

(2012) 08 AP CK 0120
In the Andhra Pradesh High Court
Case No : W.A. No. 100 of 2012

Smt. S. Jayasree

APPELLANT

Vs

The Secretary, A.P. Bar Council, Hyderabad and Another

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 196

Citation : AIR 2012 AP 152

Hon'ble Judges : Madan B. Lokur, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : D. Venkateswarlu, for the Appellant; G.M. Mohiuddin and A. Sudarshan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order dated 29.12.2011 passed by a learned Single Judge dismissing Writ Petition No. 34163 of 2011. At the outset, it is necessary to state the prayer made in the writ petition. This reads as follows:

...the High Court may kindly be pleased to issue a Writ, or Quo-Warranto or Writ of Mandamus, or orders of appropriate writ, order quashing the Election Notification dated 05.11.2011 to the Bar Council of State of Andhra Pradesh illegally issued by the Secretary without competency or authorization by a competent authority as per the provision of Bar Council Rules of Advocates Act, 1961 by granting injunction in exercise of its powers under Article 226 of the Constitution of India restraining the Secretary from proceeding to hold elections in accordance with legal citations M/s. Transmission Corporation of A.P. Limited v. M/s. Lanco Kondapalli Power Pvt. Limited, Justice S.B. Sinha and Justice P.P. Naolekar, 2005 (1) Decisions Today (SC) 1253 : (10) SCALE 233 as this Hon'ble Court may deem fit and proper in the circumstances of the case...

2. During the course of hearing, learned counsel did not cite the judgment

referred to in the prayer, but we have gone through that judgment and we propose to refer to it a little later.

3. Elections to the Andhra Pradesh Bar Council were notified on 5.11.2011 through an election notification issued by the Secretary of the State Bar Council.

4. The elections to the State Bar Council were actually held on 30.12.2011 and the results are awaited. Although it is not clear, it does appear that the appellant is not a candidate in the election.

5. Learned counsel for the appellant raised several issues before us. First of all, he submitted that the elections to the State Bar Council were earlier held on 28.4.2006 and that its term came to an end in April, 2011. Consequently, the election notification issued after the expiry of the term of the State Bar Council, by its Secretary, was without any authority of law.

6. We find from the record that even though the earlier elections may have been held on 28.4.2006, but the Bar Council was actually constituted on 2.6.2006. Consequently, the term of the earlier State Bar Council ended on 2.6.2011 and not in April, 2011 as contended.

7. However, in the meanwhile, in exercise of power conferred by Section 8 of the Advocates Act, 1961 (for short, "the Act"), the Bar Council of India (BCI) extended the term of the State Bar Council for a period of six months. This was by a resolution communicated to the State Bar Council by a letter dated 2.4.2011. In other words, the life of the State Bar Council was extended from 2.6.2011 till 2.12.2011. As mentioned above, the impugned election notification was issued on 5.11.2011. This was during the lifetime of the State Bar Council. Therefore, we cannot accept the contention of learned counsel that the issuance of the election notification by the Secretary of the State Bar Council was void due to its not having been issued during the life of the earlier State Bar Council.

8. It was then submitted that since the life of the earlier State Bar Council was extended by six months, the entire election process should have been completed within that extended period. In other words, the contention is that the results of the election (counting of which is now underway) should have been declared on or before 2.12.2011. In our opinion, this contention is correct, but it is of not much significance as far as the election is concerned.

9. The proviso to Section 8 of the Act requires the State Bar Council "to provide for the election of its members". This section reads as follows:

8. Term of office of members of State Bar Council.-- The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in Section 54) shall be five years from the date of publication of the result of his election:

Provided that where a State Bar Council fails to provide for the election of its members before the expiry of the said term, the Bar Council of India may, by

order, for reasons to be recorded in writing, extend the said term for a period not exceeding six months."

The expression "to provide for the election of its members" means that the members of the State Bar Council should be elected within the period provided or that the election process should be complete. It does not have a limited meaning that the election process should be set in motion. This is clear from a reading of Section 8-A(1) of the Act, where again, the expression used is "to provide for the election of its members" but the section also provides for the consequence of the failure to so provide "before the expiry of the term of five years or the extended term, as the case may be". Section 8-A(1) of the Act mandates that immediately on the following day, the BCI should constitute a Special Committee "to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act."

Section 8-A(1) of the Act reads as follows:

8A. Constitution of Special Committee in the absence of election.-- (1) Where a State Bar Council fails to provide for the election of its members before the expiry of the term of five years or the extended term, as the case may be, referred to in Section 8, the Bar Council of India shall, on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of--

(i) the ex officio member of the State Bar Council referred to in clause (a) of sub-section (2) of section 3 to be the Chairman:

(ii) two members to be nominated by the Bar Council of India from amongst advocates on the electoral roll of the State Bar Council, to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act.

10. A reading of the above provision clearly suggests to us that the State Bar Council should elect its members (which means a declaration of the results) before the expiry of its term or within the extended period provided by the BCI.

11. In the present case, the results of the State Bar Council should have been declared on or before 2.12.2011, that is, within the extended period of six months. The failure of the State Bar Council may invite the constitution of a Special Committee under the provisions of Section 8A of the Act. However, that is within the domain of the BCI and we need say nothing more on this subject.

12. Our understanding of the provisions of the Act is in accord with the view of the BCI in this regard. In the extension letter dated 2.4.2011 the resolution communicated by the BCI reads as follows:

RESOLVED that having regard to the facts and circumstances placed before the Bar Council in letter dated 1st February, 2011, the Bar Council of India extends the term of the present Bar Council of Andhra Pradesh for a period of 6 months

w.e.f. 3rd June 2011 and further stipulates that election to the said Council may be completed before the expiry of the said period.

13. However, no relief can be granted to the petitioner in this regard since no such relief is prayed for, nor has the BCI been made a party to these proceedings for the purposes of constituting a Special Committee.

14. It was then submitted that the Secretary to the State Bar Council is not qualified to be a Secretary to the Bar Council. There is no specific averment why the Secretary is not so qualified. However, learned counsel placed reliance on Rule 115 of the Rules of the Bar Council of the State of Andhra Pradesh. This reads as follows:

The Secretary may be appointed either by the method of direct recruitment from among the Advocates on the roll of the Council having not less than 10 years standing and not more than 45 years of age at the time of the appointment, or by promotion. In case of promotion, the promotee shall be a Law Graduate of not less than 10 years substantive service of the Council.

15. As mentioned above, the appellant has not given any specific reason for the alleged disqualification in the writ petition or in the grounds of appeal. The only averment to be found is in paragraph 4 of the affidavit filed in support of the writ petition. This reads as follows:

The present Secretary Smt. N. Renuka playing fraud in almost all matters as a key person of the Bar Council ever since she was fraudulently inducted as Secretary without fulfilling requisites for holding the post of Secretary as prescribed in Chapter IV of the Advocates Act, 1961 under the Bar Council of India Rules u/s 15(2)(k) of the Act.

16. The Bar Council of India Rules are not at all applicable to the present case. The Secretary of the State Bar Council need not be a Secretary of the BCI. Nor is it that if the Secretary of the State Bar Council does not fulfill the requirements of being a Secretary to the BCI, he or she cannot be a Secretary to the State Bar Council. The submission of learned counsel in this regard is totally misconceived.

17. However, what is more important is that the appellant has made certain allegations against the Secretary to the State Bar Council as mentioned in paragraph 4 of the affidavit. She has also described her as a tainted person in paragraph 3 of the affidavit. The appellant has not bothered to make the said Secretary as a party to these proceedings by name so that she can answer the allegations made against her. It is rather unfortunate that allegations have been made by the appellant against a person who is not a party to the writ petition or this appeal. We, therefore, decline to take notice of the allegations made by the appellant.

18. During the course of hearing, learned counsel the appellant handed over two documents to us. We are not clear for what purpose he handed over these documents since they have no relevance to the subject-matter, but we have

perused them even though they are not a part of the record.

19. One of the documents handed over is a notice sent by him to the State Bar Council regarding fraudulent cases, embezzlement of funds, misuse of office etc. The notice is not dated and in it he has made all kinds of allegations, particularly against the Secretary of the State Bar Council and against a former President of the Bar Association of High Court of Andhra Pradesh. In the notice, learned counsel states that it is in the interest and welfare of the advocates of Andhra Pradesh and in the interest of public and the safety of the public funds that a detailed probe is conducted by the CBI or ACB of the State to unearth the details of the scams mentioned by him. We have no doubt in our mind that this has no relevance to the case at all.

20. Learned counsel has also given us a letter addressed by an advocate on 11.6.2011 to the Chairman of the State Bar Council making all kinds of allegations relating to appointments and promotions in the State Bar Council. This letter questions the appointment of the Secretary of the State Bar Council and other employees. But, even this letter lacks specificity. We feel that this letter is also not relevant for deciding this case.

21. Finally, even otherwise, we are of the opinion that the de facto doctrine validates the actions of the Secretary in issuing the election notification. No office bearer of the State Bar Council has questioned the election notification and in fact the election notification has even been acted upon and the elections held.

22. Explaining the de facto doctrine, the Supreme Court in Pushpa Devi M. Jatia Vs. M.L. Wadhavan, Additional Secretary, Government of India and Others, said:

Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as validity of his acts are concerned It is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognised as valid under the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. In Gokaraju Rangaraju Vs. State of Andhra Pradesh, Chinnappa Reddy, J., explained that this doctrine was engrafted as a matter of policy and necessity to protect the interest of the public. He quoted the following passage from the judgment of Sir Ashutosh Mukherjee, J., in Pulin Behari Das v. King Emperor (1912) 15 Cal LJ 517:

The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where those interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large.

The learned Judge also relied upon the following passage from the judgment of P.S. Menon Vs. State of Kerala and Others,

This doctrine was engrafted as a matter of policy and necessity to protect the interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid."

23. Similarly, in *Central Bank of India v. C. Bernard 2*, it was held:

The de facto doctrine has two requisites, namely, (i) the possession of the office and the performance of the duties attached thereto, and (ii) colour of title, that is, apparent right to the office and acquiescence in the possession thereof by the public. According to this doctrine the acts of officers de facto performed within the sphere of their assumed official authority, in the interest of the public or third parties and not for their own interest, are generally held valid and binding as if they were performed by de jure officers. This doctrine dates back to the case of *Abbe de Fountaine* decided way back in 1431 to which reference was made by Sir Asutosh Mookerjee, J. in *Pulin Behari Das v. King Emperor* (1912) 15 Cal LJ 517. Mookerjee, J. held that as the complaint was made after complying with Section 196, Criminal Procedure Code, by the order of or under authority from local government which was de facto, the proceedings were valid. On the same principle it was further held that the Court of Session, assuming it was not the holder of a de jure office, was actually in possession of it under the colour of title which indicated the acquiescence of the public in its actions and hence its authority could not be collaterally impeached in the proceedings arising from the conviction of Pulin and his co-accused. Again, in *Immediseti Ramkrishnaiah Sons, Anakapalli and Others Vs. State of Andhra Pradesh and Another*, the government nominated nine persons on a Market Committee which nomination was later set aside by the High Court. However, before the High Court pronounced its judgment, the Market Committee had functioned as if it had been properly constituted. Between the date of its constitution and the date of the High Court decision it had taken several decisions, issued notifications, etc. which were the subject-matter of challenge on the ground that its constitution was ab initio bad in law. Chinnappa Reddy, J. relying on the observations of Mookerjee, J., in Pulin case concluded that the acts of the Market Committee de facto performed within the scope of its assumed official authority, in the interest of the public or third persons and not for his own benefit are generally as valid and binding as if they were performed by a de jure Committee. The Allahabad High Court in *Jai Kumar v. State*, 1968 All LJ 877 upheld the judgments of the District Judges whose appointments were later struck down by this Court on the principle that the acts of officers de facto are not to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by someone claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or benefit by reason of being the officer which he claims to be. In all other cases, the acts of an officer de facto are valid and effectual, while he is suffered to retain the office,

as though he were an officer by right and the same legal consequences will flow from them for the protection of the public and of the third parties. This Court in *Gokaraju Rangaraju Vs. State of Andhra Pradesh*, was required to consider the question of the effect of the declaration of this Court holding the appointment of an Additional Sessions Judge invalid on judgments pronounced by him prior to such declaration. This Court observed that the de facto doctrine is founded on good sense, sound policy and practical experience. It is aimed at the prevention of public and private mischief and the prevention of public and private interest. It avoids endless confusion and needless chaos. It, therefore, seems clear to us that the de facto doctrine can be invoked in cases where there is an appointment to office which is defective; but notwithstanding the defect to the title of the office, the decisions made by such a de facto officer clothed with the powers and functions of the office would be as efficacious as those made by a de jure officer. The same would, however, not be true of a total intruder or usurper of office.

24. On an overall consideration of the material, we are of the view that the appellant has not made out any case for setting aside the election process or the election notification dated 5.11.2011.

25. As far as *M/s. Transmission Corporation of A.P. Limited v. M/s. Lanco Kondapalli Power Pvt. Limited* 3 referred to in the prayer clause in the writ petition is concerned, we find that the citation is incorrect. The correct citation is 2005 (10) SCALE 233. That apart, we find that the decision pertains to the Arbitration and Conciliation Act. We simply cannot see the relevance of this decision.

26. The writ appeal is dismissed. Interim applications stand disposed of. No costs.