
(1954) 10 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Application No. 193/5 of 1954-55

V.D. Deshpande and others

APPELLANT

Vs

State of Hyderabad and others

RESPONDENT

Date of Decision : 11-10-1954

Acts Referred:

Citation : (1954) 10 AP CK 0008

Hon'ble Judges : Misra, C.J.;Srinivasachari, J

Bench : Division Bench

Advocate : D.M. Deshmukh, for the Appellant; N.S. Raghavan, Advocate-General, Vinayakrao Vaidya and J.V. Narsingh Rao (for Respondents Nos. 2 to 8), for the Respondent

Final Decision : Dismissed

Judgement

Misra, C.J.—This is an application under Art. 226 of the Constitution against the Hyderabad State and seven Deputy Ministers for the issue of a Writ Quo Warranto or any other appropriate writ or direction, which this Court might deem fit. Of the four petitioners, two, viz., Shri V. D. Deshpande, petitioner No. 1 and Shri K. Venkat Ramarao, petitioner No. 2, are members of the Hyderabad Legislative Assembly. The third petitioner, Shri Ramarao Rahatgaonkar is a voter of the Ambad Constituency, represented in the Assembly by the sixth respondent, Shri Bhagwath Ghambeer Rao Ghade, while Shri Bheemayya, petitioner No. 4 is a voter of the Warangal Constituency, which is represented in the Assembly by respondent No. 5, Shri M. S. Raja Lingam.

2. The aforesaid seven respondents Nos. 2 to 8 were appointed Deputy Ministers of the Hyderabad State by the Rajpramukh on 5-2-1954 and were sworn in as such on the fore-noon on that day. The petitioners claim that the office of the Dy. Minister is "an office of profit" and its acceptance by the said respondents disqualified them for retaining their respective seats in the Legislative Assembly after the date of their appointment.

3. They complain that in spite of the fact that these persons ceased to represent the constituencies from which they were elected by virtue of Art. 190(3) they continued unconstitutionally to act as members of the Hyderabad Legislative Assembly in the interest of the dominant political party, which, in order to keep itself in power and maintain its majority induced the Rajpramukh to exercise his powers under Art. 213 read with Arts. 238 and 191(1) (a) and to enact and promulgate an Ordinance on 13-2-1954 and later the Assembly to pass the Hyderabad Salaries of Ministers (Amendment) Act, 5 of 1954, published in the Gazette Extraordinary of 16-3-1954, declaring not only prospectively that no person shall be disqualified for being chosen as a member of the House by reason of the fact that he holds the office of a Deputy Minister but also that a holder of that office shall not be deemed ever to have been disqualified.

4. It is argued on behalf of the petitioners that once the vacancies had arisen they could only be filled up by the procedure laid down by S. 150, Representation of the People Act (43 of 1951), which empowers the Election Commission of India on the occurrence of a vacancy in the Assembly, to take steps forthwith for holding a re-election and that the action of the Rajpramukh and the State Assembly in removing the disqualification retrospectively operates in effect to re-appoint respondents Nos. 2 to 3 to fill up the vacant seats without holding a fresh election as required by law. It is said that in order that a declaration contemplated by Cl. (a) of Art. 191(1) may be effective, it should be made prior to the occurrence of the vacancy and that a subsequent declaration is invalid and of no avail.

5. The first two petitioners allege that they are seriously prejudiced in that they are forced to suffer the loss of co-operation of the seven constituencies represented by the seven Dy. Ministers respondents who being now the servants of the Executive, were no longer impartial and independent, and that the third and fourth petitioners are prejudiced in that by the methods adopted by the ruling party they are being precluded from electing fresh representatives for the vacant seats.

6. The respondents oppose the application on two grounds. In their first contention which is preliminary in its nature, they question the right of the applicants to move this Court for information by way of Quo Warranto or to ask for issue of a Writ of Mandamus. It is urged on their behalf that the petitioners have no personal right or special interest to protect & are, therefore, not competent to invoke the aid of this Court by recourse to its extraordinary jurisdiction of issuing high prerogative writs. Their second line of defence consists of a total denial of the allegation that the office of a Dy. Minister is or was at any time an office of profit.

7. So far as the preliminary objection is concerned, we may say at once that the rule that no person may invoke the Court's aid in respect of a wrongful act of a public nature not affecting prejudicially the real and special interest or a specific legal right of the relator is true only so far as the issue of Writs Mandamus and

Certiorari, etc., are concerned. In respect of Writ Quo Warranto there is no such restriction and a member of the public may challenge a public act of the State provided he does so bona fide and is not a "man of straw" -- *OR. v. Briggs*", (1864) 11 LT 372 (A)) set up by others as a mere pawn in the game and provided it is in the interest of the public that the legal position should be judicially declared once for all. The law in this connection was examined in some detail in -- "*Rex v. Speyer*", (1916) 1 KB 595 (B), and it was authoritatively laid down in England a relator, in proceedings for issue of a Writ Quo Warranto, need not necessarily have a direct and personal interest as distinct from the interest which he may have in common with the public. The following observation of Lord Reading C. J. concurring at page 613 of the report represents the conclusion which was reached in that case:

It cannot be doubted that this application concerns public government and there is no ground for impugning the motives of the relator. A stranger to the suit can obtain prohibition (See -- "*Broad v. Perkins*", (1888) 21 QBD 533 (C) and I see no reason why he should not in a proper case obtain an information of Quo Warranto. Sir George Makgill appears to have brought this matter before the Court on purely public grounds without any private interest to serve, and it is to the public advantage that the law should be declared by judicial authority. I think the Court ought to incline to the assistance, and not to the hindrance, of the applicant in such a case if the Court has the power, which I think it has. In my opinion, the preliminary objection fails on all grounds.

This is the settled view in England provided the act complained of is a public act of the Government as distinct from that of a corporation and we do not think it is necessary to encumber this judgment by referring to cases like -- "*Rex v. Kemp*". (1789) 1 East 46 (D) or -- "*Rex v. Brown*", (1789) 3 TR 574 (E) and to the conflicting view in -- "*Ex Parte Parry*", (1887) 3 TLR 649 (F), which was referred to by A. L. Smith J. in -- "*Regina v. Burrows*", (1892) 1 QB 399 (G) as "an unfortunate decision".

8. In India also the weight of authority is against the respondents' preliminary objection. In -- *Biman Chandra Bose Vs. Dr. H.C. Mukherjee, Governor and Others*, , Bose J. in dealing with the question said that if proper grounds had been laid in the petition and the application had asked for a writ of information in the nature of Quo Warranto against the nominated persons as respondents, he would have held in favour of the maintainability of such application. The petitioner in that case challenged the validity of the respondent's nomination by the Governor to the Legislative Council of the State of West Bengal under Cl. 3(e) read with Cl. (5) of Art. 171 of the Constitution and alleged that it was unconstitutional and injurious to him. The learned Judge before whom the decision in -- *In Re: V. Chakkarai Chettiar*, was cited in support of the preliminary objection and to which we will have occasion to advert at some greater length later, felt that he could not agree either with the reasoning of that case or with the conclusion that unless a person's personal right is infringed or unless he has

suffered a legal injury he cannot maintain an application for Quo Warranto. According to Bose J. such a view is clearly erroneous.

9. In -- Surendra Mohan Patnaik Vs. Gopal Chandra Patnaik and Others, a similar view was adopted by Panigrahi J. who said:

It is obvious, therefore, that no personal right of his (petitioner) is in any way affected by the election which he challenges or by result of this application. Nevertheless, I do not think it can be said that he is not competent as a relator to lay this information before the Court to determine the validity of the elections challenged.

The learned Judge cited in support of this conclusion the following passage from -- "R. v. Hodge", (1819) 106 ER 392 (K):

To attack the possessor of an office in the corporation of a borough, the relator need not be a burgess. He has sufficient interest if he is an inhabitant subject to the Government of the corporation.

He relied also on Halsbury's Laws of England (Hailsham) Vol. 9, 812 at 813 and -- "King v. Speyer (B)", to which reference has already been invited earlier, and went on to say that the issue of a writ on the application of a person like the petitioner, who had no personal and direct interest is undoubtedly discretionary. And if it was found that the petitioner was actuated by ulterior motives or the prayer was not bona fide, the Court could always refuse to interfere.

10. The next case to which reference is necessary in this connection is -- AIR 1952 330 (Nagpur) here two learned Judges of the Nagpur High Court constituting the Division Bench had to consider an application for the issue of a Writ Quo Warranto at the instance of a person who had no complaint to make of any infringement of his personal right. They said:

Though the power of this Court under Art. 226 is ordinarily exercisable for the enforcement of right or performance of duty it cannot necessarily be limited to only such cases. Such a limitation cannot be reconciled with the power to issue a writ in the nature of Quo Warranto which power had been expressly conferred upon the Court. In proceedings for a Writ of Quo Warranto the applicant does not seek to enforce any right of his as such nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from that office.

The learned Judges relied upon English decisions and said that they saw no reason to refuse a citizen under a democratic republican Constitution to move for a Writ of Quo Warranto for testing the validity of a high appointment of the Advocate-General, under the Constitution.

11. In -- "Nesamony v. T. M. Varghese", AIR 1952 Trav-C 66 (M), the decisions in,-- "R. v. Carmarthen Corpn.", (1759) 2 Burr 869 (N) and -- "R. v. White",

(1836) 5 Ad El 613 (O) were relied on for a similar view. Likewise in -- *Maseh Ullah Shah Vs. Abdul Rehman Sufi and Others*, , a Division Bench of the Allahabad High Court ruled that motion for a Writ of Quo Warranto can be made at the instance of a private individual without the intervention of a governmental or a public authority.

12. Of the two Madras cases upon which reliance was placed on behalf of the respondents, viz., -- "In re In Re: P. Ramamoorthi, and -- In Re: V. Chakkarai Chettiar, the former related to the rule applicable to a petition for the issue of a Writ Certiorari. The latter case, which was decided by a single Judge, no doubt, arose out of a motion for the issue of a Writ Quo Warranto and the learned Judge refused to grant relief as in his opinion a Writ of Quo Warranto could not lie at the instance of a person who did not suffer any personal injury by reason of the impugned appointment. "Ramamoorthi's case (Q)" and the observation of the Supreme Court of India in the first Sholapur case, - *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, to the effect that no one except those whose rights were adversely affected by the law can raise the question of constitutionality of that law, were cited as supporting the above view. We have already mentioned that Ramamoorthi's petition was for the issue of a Writ Certiorari and that the rule applying to a relator in such a case is different from the one with which we are concerned.

In -- "Charanjitlal's case (R)", the validity of the Sholapur Spinning and Weaving Co. (Emergency Provisions) Act was impugned by a holder of a share in the company who moved for a Writ of Mandamus and certain other reliefs under Art. 32 of the Constitution and the observations made in that case to the effect that an individual share-holder was not entitled to challenge the validity of an enactment which affects the fundamental rights of the company, except to the extent that it constitutes an infraction of his right must be taken to be applicable to the nature of the relief with which their Lordships were concerned. They could scarcely be made applicable to the case before us. The last case upon which reliance was placed by Chandra Reddy J. in the Madras case, viz., -- "McCabe v. Athchison", (1914) 235 US 151 (S), is likewise distinguishable. With all due respect, therefore, we are constrained to express our dissent from the view of law enunciated in -- "Chakkari Chettiar's case (I)". We overrule the preliminary objection.

13. Coming to the second point, it has to be noticed that on 5-2-1954, when the respondents Nos. 2 to 8 were appointed and sworn in as Dy. Ministers, no emoluments either by way of salary or allowance were attached to that office. Salary was attached to that office for the first time by the Ordinance complained of on 13-2-1954. No doubt, it was made payable as from 5-2-1954, but the very same Ordinance also declared at the same time by virtue of the powers vested in the Rajpramukh under Art. 191(1) (a) that the office of a Dy. Minister would not constitute nor be deemed to have constituted at any time a disqualification for its holder being chosen or retained as a member of the Legislative Assembly. It

follows that the office of the Dy. Minister became an office of profit only by virtue of the Ordinance and that it was neither an office of profit nor did it entail any disqualification prior to the date on which the Ordinance was promulgated. We may emphasize also that as soon as the Dy. Minister's office became an office of profit, the disqualification envisaged by Art. 191 (1)(a) was taken away. The two acts being simultaneous, there was no period of time at which it could be said that the seats held by respondents Nos. 2 to 8 in the Legislative Assembly fell vacant and jurisdiction was acquired by the Election Commission of India under S. 150, Representation of the People Act.

In our judgment, the material date is 13-2-1954 and not 5-2-1954, on which respondents Nos. 2 to 8 were sworn in for it was on the later date alone that the office was made an office of profit. Since the disqualification was removed at the same time and both provisions were given retrospective effect it would be difficult to dissociate the fixation of salary from the removal of the disqualification and say that the office of a Dy. Minister became an office of profit from 5-2-1954 while the clause relating to the removal of disqualification took effect only from 13-2-1954. In our judgment, as things stood on 5-2-1954, the acceptance of the office by respondents Nos. 2 to 8 did not bring about any vacancy and S. 150, Representation of the People Act, did not become operative on that date.

14. Reliance was placed on behalf of the petitioners, however, on -- "*Delane v. Hillcoat*", (1829) 109 ER 115 (T) for the proposition that the expression "office of profit" in Art. 191(1) does not make it essential for its incumbent to get actual profit and that if a profit can be reasonably expected to accrue it would be sufficient to bring the office within the prohibition contained in the aforementioned Article. In the case referred to, the office of a treasurer of a turn-pike road was remunerated not by payment of any fixed emolument but by the balances which remained unspent in the hands of the incumbent. On the facts of the case, the average balances in the hands of the incumbent were normally such that it was reasonably expected that a profit could be made out of the office, and it was in these circumstances that *Littledale J.* held that the office would undoubtedly be regarded as an office of profit. The argument, however, that a bare hope or expectation in the mind of an incumbent that emoluments may be attached to the office which had no emoluments attached to it on the date on which the appointment was made (sic) can scarcely be warranted.

"*Delane*"s case (T)" was explained in -- "*Henry v. Galloway*", (1933) 148 LT 453 (U) by *Finlay J.* as follows.

It is of course, and must be an office and no doubt it must be an office to which remuneration is in some way or other attached. You cannot have an office of profit unless you have got the remuneration attached to it. That does not, of course, mean that in any particular year there must necessarily be any remuneration. It is, I should think, clear beyond any controversy--indeed, it was not controverted--that if you take the case, the perfectly possible case, of a

holder of an office remunerated by share of profits, and by reason of the fact that in difficult times there are no profits so that there is no remuneration, it is not questioned, I think, and could not be questioned, that that would nonetheless be an office of profit and would continue to be an office of profit even though for one year or for more than one year no remuneration accrued.

We are clear that -- "Delane's case (T)" is not an authority for the proposition advocated on petitioners' behalf to the effect that because the Dy. Ministers could have entertained the hope that the Legislature would ultimately fix a remuneration for the post of Dy. Minister at some future date, the acceptance of that office on 5-2-1954 amounted to acceptance of an office of profit on that date so as to attract to itself the disqualification mentioned in Art. 191 and to render the respondents' seats automatically vacant.

15. There is a further ground for our disallowing the application before us. The dispute as to whether or not the respondents are disqualified by reason of the acceptance of office of profit from continuing to represent their respective constituencies is reserved by Art. 192 for the decision of the Governor or the Rajpramukh as the case may be. The Article provides:

192(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in Cl. (1) of Art. 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

In its application to Part B States except in the case of the State of Jammu and Kashmir the expression Governor occurring in the above Article has to be substituted by the word "Rajpramukh". The Constitution having thus provided a machinery for the final determination of the dispute, we feel that in the present case, if the petitioners desired to challenge the authority of the Dy. Ministers to represent their respective constituencies they should have referred the matter to the Rajpramukh. The Constitution provides them with an adequate remedy, which was both speedy and effective. The petitioners desire to by pass that remedy and we think, in these circumstances, the rule laid down in -- K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , should apply, and redress by way of issue of Writ Quo Warranto ought to be refused.

16. We dismiss the application. In the circumstances of the case, however, the parties will bear their own costs.