

Premanand Shetty K. Vs. State of Karnataka and anr.

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Court : Karnataka

Decided On : Jun-25-2004

Reported in : 2004(4)KarLJ417

Judge : R. Gururajan, J.

Acts : [Drugs and Cosmetics Act, 1940](#) - Sections 33N; Drugs and Cosmetics Rules, 1945 - Rule 50A; [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition No. 2445 of 2004

Appellant : Premanand Shetty K.

Respondent : State of Karnataka and anr.

Advocate for Def. : A.N. Jayaram, Adv. General and ;N. Basavarajaiah, High Court Government Pleader

Advocate for Pet/Ap. : Ravi varma Kumar, Sr. Adv. for J. Prashanth and ;V.R. Sarathi, Advs.

Judgement :

ORDER

R. Gururajan, J.

1. This petition is filed seeking for a direction in the nature of quo warranto ousting the second respondent from the post of Drug Controller after quashing the notification Annexure-A, dated 12-6-2004.

2. Petitioner states that the second respondent has been appointed in terms of Annexure-A notification dated 12-6-2003. According to petition averments, the second respondent is ineligible to be appointed as a Drug Controller as he does not have the minimum qualification to hold the post of Drug Controller as specified under Rule 50-A of the Drugs and Cosmetics Rules, 1945.

3. Notice was issued and respondents have entered appearance. Respondent states that in the light of the proceedings initiated by Lokayuktha, the Drugs Control Department has to necessarily appoint respondent 2 in the larger public interest. According to objection statement, there was no suitable person to be promoted to the post of Drug Controller from the cadre of Additional Drugs Controller in view of the various proceedings and that therefore the Government thought it fit to appoint the second respondent as Drug Controller. According to the respondents, the Government appointed on deputation the second respondent, a medical doctor and an Indian Police Service Officer of the Karnataka Cadre with administrative capacity with a post-graduate diploma in public policy and management from IIM, Bangalore with specialisation in Health Policy. Respondents say that he has the requisite qualification in terms of Rule 50-A of the Rules. The respondents further submit that the second respondent is a graduate in Medicine from the University of Calicut and while doing MBBS he had studied both Pharmacology and Microbiology. After passing MBBS in 1989, he worked in the Institute of Maternity and Child Health, Calicut Medical College and Safdarjang Hospital, New Delhi as an intern and as a Junior Resident during the period 1990 to 1992. He has also enforced various provisions of the [Drugs and Cosmetics Act, 1940](#) among other legislative enactments and that therefore he has both qualification and eligibility in terms of Rule 50-A of the Rules. They support Annexure-A.

4. Sri Ravi varma Kumar, learned Senior Counsel, appearing for the petitioner took me through the material on record to contend that the writ of quo warranto can be

issued at the instance of any person and it is not confined to a particular individual. He says that writ of quo warranto is only a prayer to oust a person holding a post to which he is otherwise not entitled to. Learned Counsel contends that the second respondent's appointment is contrary to Rule 50-A and that therefore he has to be ousted from the post. Learned Counsel says that a reading of Rule 50-A would show that appointment of respondent 2 lacks statutory-requirements in terms of the Rules. He relies on various judgments in support of his contentions. Per contra, learned Advocate General would say that the second respondent has the necessary qualification in terms of the rules and that his appointment need not be ousted at this stage. His argument is that even otherwise, this Court may allow him to continue for three more months and the matter would be considered in the meanwhile.

5. Matter was reserved for judgment and thereafter the learned Counsel for the respondent wanted to argue further in support of his submission. Matter is listed today, learned Government Advocate argues the case further. He invites my attention once again to the writ averments and the objections statement to contend that the second respondent fulfills all statutory requirements. According to him, Rule 50-A is fully complied with in the case on hand. His further argument is that petitioner has no locus to maintain this petition. He says that petitioner has no interest in the matter. His further argument is that the word experience has to be liberally interpreted in the light of the second respondent exercising his powers for implementation of Drugs and Cosmetics Act. In the result, he would say even assuming that the appointment of the second respondent lacks statutory requirement, the judgment has to be prospective in terms of the judgment of the Supreme Court and the past action of the second respondent is not to be affected by this Court's order.

6. After hearing the learned Counsels for the parties, I have carefully perused the material on record and three points arise for my consideration:

(A) Locus

(B) Requirement of Rule 50-A

(C) Relief

(A) Locus:

6.1 Normally only a person affected or a person having interest alone can maintain a writ in a given circumstances. Admittedly, this petition is filed seeking for a writ of quo warranto. A writ of quo warranto stands totally on a different footing than other writs under Article 226 of the [Constitution of India](#). Learned Counsel for the petitioner strongly relies on a judgment of the Supreme Court in *State of Haryana v. Haryana Co-operative Transport Limited and Ors.*, : [1977]2SCR306 wherein the Supreme Court has considered 'usurpation of office'. The Supreme Court ruled that if the High Court finds that a person appointed to any of these offices is not eligible or qualified to hold that post, the appointment has to be declared invalid by issuing a writ of quo warranto or any other appropriate writ or direction. To strike down usurpation of office is the function and duty of High Courts in exercise of their constitutional powers under Articles 226 and 227.

6.2 The Supreme Court in *University of Mysore and Anr. v. C.D. Govinda Rao and Anr.*, : [1964]4SCR575 has ruled that the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the enquiry leads to the finding that the holder of the office has no valid title to it, the issue of writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. The Supreme Court further notices that before a citizen can claim a quo warranto, he must satisfy the Court that the office in question is a public office and is held by usurper without legal authority and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not. This Court in *R.K. Jain v. Union of India and Ors.*, : 1993(65)ELT305(SC) after noticing this judgment has ruled that it is needless to say that the general rule is, to seek a writ, one should show that he has locus standi and aggrieved by an act and the injury complained of must be public in

nature. But, seeking of writ of quo warranto is an exception to the said general rule. Any tax-payer can maintain a writ of quo warranto.

6.3 However, the learned Government Advocate invites my attention to a judgment of the Supreme Court in R.K. Jain's case, supra, to contend that the petitioner has no right to maintain a writ petition. A careful reading of the said judgment is not one involving quo warranto issue as in the present case. The facts in the said case is totally distinguishable.

6.4 In the light of the judgment of the Supreme Court and this Court, the locus issue is answered in favour of the petitioner.

(B) Scope of Rule 50-A:

7. Drugs and Cosmetics Act is a special Act to regulate the import, manufacture, distribution and sale of drugs and cosmetics in the country. It is an exhaustive Act. Drug Controllers are provided with certain duties and responsibilities. A perusal of Rule 50-A would show that it provides for certain qualifications. They are:

(1) he should be a graduate in Pharmacy or Pharmaceutical Chemistry or in Medicine with specialisation in Clinical Pharmacology or Microbiology from a University established in India by law; and

(2) an experience in the manufacture or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years.

7.1 Admittedly, second respondent is a graduate in Medicine from the University of Calicut and while doing MBBS he had studied both Pharmacology and Microbiology. After passing MBBS in 1989, he worked in the Institute of Maternity and Child Health, Calicut Medical College and Safdarjang Hospital, New Delhi as an intern and as a Junior Resident during the period 1990 to 1992, He has also enforced various provisions of [Drugs and Cosmetics Act, 1940](#) among other legislative enactments. He is also an IPS Officer of the Karnataka Cadre. It is no doubt true that the petitioner is a Medical Doctor but that by itself does not qualify him for the post of Drug Controlling Authority. Rule 50-A specifically provides that specialisation is a must for holding the post of a Drug Controller or Controlling

Authority. No material is placed before this Court to show that he is specialised in terms of Rule 50-A of the Rules. The post of Drug Controller is a sensitive post. Hence, only those who have the requisite qualification and experience in terms of the Rules alone can be appointed as otherwise the public health policy would suffer at the hands of ineligible controlling authority. Therefore, the argument of the learned Government Advocate that the second respondent has the requisite qualification does not appeal to me.

7.2 Rule 50-A not only provides for educational qualification but also experience in the field. In terms of Rule 50-A(ii), the Drug Controlling Authority must have experience in manufacturing and testing of drugs or enforcement of the provisions of the Act for a minimum period of five years. The argument of the respondent is that as a Police Officer, the second respondent has enforced the provisions of the Drugs and Cosmetics Act and therefore he is eligible in terms of Rule 50-A(ii) cannot be accepted in the absence of any particulars with regard to enforcement in terms of the Act. A mere investigation under the Drugs and Cosmetics Act does not give him the status of enforcement in terms of Rule 50-A(ii).

7.3 The law with regard to the qualification of a Drug Controller is fairly well-settled. This very question was considered by the Supreme Court in Bhagwan Singh v. State of Punjab, 1999(5) Scale 372 : 1999(8) SLT 499. That was a case in which the third respondent was a Medical Officer he possessed MD in Pharmacology. His appointment was challenged on the ground of want of experience in terms of Rule 50-A(ii). The Supreme Court ruled as under:

'In the context of the Drugs and Cosmetics Act, the experience must be an experience relevant to the implementation of the provisions of the Act.

What is clear, however, is that the drugs in the context of this Act, refer to medicinal or other preparations for internal or external use of human beings or animals etc. Therefore, the relevant experience must be the experience of testing these preparations as such, and not incidentally isolating such preparations in the course of analysis for other purposes.

Therefore any experience of testing drugs to ensure that they comply with the requisite standards would also be a relevant experience. In this context also, in our view, respondent 3's experience as a Chemical Examiner cannot be considered as a relevant experience since his work did not directly deal with the kind of testing which is contemplated under the [Drugs and Cosmetics Act, 1940](#).

Merely being appointed as Ex Officio Drugs Inspector per se cannot be treated as giving him the requisite experience unless he had, in fact discharged any functions as such officer during the said period. The High Court has also discarded his experience in the said capacity for the purposes of his appointment as the Controlling Authority'.

This judgment fully supports the contention of the petitioner.

7.4 In 1992(2) EER 227 (AP) an identical issue was raised before the Hon'ble Andhra Pradesh High Court. In that case also a Doctor was appointed as a Drug Controller. The Court noticing the contention on experience ruled as under:

'With regard to the second qualification required, the petitioner states that the 2nd respondent did not have experience in manufacturing or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years. Sri Rama Krishnaraju, learned Government Pleader contends that the requirement of the minimum period of five years experience is only with regard to the manufacture or testing of drugs. The rules cannot be interpreted in the way Sri Raju did. If the said interpretation is accepted, even a day's experience in the manufacture or testing of drugs could be held to be sufficient to hold that the 2nd respondent is qualified. I do not think the interpretation given by Sri Raju is the correct interpretation of the rule in question. The Rule requires that a person should have experience in manufacture or testing drugs or enforcement of the provisions of the Act for a minimum period of five years. The said minimum period of five years equally applies either to the manufacturing of drugs or to the enforcement of the provisions of the Act. Admittedly, the 2nd respondent did not have the minimum period of five years experience either in the manufacture or testing of drugs in the enforcement of the provisions of the Act'.

7.5 In the light of these judgments what is clear to me is that the second respondent lacks the required statutory qualification and experience in terms of the Rule. His appointment runs counter to Rule 50-A of the Rules.

7.6 At this stage, I must also notice the averments made by the respondents in the objection statement. They refer to the facts of the case to say that there was some proceedings by the Hon'ble Lokayukta resulting in no availability of suitable person in the Department. It was in those circumstances, they have chosen to take advantage of Rule 16 of the Karnataka Civil Services (General Recruitment) Rules, 1977 which provides for relaxation of rules relating to appointment and qualifications. If there is no statutory prescription with regard to qualification and experience, respondents would have been justified in their action, but where the statute in unmistakable terms prescribes certain specific requirements, there cannot be any compromise over the qualification/experience. This Court do appreciate the practical difficulties being faced by the Government but the Government had to find a solution to meet the statutory requirement. Practical difficulties cannot override special statutory requirement in terms of a special Act for the special post of a Controlling Authority.

7.7 In the light of the discussions above and in the light of the judgments of Courts of law with regard to this very Rule, I have no hesitation in holding that the second respondent has to be vacated from his office for want of requirements in terms of Rule 50-A of the Rules. Hence Annexure-A is declared as unenforceable in law. Second respondent is directed to vacate his office of the Drug Controller in the given circumstances.

(C) Relief:

8. Though I have ruled that the second respondent has to be vacated from his office, I must also notice the embarrassing situation being faced by the Government in terms of the averments made in para 3 of the objection statement. This Court certainly appreciates the difficulties faced by the Government and this Court is firmly of the view that the Drug's Department has to be in the right hands of Iron as otherwise the health of the general public and the object is fatally affected on account of certain unreasonable acts as stated in the objections

statement in terms of Hon'ble Lokayukta proceedings. But, this Court cannot shut its eyes to the legal necessities in such cases. The second respondent as on today in terms of my earlier finding has no statutory qualification and he has to vacate his office. When? is the question.

8.1 Drug's department has its own responsibilities and the Government has to make some arrangement in this regard. In some what identical circumstances, the Supreme Court in *Dr. M.C. Bindal and Ors. v. R.C. Singh and Ors.*, : AIR 1987 SC358 has ruled as under:

'We direct that the State Government shall forthwith take necessary steps for appointment of a suitable candidate fully qualified to hold the post of Food and Drugs Controller, through the Uttar Pradesh public Service Commission, in accordance with law. We further direct that the State Government shall complete the process of appointment within three months from today. The State Government shall in the meanwhile appoint a member belonging to the Indian Administrative Service to hold the post of Food and Drug Controller till a regular appointment to the said post is made in consultation with the Public Service Commission'.

8.2 In the present circumstances, I am of the view that the finding of the Supreme Court has to be made applicable to this case, as otherwise there would be vacuum in the Drugs Department on account of pending Lokayukta proceedings and on account of details placed in the objection statement. Hence, the State Government is directed to appoint a suitable person to the post of the Controlling Authority in terms of the Rules and the process should be completed within three months from today. The State Government shall in the meantime appoint the Director of Health Services to hold the post of Controlling Authority/Drug Controller, till a regular appointment is made, to meet this peculiar situation.

8.3 I must also notice a judgment of the Supreme Court in *Bhagwan Singh's case*, *supra*, wherein it has ruled as under:

'In the premises, the appeals are allowed and the impugned judgment and order of the High Court is set aside. The appointment of the third respondent as the

Controlling Authority is also set aside. We, however, make it clear that if the respondent 3 has acted as the Controlling Authority so far or has received any salary or emoluments for that post, the same will not be recovered from him and our judgment will operate prospectively. We also make it clear that the present judgment will not affect any action taken by the respondent 3 in discharge of his duties as the Controlling Authority'.

8.4 Learned Government Advocate says that the same yardstick has to be applied to the facts of this case. Accepting this argument, I deem it proper to make it clear that any salary or emoluments drawn by the second respondent in the post of Controlling Authority is not to be recovered from him and this judgment is to operate prospectively after three months from today and any action taken by the second respondent is not affected in any way by this judgment.

Ordered accordingly. No costs.

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