disposal of that application on February 6, 1968, the Council of Ministers consisting of respondents 1 to 11 have ceased to hold their office by reason of the intervention of the President's Proclamation under Article 356 of the Constitution dated February 20, 1968, so that at the hearing of this appeal, respondents 1 to 11 do not occupy the office of members of the Council of Ministers for the State of West Bengal from which they were sought to be ousted by the petition in question.

2. So far as the writ of quo warranto is concerned, it is well established that though the immediate object of a writ of quo warranto is to inquire into and determine the authority of a person holding a public office, the relief that can be granted by the Court on such a writ is the ouster of the person proved to be a usurper from the public office in question and that, accordingly, relief by way of quo warranto can be available only so long as the respondent is in actual possession and user of the office in question. As a general rule, therefore, quo warranto to question a person's title to office will not be granted after he has ceased to hold that office (vide Short on Informations, p. 146). To this general proposition an exception has, however, been engrafted by judicial decisions that resignation after rule nisi has been issued is no answer to the rule. The obvious reason for this is that a person cannot avoid a decision in a pending proceeding by a unilateral act and the very fact of resignation presupposes that there was an office in which he was acting and, therefore, the real question as to title to so act should be heard (vide *R. v. Warlow* (1813) 2 M & S 75 : *R. v. Blizard* (1866) LR 2 QB 55 . Apart from this exception on the ground of resignation, there is no other contingency under which a writ of quo warranto would issue in a case where the respondent has ceased to hold the office, the title to which is challenged.

3. On behalf of the appellant, however, it has been argued by Mr. Chatterjee that though the respondents might have ceased to hold their office, there might be other questions consequential upon the fact of their holding the office, prior to the termination thereof, which may still be left, for example, the validity of acts done by them while in office or their obligation to refund the salaries which they might have drawn while in office. But so far as a petition for quo warranto is concerned, it has been established that no such relief can be available in a proceeding for quo warranto. Thus, a writ of quo warranto cannot be used to quash acts already done by a usurper. Quo warranto is addressed to prevent a continued exercise of authority unlawfully asserted, not to correct what already has been done under it or to vindicate private rights (vide *Johnson v. Manhattan R. Co.* (1932) 289 US 479; 74 Corpus Juris Secundum Article 49). So far as the right of a person to ask for refund of salaries from a usurper to a public office is concerned, that also is not to be determined in a proceeding for quo warranto. If such an action is maintainable as a consequence of a writ of quo warranto having been issued, that has to be determined independently, on its merits, in an appropriate subsequent proceeding which may subsequently be brought by the petitioner or some other person, after establishing his right to maintain such

action.

4. Apart from the above general proposition, it has been rightly pointed out on behalf of the respondents that the appeal is not against an order discharging a Rule but rejecting an application refusing to issue a Rule Nisi. Today, after the respondents have ceased to hold their office, how can a Rule be issued asking them to show cause why they should not be ousted from that office? This is a proposition which does not depend upon legal niceties. Eventually it was argued by Mr. Chatterjee that even though a writ of quo warranto might not be appropriate in the circumstances of this case, the Court might grant some other appropriate relief under the residuary prayer clause, namely, to make "such further or other order or orders as the Court may deem fit and proper". It is true that in some cases, owing to subsequent contingencies arising, the Court has modified the relief specifically prayed for by a petitioner under Article 226 of the Constitution to make such order as might be proper in the changed circumstances (e.g. in *Sri Satya Narain Singh Vs. District Engineer, P.W.D. and Another*,). But that does not apply ab initio at the time of issuing the Rule and, not at least in a case where the cause of action which had brought the petitioner to the Court no longer subsists.

5. Having given our anxious consideration to all the questions involved in this appeal, we are unable to hold that there is before this Court any live controversy which has to be disposed of in appeal.

6. In this view, this appeal is dismissed but without any order as to costs.

7. If the question as to the validity of the Governor's order in a future case of dismissal of ministry takes place, prima facie that will be determined by the Court on its own merits irrespective of what has happened in the instant case.

8. A question was raised as to the right of the appellant to file an affidavit before this Court today. It was urged by Mr. Deb on behalf of the Union of India that the appellant had no right to file any affidavit at the appellate stage without leave of the Court. Mr. Chatterjee maintained that he had made certain averments only to show that the general questions involved in the petition were not dead but they were having their repercussions even now. The objection to the affidavit, it appears, is due to the averments in paragraph 2 of the affidavit to the effect that the respondents 1 to 11 drew their salary etc. illegally and that the acts done by them during their holding the office were all without authority of law. As I have already stated, the two points raised in paragraph 2 of the affidavit are not relevant to a proceeding for quo warranto and that the merits of such points would, if pursued, have to be determined in appropriate proceedings. No fresh orders upon this affidavit are, therefore, called for in this appeal, and it is, therefore, rejected.

Ajay K. Basu, J.

9. I agree.