
(2006) 10 GAU CK 0005
In the Gauhati High Court

Xavier P. Mao

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2007) 2 GLT 87

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—In this writ petition, the petitioner is questioning the legality of the appointment of the respondent No. 7 as Professor of Culture in the Department of Philosophy under the North Eastern Hill University. At the very outset, it may be noted that the copy of the impugned letter is not even annexed to this writ petition. It is contended by Mr. S. Sen, the learned Counsel appearing for the respondents-University that the petitioner is not even a contender for the post in question and, as such, he has no locus standi to file this writ petition, in support of his contention, he relies on the decisions of the Apex Court Ghulam Quadir v. Special Tribunal (2002) 1 SCC and Mani Subrat Jain and Others Vs. State of Haryana and Others, . The contentions of Mr. P. Dey, the learned Counsel for the private respondent are also duly noted which are in pari materia with those of the learned Counsel for the respondent-University. On the other hand, Mr. K. Paul, the learned Counsel for the petitioner, strenuously urges that even though the petitioner is not a contender for the post in question, bearing in mind the gravity of the illegality and arbitrariness apparent on the face of record, this is a fit case for interference by this Court by ignoring the technicalities of the law of standing associated with normal litigations. Strong reliance is placed by him on the decision of the Apex Court in K. Shekar Vs. V. Indiramma and Others, and Dr D.C. Wadhwa and Others Vs. State of Bihar and Others, At this stage, it may be noted that there is no dispute that the petitioner is neither qualified for the post in question nor did he ever apply for the same.

2. Before advertng to the various contentions raised by the petitioner in his writ petition, it will be appropriate to examine the standing of the petitioner to challenge the validity of the impugned appointment. This is necessary. If the petitioner is found to have no standing to file this writ petition, I need not deal with the other points so raised by him. Ordinary, it is the person aggrieved and directly affected, who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf. In that situation also, the claim is to be made in substance by the person affected even though the form be different and it is so stated expressly. In *Mani Subrata Jain (supra)*, the appellants had asked for a mandamus directing the respondents to appoint them to the posts of Additional District and Sessions Judges, etc. The Punjab and Haryana High Court dismissed the writ petition on the ground that the appellants had no locus standi to file the writ petitions. The High Court had taken the view that the appellants were not appointed and had no right to be appointed nor did they have the right to know why they were appointed. Dismissing the appeals filed by the appellants, the Apex Court held that the High Court rightly dismissed the writ petition. This is what the Apex Court says:

The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something.

3. The question of locus standi again came up for consideration before the Apex Court in *Ghulam Quadir (supra)*, a case cited by the learned Counsel for the respondents-University. While duly noting the recent far-reaching changes in the orthodox rule of interpretation regarding locus standi, the Apex Court observes at para 38 of the judgment as follows:

There is no dispute regarding the legal proposition that the rights under Article 226 can be enforced only by an aggrieved person except in the case where the writ prayed for is habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under Article 226. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in India and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper technical grounds. If a person approaching the Court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any

post or property, he cannot be non-suited on the ground of his not having locus standi.

4. Thus, the question whether a person has the locus standi to bring a proceeding under Article 226 of the Constitution depends mostly on whether he possesses a legal or fundamental right and whether such right has been violated. The well-known recognized exceptions are a writ of habeas corpus, a writ of quo warranto and a Public Interest Litigation (PIL). No other exception appears to have been developed as yet by the Apex Court. The enormity of the infringement of laws by the authorities is hardly relevant for determining the right of a citizen to invoke Article 226 unless he is personally aggrieved by the action or inaction of the authorities. This proposition of law is also consistent with the proposition that the petitioner must succeed on the strength of his case and not on the weakness of the case of his opponent. In my opinion, this fully takes care of the submission of the learned Counsel for the petitioner that for determining the standing of the petitioner, this Court should examine the merits of the case. I have carefully gone through the decisions in *K Shekhar* (supra) and *DC Wadhwa* (supra) upon which heavy reliance was placed by the learned Counsel for the petitioner. In *K Shekhar* (supra), one of the questions which called for consideration before the Apex Court was whether the respondent No. 1 therein did not have the locus standi to challenge the appointment of the appellant either as Lecturer in 1986 or subsequently as Assistant Professor in 1990 in the National Institute of Mental Health and Neuro Science (NIMHANS) not only because she herself had not applied pursuant to the advertisement dated 29.09.1986 but also she did not have the necessary qualifications to be appointed to either post. The contentions of the respondent No. 1, on the other hand, was that the NIMHANS had appointed the appellant as Assistant Professor by a backdoor method contrary to the Recruitment Rules of NIMHANS, without completing the process started by the third advertisement and that her claim was overlooked although she was fully qualified only to accommodate the appellant. The findings of the Apex Court on this controversy are found at paragraph 22 of the judgment, which read thus:

It may be that the respondent No. 1 could not directly challenge the appellant's appointment as Lecturer at the Centre in 1986 either because she herself was merely not an applicant but was unqualified to be so appointed or on the ground of delay. But the immediate grievance of the respondent No. 1 was the appellant's appointment in 1990 as Assistant Professor. Because the appointment was as a result of the appellant's appointment as a Lecturer in the ICMR Centre in 1986, it was also called into question. To get rid of the "weed" so to speak, one had to eliminate the root, it is nobody's case that the respondent No. 1 could not be considered for appointment as Assistant Professor in 1990. The Writ Application was filed in the same year. There was as such no question of the respondent No. 1's application being defeated because of any delay.

5. The finding recorded therein that "it is nobody's case that the respondent No.

1 could not be considered for appointment as Assistant Professor in 1990" is instructive. I fail to understand how this case can be of any assistance to the petitioner when the respondent No. 1 in *K. Shekhar (supra)* was found to be qualified for the post in question. Therefore, this decision does not lay down any proposition of law even remotely suggesting that a person, who is neither eligible nor apply for a particular post, has the locus standi to challenge the appointment of a third person. Coming now to the second case cited by the learned Counsel for the petitioner, namely, *D.C. Wadhwa case (supra)*, it may be noticed that there were four petitioners in that case: At paragraph 3 of the judgment, it is recorded by the Apex Court that two of the ordinances under challenge therein affected the interest of the petitioner Nos. 2 and 4 while the right of the petitioner No. 3 to pursue a particular course of study was vitally affected by the provisions contained in that ordinance. In so far as the petitioner No. 1 was concerned, while holding that he, being a Professor of Political Science and was deeply interested in ensuring proper implementation of the constitutional provisions, had sufficient interest to maintain a petition under Article 32 even as a member of the public because it was a right of every citizen to insist that he should be governed by laws made in accordance with the Constitution and not laws made by the executive in violation of the constitutional provisions, the Apex Court, nevertheless, proceeded to make the following observations

Of course, if any particular ordinance was being challenged by the petitioner No. 1, he may not have the locus standi to challenge it simply as a member of the public unless some legal right or interest of his is violated or threatened by such ordinance, but here what petitioner No. 1, as a member of the public is complaining of, is a practice which is being followed by the State of Bihar of re-promulgating the ordinance from time to time without their provisions being enhanced into Acts of the Legislature. It is clearly for vindication of public interest that petitioner No. 1 has filed these writ petitions and he must therefore, be held to be entitled to maintain his writ petitions.

Their Lordships thereafter quoted with approval the following observations made by them in *S.R Gupta v. Union of India* as follows:

An State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provisions.

5.1 Reading the propositions of law laid down in *D.C. Wadhwa Case (supra)*, and the observations made in *S.P. Gupta case (supra)*, extracted above in juxtaposition, in my considered view, unmistakably reveals that the law on standing that only a person whose legal or constitutional right has been infringed can maintain a writ petition still holds good and that the grievances ventilated by the petitioner No. 1 in *D.C. Wadhwa case (supra)* were allowed to be raised as a public interest litigation and not as an ordinary writ petition. That is why the

Apex Court has time and again warns that judgment of a Court of law should not be read like Euclid's theorem. To quote, it is neither desirable nor permissible to pick out a work or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court. While applying the decision of the Supreme Court to the later case, the Courts must carefully try to ascertain the true principle laid down by the decision and not to pick words or sentences from the judgment divorced from the context of the question under consideration by the Court (see Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., . At the risk of repetition, it is reiterated that a judgment of a Court of law cannot be read like a statute. It is manifest that instead of helping the case of the petitioner, D.C. Wadhwa case (supra), which is a decision of the Constitution Bench, restated the well-settled and well-recognized law of locus standi that only a person whose legal right has been affected can challenge the action or inaction of public authorities and that this rule is departed from only in the case of a writ of quo warranto, a writ of habeas corpus and public interest litigation.

6. It is contended by Mr. K Paul, the learned Counsel for the petitioner that even the Apex Court in SLP (C) No. 8198/2004, while dismissing the appeal filed by the respondent-University against the present petitioner, did not question his locus standi and, therefore, this writ petition is equally maintainable. In the absence of adequate materials, it is neither possible nor desirable to deal with this plea which has been raised at the fog end of the hearing. Nevertheless, on going through paragraph No. 7 of the writ petition pleadings (Annexure I) in WP(C) No. 173 of 2002, which apparently culminated in the said SLP, it is found that the petitioner had specifically pleaded therein that he was already working for the preceding 14 years and was qualified for the contentious post of Reader against which the private respondent herein was appointed. He might or might not have corrected asserted those facts, with which I am not concerned in this writ petition. However, the fact remains that the petitioner in the instant writ petition does not make any assertion to the fact that he is qualified for the post Professor of Culture in the Department of Philosophy. Nor does he assert that he applied for the post in response to the related advertisement. In my judgment, this aspect of the matter makes all the difference. The contention of the learned Counsel for the petitioner also fails on this count.

7. For the reasons stated in the foregoing, the petitioner has no standing to maintain this writ petition, which is hereby dismissed at the threshold. Consequently, it is not necessary to examine the merits of the case as projected by the petitioner in his writ petition. Considering the facts and circumstances of the case, the parties are directed to bear their own costs.