
(2021) 10 CHH CK 0017
In the Chhattisgarh High Court
Case No : WPIL No. 21 Of 2021

Rustam Bhati

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 04-10-2021

Acts Referred:

Citation : (2021) 10 CHH CK 0017

Hon'ble Judges : Prashant Kumar Mishra, J;Naresh Kumar Chandravanshi, J

Bench : Division Bench

Judgement

1. In this PIL, the petitioner has prayed for issuance of writ of quo warranto declaring that the appointment of the private respondent i.e. respondent No.3-Alok Shukla vide Annexures P-1 & P-2 as illegal & invalid and for quashing these two orders.

2. The respondents have objected to the maintainability of the writ petition on the ground that (i) the petitioner has suppressed the fact that he is a Member of the State BJP working Committee and has previously served as the President of the Minority Cell of BJP from 2006-2010, therefore, he has not approached the Court with clean hands; (ii) WPS No. 2401 of 2020 (Naresh Chandra Gupta Vs. State of Chhattisgarh and others) was preferred by another Member of BJP which came to be dismissed on 15-09-2020 and thereafter, the present petition has been filed on 16-02-2021, therefore, this petition is hit by the principles of res judicata and suppression of the order passed in the matter of Naresh Chandra Gupta (supra); (iii) the petition is not bona fide and since the petitioner himself was not a candidate for selection to the concerned office, he cannot maintain the writ petition; and (iv) writ of quo warranto does not lie to challenge the contractual appointment.

3. We have heard learned counsel for the parties at length. Both the parties have referred to several judgments of the Hon'ble Supreme Court, however, the question, at this stage, is only in respect of maintainability of the writ petition, we are not referring to all the judgments which basically deal with the principles

as to when writ of quo warranto is issued.

4. In the matter of The State of West Bengal & others Vs. Dipak Mishra [Special Leave to Appeal (Crl.) Nos. 2669-2670/2021], the Hon'ble Supreme Court observed that:-

" While it is true that the Court is required to examine whether a litigation is really in public interest or to advance some other interest in the garb of public interest, at the same time, a Public Interest Litigation cannot be thrown out only because the petitioner belongs to a rival political party. Persons with political affiliations are, as much entitled to file a public interest litigation as any other person. Whether the litigation is bona fide or not is a different issue which has to be examined by the Court on a case to case basis, having regard to the nature of the complaint before it."

5. In view of the above, the PIL cannot be thrown out only for the reason that the petitioner belongs to a rival political party. The issue as to whether in view of order passed by the learned Single Judge in the matter of Naresh Chandra Gupta (supra) challenging the same appointment, the instant petition would be barred by principles of res judicata. Suffice, it would be say that WA No. 398/2020 preferred by Naresh Chandra Gupta is pending consideration and is tagged with the present PIL, therefore, the judgment has not attained finality. The writ appeal having been entertained by the Division Bench, the same shall be dealt with on merits and at the same time, the present PIL shall also be considered, therefore, for this count also, the PIL cannot be thrown out in limine.

6. The objection as to the maintainability of the petition on the ground that the petitioner himself being not a candidate for the subject post, he cannot maintain PIL also deserves outright rejection on the ground that had he been a candidate for selection to the subject post, the PIL would not have been maintainable in view of the law laid down by the Hon'ble Supreme Court in the matter of Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others, (1998) 7 SCC 273 because PIL is not maintainable in service matter. A PIL in service matter is maintainable only for issuance of writ of quo warranto and such prayer is always made by a candidate or the public spirited person who desires to challenge the appointment on the ground of infraction of statutory rule or that the person so appointed is not eligible in law to hold the post.

7. Another contention raised by the learned counsel for the respondents is that the petition lacks bona fides however, nothing has been brought on record to demonstrate as to the nature of inter se dispute between the petitioner and the respondent No.3 so as to conclude that the petitioner wants to harass the respondent No.3. This question as to whether a writ of quo warranto would eventually be issued or not would not effect the bona fides of the petitioner. Moreover, in the matter of Dipak Mishra (supra), the Hon'ble Supreme Court has observed that "Whether the litigation is bona fide or not is a different issue which has to be examined by the Court on a case to case basis, having regard to the

nature of the complaint before it."

8. In view of the above, the objection regarding maintainability of the present WP (PIL) is rejected and we hold that WP PIL No.21 of 2021 is maintainable.

9. Since, the return has already been filed, this PIL and WA No.398/2020 shall now be heard together on merits.

10. Post both the matters i.e. WP PIL No.21 of 2021 and WA No.398 of 2020 for final hearing in the week commencing from 15 th November, 2021.