

D. Siva Prasad Vs. State of Andhra Pradesh Rep. by Principal Secretary to Government, Panchayat Raj and Rural Development Dept. and ors.

D. Siva Prasad Vs. State of Andhra Pradesh Rep. by Principal Secretary to Government, Panchayat Raj and Rural Development Dept. and ors.

SooperKanoon Citation : sooperkanoon.com/438515

Court : Andhra Pradesh

Decided On : Sep-23-2009

Reported in : 2010(1)ALT97

Judge : P.S. Narayana, J.

Acts : Andhra Pradesh District Planning Committees Act, 2005 - Sections 1(3), 2, 3, 4, 4(1), 7, 8, 9, 11 and 14; Andhra Pradesh Panchayat Raj Act, 1994; Right to Information Act (RTI); Andhra Pradesh Districts (Formation) Act, 1974; [Constitution of India](#) - Articles 164(1), 164(2), 164(4), 173, 191, 226 and 243ZD; [Constitution of India](#) (73rd Amendment) Act

Appeal No. : Writ Petition No. 7277 of 2009

Appellant : D. Siva Prasad

Respondent : State of Andhra Pradesh Rep. by Principal Secretary to Government, Panchayat Raj and Rural Developme

Advocate for Def. : G.P. for Respondent No. 1

Advocate for Pet/Ap. : S.C. Rangappa, Adv.

Disposition : Petition allowed

Judgement :

ORDER

P.S. Narayana, J.

1. This Court issued notice before admission on 10.6.2009 and issued Rule Nisi on 11.8.2009. Counter-affidavit was filed by respondent No. 1.

2. Dr. Siva Prasad, writ petitioner filed the present writ petition for a writ at Quo Warranto to set aside the notification issued by the first respondent G.O.Ms. No. 418 PR & RD (Elections and Rules), dated 06.9.2007 implementation of which is sought to be justified on untenable grounds in the first respondent's laconic communication, dated 19.02.2009, as stated in para 13 and thereby declaring the said notification as illegal so far as the appointment/nomination of second and third respondents as members of the District Planning Committee, Anantapur, is concerned and consequently direct the first respondent to consider the petitioner for appointment/nomination as member of the District Planning Committee, Anantapur, under 'Experts' category and pass such other suitable orders.

3. Though respondents 2 and 3 had been served, none represents respondents 2 and 3. As already aforesaid, counter-affidavit of R-1 had been filed.

4. Sri S.C. Rangappa, learned Counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the writ petition and also the stand taken in the counter-affidavit of R-1 and would maintain that in the light of the 73rd Constitutional Amendment and also in the light of the provisions of the A.P. District Planning Committees Act, 2005 (hereinafter in short referred to as 'Act' for the purpose of convenience) since respondents 2 and 3 do not fall under the category of 'Experts of the subject' as ordained by the provisions of the Act, the very appointment of respondents 2 and 3 being illegal, inasmuch as the same being contrary to the provisions of the Act, such appointments are to be declared as invalid and a writ of Quo Warranto to be issued granting appropriate reliefs. The learned Counsel also had drawn the attention of this Court to the respective bio-datas of the petitioner and also the second and third respondents as well and would maintain that even on a comparative study, non-consideration of

the case of the writ petitioner for such appointment is arbitrary. The learned Counsel also relied on several decisions to substantiate his submissions.

5. Per contra, the learned Government Pleader for Panchayat Raj and Rural Development would maintain that the term or expression 'Expert' had not been defined by the Act. A representation was made by the petitioner after the appointments were made. Even otherwise, these are nominated posts and it is the discretion and prerogative of the Government to make such appointments. At any rate, in the light of the bio-datas placed before this Court, it cannot be said that these appointments are not in accordance with law. At any rate, since the Government had exercised the discretion in accordance with the provisions of the Act, normally the writ court to be slow in interfering with such decision or such appointments and at any rate this is not a fit matter where the writ of Quo Warranto can be issued, since this is not a clear case where it can be said that respondents 2 and 3 would not fall under the category of 'Experts'. The learned Government Pleader for Panchayat Raj and Rural Development also relied on certain decisions.

6. The relief prayed for in the writ petition already had been referred to above. The object of the 73rd Constitutional Amendment is to achieve the ideals of Gandhiji relating to 'Poorna Swaraj' and 'Grama Swaraj' and so as to put those into implementation, the constitution of the District Planning Committee had been thought of. Article 243ZD of the [Constitution of India](#) reads as hereunder.

Committee for district planning:

(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislature of a State may, by law, make provision with respect to-

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every District Planning committee shall, in preparing the draft development plan,-

(a) have regard to-

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

7. Pursuant to the Article 243ZD of the [Constitution of India](#), the State of Andhra Pradesh, enacted A.P. District Planning Committees Act, 2005 as already aforesaid and according to Section 1(3) of the Act, the Act shall be deemed to have come into force on 30.12.2003. Section 3 of the Act provides for constitution of District Planning Committee for every district. Section 4 of the Act reads as hereunder.

4. (1) The Committee constituted under Section 3 shall consist of the following thirty members in each district, namely:

(i) the Chairperson, Zilla Parishad, shall be the Ex-officio Chairperson of the Committee;

(ii) the District Collector shall be the Member Secretary;

(iii) four members to be nominated by the Government of whom one member shall be from the Minorities and three members shall be nominated from the 'experts of the subject';

(iv) twenty four members of the Committee shall be elected in the prescribed manner by and from amongst the elected members of the Zilla Parishad Territorial Constituencies and the Municipalities in the District by following the rule of reservation as specified in the Andhra Pradesh Panchayat Raj Act, 1994:

Provided that the number of members to be elected from the rural and urban areas shall be as nearly as possible in proportion to the ratio between the population of the rural and urban areas of the district.

(2) The members nominated under Clause (iii) of Sub-section (1) shall hold office for such term as may be notified by the Government.

8. It is the case of the writ petitioner that the writ petitioner applied to the first respondent praying for nominating him as a member of the Anantapur District Planning Committee under the category of 'experts' in terms of Section 4(1)(iii) of the Act and the same had been specified in his application dated 22.12.2005. The said application was acknowledged by the first respondent and a copy of said application also had been produced before this Court. It is also the case of the petitioner that the first respondent, in exercise of powers conferred by the Act, issued a notification in A.P. Gazette through G.O.Ms. No. 418 PR & RD (Elections and Rules) dated 06.9.2007, nominating the following members to the District Planning Committee, Anantapur.

1. Sri P.T. Narasimha Reddy, s/o P. Thimma Reddy, Chennampalli (V), Kambadur (M), Anantapur District.
2. Sri B. Sreeramulu, s/o B. Sanjeevanna, r/o Guttur (V), Penukonda (M), Anantapur District.
3. Sri S. Mahaboob Peera, s/o Shaik Sahab, r/o 9/73 Sofair Street, Guntakal, Anantapur District.
4. Sri K. Ramachandra Reddy, s/o K. Nagi Reddy, r/o Akuledu (V), Singanamala (M).

9. Aggrieved by the said notification, the petitioner filed the writ petition challenging the appointment/nominations of respondents 2 and 3 as members of the District Planning Committee, Anantapur. It is also the case of the petitioner that the petitioner obtained the bio-datas of respondents 2 and 3 from the first respondent under the Right to Information Act and the said bio-datas of these parties read as hereunder.

BIO-DATA-----1.
Name in full (Capital letters) Boya Steeramulu2. Father's name Boya Sanjeevanna3. Date of birth 01-01-19654. Caste Boya B.C5. Native place and mandal Guttur, Penukonda (M)6. Educational qualification B.A.,7. Permanent residential address Guttur (PO), Penukonda (M),with phone No. Anantapur (Dist), 515164 Cell: 9963262017,Resi:085555284608. Address for Correspondence Gutturwith phone No. Resi: 08555528460 Cell: 99632620179. Experience with details10. Another information-----

1. Name in full (Capital letters) P.T. Narasimha Reddy2. Father's name P. Thimma Reddy3. Date of birth 15.8.19454. Caste Kuruba B.C.5. Native place and Mandal Chennampalli (Vge) Kambadur6. Educational qualification (Mandal) M.A. MEd.,7. Permanent residential address Chennampalli (vg) & (PO),with phone No. via- Perur (Project)Anantapur (Dist.), 269169 - Code 084928. Address for Correspondence - do-with phone No. 269169 - 08492228219 - 085569. Experience with details High School H.M.Mandal Educational Officer10. Any other information Jalasadhana

10. It is the case of the writ petitioner that the bio-data of second respondent reveals that he is native of Anantapur District and his educational qualification is B.A., and he kept the column 'Experience' blank in his bio-data submitted by him. From the above it is evident that the second respondent does not fall within the category of 'Experts of the subject' (planning) as mandated or ordained by the provisions of the Act. Further it is stated that the bio-data of respondent No. 3 reveals that he is native of Anantapur District and his educational qualifications are M.A., M.Ed., and he worked as High School Headmaster and Mandal Educational Officer. He is also member of the Jalasadhana Committee, U.P.P. (Project) Perur. Thus, it is clear that the third respondent also does not come within the category of 'Experts of the subject' (Planning) as ordained by the provisions of the Act.

11. Section 4 of the Act already had been referred to above. It is also the specific case of the writ petitioner that the writ petitioner is a native of Yadiki, Anantapur District, and after his retirement from the Indian Administrative Service as Secretary to Government of A.P. on 28.02.1998, the writ petitioner settled at Anantapur District headquarters and since then the petitioner has been residing at Anantapur. He did his M.A., in Economics and Ph.D., in Public Administration and the writ petitioner is also holding Post Graduate degree i.e., LL.M. Regarding his experience, he worked as Deputy/Joint Secretary to Government of A.P. in the Planning Department during the period from March 1984 to July 1985 and during the said period he was associated with the formulation of 7th Five year Plan. As Secretary to Government, B.C. Welfare Department, he was instrumental in preparing a policy document containing several policy initiatives for integrated development of BCs. in all spheres. In addition he worked in Government of India as Indian Statistical Service Officer during the period from February 1970 to November 1975.

12. It may be appropriate to have a glance at the bio-data of the writ petitioner and the same reads as hereunder.

BIO-DATA(1) Name : D. Siva Prasad(2) Date of birth : 22-02-1940(3) Educational qualifications-----

Sl. Degree Subject Name of the Year of Class/ RemarksNo. University passing Division-----1

M.Sc., Mathematics SriVenkateswara 1962 First -University,Tirupathi2 M.A., Public Admin. Nagpur 1973 Second StoodUniversity first3 P.G Business -do- 1974 FirstDiploma Management4 L.L.B., Law -do- 1974 First Stoodfirst5 M.A. Economics -do- 1976 Second -6 L.L.M. Commercial -do- 1982 First StoodLaw first(Specialisation)7 Ph.D Public Osmania 1995 Title ofAdministration University, ThesisHyderabad PersonnelManagementin Commercialtaxes Dept.of A.P.------(4)

Experience-----Sl.

No.	Post	held	Organisation/	Period	Department	From	To
1	Directly recruited	Visakhapatnam	20.12.1965	July 1967	as Deputy Collector & Cuddapahin Group-I Services Districtscompetitive examinationconducted by AndhraPradesh Public ServiceCommission ProbationaryDeputy Collector (Training)2 Revenue Divisional Nalgonda,	July 1967	February 1970
Officer	Peddapuramand Cuddapah,Govt.						

of AndhraPradesh-----

Directly recruited to Indian Statistical Service (Gr-IV) by Union Public ServiceCommission on the basis of competitive examination.-----3

Indian Statistical	February 1970	February 1972	Service, Probationer(under training)4 Asst. Mineral Indian Bureau	February 1972	June 1975	Economist of Mines, Govt.(ISS Grade IV) of India, Nagpur5 Statistical Officer Office of the	July 1975	Nov. 1975(Promoted to ISS Director GeneralGrade III) of Employment& Training,Ministry ofLabour, Govt. ofIndia, New Delhi-----
--------------------	---------------	---------------	---	---------------	-----------	---	-----------	---

Repatriated to Govt, of A.P. in November 1975-----6

Revenue Divisional	Gadwal	and	November 1975	August 1976	Officer Mahaboobnagar7 Assistant Secretary Board of	August 1976	November 1981
--------------------	--------	-----	---------------	-------------	---	-------------	---------------

Revenue Office of the Commr. Land Revenue, Govt of
A.P.,Hyderabad-----
Promoted to Indian Administrative
Service-----8 Joint
Secretary to Office of the November 1981 November 1982 Commissioner of
Commissioner Land Revenue of Land Revenue, A.P.,Hyderabad9 Joint Collector
Medak District, November 1982 March 1984 Andhra Pradesh10 Dy. Secretary Fin.
& Plg. March 1984 July 1985to Govt. (Planning Wing)Department,
A.P.Secretariat,Hyderabad11 Joint Secretary Panchayat Raj July 1985 November
1986to Govt. & Rural Development Dept.,A.P.Secretariat,Hyderabad12 Secretary to
Office of the November 1986 April 1990 Commissioner,
Commissioner,Commercial Taxes Commercial Taxes,Hyderabad13 Joint
Secretary/ General Admn. April 1990 October 1990 Addl. Secretary Dept., A.P.to
Government Secretariat,Hyderabad14 On study leave ----- November 1990 July
199115 Addl. Secretary to Energy, Forest, July 1991 August 1992 Government
Environment,Science & Technology; Dept.,Govt. of A.P.,Hyderabad16 Special
Secretary Energy & Forest August 1992 March 1994to Government
Department,(Energy) Govt, of Andhra Pradesh,Hyderabad17 Secretary to
Backward Classes 16.3.1994 28.2.1998 Government Welfare Department,Govt. of
A.P.,Hyderabad-----
(Retired from service on Superannuationon A.N. of
28.2.1998.-----

Thus, it is his case that he possesses the requisite qualifications and experience to be considered and nominated as a member of District Planning Committee, Anantapur, under 'Experts' category and, hence, the writ petitioner submitted representation to respondent No. 1 on 29.12.2007 to reconsider the issue and nominate him as member of the Anantapur District Planning Committee under 'Experts' category. A copy of the representation also had been placed before this Court.

13. In response to the said representation, the first respondent in letter dated 31.01.2008 informed him that his request for reconsideration had been examined in detail and the first respondent felt that there is no need to change the persons

already nominated to the DPC, Anantapur. The said letter dated 31.01.2008 reads as hereunder.

Government of Andhra Pradesh

Panchayat Raj & Rural

Development (MDL-I) Department

Letter No. 15116/Mdl.I/A2/2005

Dated: 30.01.2008

From:

Dr. V.P. Jauhari, I.A.S.,

Spl. Chief Secretary to Government,

Panchayat Raj & Rural Development Dept.,

A.P. Secretariat,

Hyderabad.

To

Dr. D. Siva Prasad, IAS (Retd.),

11-1-792, opp: Cement Godown,

Obuladevanagar,

Anantapur. (A.P).

Sir,

Sub: District Planning Committees- Four members nominated for District Planning Committees of Anantapur-Request for re-consideration of the persons nominated to the DPC, Anantapur- Rejected- Reg.

Ref: (1) G.O.Ms. No. 418, P.R. & R.D. (Elections & Rules) Dept., dt.6.9.2007
published in the ordinary Gazette, dt.6.9.2007

(2) From Dr. D. Siva Prasad IAS., (Retd.), Lr.Dt.29.12.2007.

* * *

I am to invite your attention to your letter 2nd cited.

The request for re-consideration of the Members nominated to the District Planning Committee, Anantapur has been examined by the Government in detail and felt that there is no need to change the persons already nominated to the District Planning Committee, Anantapur.

Yours faithfully,

Sd/- xx xx xx

For Spl. Chief Secretary

to Government.

14. It is also stated that the writ petitioner requested the first respondent by letter dated 08-02-2008 to furnish reasons for its decision and further reminders also had been made on 27.5.2008 and 20.7.2008. Then the writ petitioner, through letter dated 12.8.2008 approached the A.P. State Information Commission requesting to arrange to furnish information and do justice as per law. Due to intervention of A.P. State Information Commission, the first respondent informed him, in letter dated 23.01.2009, that the reasons for rejection for nominating the petitioner as a member under 'experts' category to the District Planning Committee, Anantapur, would be furnished on payment of requisite fee under RTI Act to the first respondent. Accordingly, while enclosing the requisite fee of Rs. 20/-, by way of Indian Postal Order, the petitioner requested the Government of A.P in letter dated 02-02-2009 to furnish information. In response thereto, the first respondent, by letter 19.02.2009, informed him that constitution of the District Planning Committees is the prerogative of the Government.

15. It is also the case of the petitioner that the words 'experts of the subject' occurring in Section 4(1)(iii) had not been defined in the Act. Further it is stated by the writ petitioner that if competitive merits, knowledge and experience to be taken, the case of the petitioner to be considered. In such circumstances, since the appointments of R-2 and R-3 being not in accordance with provisions of the Act, the same to be declared as illegal by issuing a writ of Quo Warranto.

16. In the counter-affidavit filed by the first respondent Section 4(1) of the Act had been referred to. Specific stand had been taken that the Chairman, District Development Review Committee and in-charge Minister of Anantapur District had suggested the following names for the nomination of the District Planning Board, Anantapur, under Section 4(1)(iii) of the Act. The said names already had been specified supra.

17. It is also stated that the Government had examined the proposal and issued notification vide G.O.Ms. No. 418 PR & RD (Elections & Rules) Department, dated 06.9.2007, nominating the said members to the District Planning Committee, Anantapur. The petitioner made a representation to the Government to nominate him as a member of the District Planning Committee, Anantapur, under 'Experts' category. The Government, after examining the representation of the petitioner for its nomination as member of the District Planning Committee, Anantapur, felt that there is no need to change the persons already nominated to the District Planning Committee, Anantapur. Further, it is stated that after obtaining proposals from the Chairman of the District Development Review Committees and in-charge ministers of the district, the Government had nominated the members under the powers conferred vide Section 4(1)(iii) of the Act. The constitution of the committee is prerogative of the Government. Hence, the writ petition to be dismissed.

18. This Act is an Act which was thought of to constitute District Planning Committees for the purpose of Article 243ZD of the [Constitution of India](#) and to discharge the functions of the State Government in regard to the items of business of the Government and for matters connected therewith or incidental thereto. Further, it is specified that under Article 243ZD of the [Constitution of India](#), the Government is empowered to constitute in the State a District Planning Committee

at the district level to consolidate the plans prepared by the Panchayats and the Municipalities in the District by undertaking legislation. Section 2 of the Act deals with definitions and Section 2(a) of the Act defines 'committee' as in this Act, unless the context otherwise requires, 'Committee' means the District Planning Committee constituted under Section 3. Section 2(b) of the Act defines 'District' as in this Act, unless the context otherwise requires 'District' means a district as construed in the Andhra Pradesh Districts (Formation) Act, 1974. Section 2(d) of the Act defines 'Municipalities'. Section 2(f) defines 'Panchayats'.

19. As already aforesaid, Section 3 of the Act deals with Constitution of District Planning Committee and the said provision reads as hereunder.

3. (1) There shall be constituted for every district, a District Planning Committee, to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole and to exercise such other powers as may be entrusted to it by the Government from time to time.

(2) Every Committee shall in preparing the Draft Development Plan,-

(a) have regard to,-

(i) matters of common interest between the Panchayats and Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Government may, by order, specify.

(3) Where the term of the existing members of the Municipality or Panchayat has expired and the elected members cease to be members of the committee then the committee with remaining members shall continue to discharge the functions till new elections are held.

20. Section 4(1)(iii) specifies that the Committee constituted under Section 3 shall consist of the following thirty members in each district namely:

(i)

(ii)

(iii) four members to be nominated by the Government of whom one member shall be from the Minorities and three members shall be nominated from the experts of the subject.

21. Lot of emphasis had been laid on the interpretation of the words 'Experts of the subject' aforesaid by both Sri S.C. Rangappa, the learned Counsel representing the writ petitioner and also the learned Government Pleader for Panchayat Raj and Rural Development.

22. Section 7 of the Act deals with 'preparation of development plan'. Section 8 of the Act dealing with the 'functions of the committee' reads as hereunder.

The Committee shall perform the following functions, namely:

(i) ensure that each Gram Panchayat or Mandal Parishad or Zilla Parishad or Nagar Panchayat or Municipality or Municipal Corporation in the district prepares a Development Plan for the financial year which shall be consolidated into the District Development Plan and shall be submitted to the Government for incorporation into the State Plan;

(ii) review from time to time the implementation of the Development Plan so prepared and monitor the achievements at the district level against the targets set under different development or performance indicators;

(iii) formulate draft five year plans of the district in their socio-economic, temporal and spatial dimensions;

(iv) make necessary recommendations to the Government concerning the development of the district;

(v) perform such other functions as entrusted by the Government subject to the guidelines issued from time to time.

23. Section 9 of the Act deals with Powers of the Committee and the same reads as hereunder:

(1) the Committee shall exercise such powers as may be notified under this Act or may be allotted to it by the Government in respect of the business of the Government.

(2) The Government may prescribe and notify the manner in which the powers so notified or allotted to the Committee may be exercised.

(3) While exercising such powers, the Committee shall be deemed to be a body subordinate to the Government and shall exercise these powers, for and on behalf of the Government.

24. Section 11 of the Act deals with Constitution of Sub-Committees. Section 14 of the Act deals with the Power to make rules.

25. As already aforesaid the words 'Experts or Experts of the subject' had not been defined by the Act. The Judicial Dictionary by Justice L.P. Singh and P.K. Majumdar defines 'Expert' as hereunder.

Expert. One who is knowledgeable in specialized field, that knowledge being obtained from either education or personal . experience. *Midtown Properties, Inc. v. George F. Richardson, Inc.* 139 Ga-App. 182 : 228 S.F. 2d 303, 307. One who by reason of education or special experience has knowledge respecting a subject-matter about which persons having no particular training are incapable of forming an accurate opinion or making a correct deduction, *Balfour v. State, Ind.* 427 N.E. 2d 1091, 1094. One who by habits of life and business has peculiar skill in forming opinion on subject in dispute. *Brown v. State* 140 Ga-App. 160 : 230 S.E. 2d 128, 131, [See Black's Law Dictionary, 6th Ed. At 578].

Person who as an expert gave evidence in witness box, must be shown as having made special study or acquired special experience on the subject. State of

Himachal Pradesh v. Jailal : AIR 1999 (Supreme Court) 3318 : 1999 (7) SCC 280.

26. West's 'Legal Thesaurus/Dictionary' defines the expression 'Expert' as hereunder.

1. One who is knowledgeable, through experience or education, in a specialized field (an expert on accident reconstruction). Master, authority, professional, virtuoso, connoisseur, gourmet, critic, practitioner. See also teacher, scholar, specialist.

2. Skilled and knowledgeable (expert witness). Qualified, competent, proficient, able, trained, experienced, professional, 'pro,' polished, versed, accomplished, schooled, adroit, dexterous, capable, ace, adept, apt, efficient. Ant. Novice; amateurish.

The dictionary definition referred to above being self-explanatory, further need not be discussed in elaboration. No doubt, the Counsel on record made elaborate submissions relating to the maintainability of the writ of Quo Warranto.

27. The learned Government Pleader for Panchayat Raj and Rural Development would emphasize that this being a discretionary writ, normally the writ Court not to interfere with the prerogative of the Government in constituting such committees under Article 226 of the [Constitution of India](#). In *The University of Mysore v. C.D. Govinda Rao and Anr.* : AIR 1965 SC 491 while dealing with the writ of quo warranto the nature of the said writ and the conditions to be satisfied for issuance thereof it was held as hereunder.

Broadly stated, 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 inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the 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; it also protects as citizen from being

deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, 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.

28. Further reliance was placed on the decision in *B.R. Kapur v. State of Tamil Nadu and Anr.* : AIR 2001 SC 3435 : 2002 (1) ALT 10.1 (DNSC) wherein the Apex Court while dealing with Articles 164(4), (1), (2) of the [Constitution of India](#) held that a non-legislator appointed as minister for a period of six consecutive months under Article 164(4) is required to have qualifications for membership of legislature contained in Article 173 of the [Constitution of India](#) and be free of disqualification contained in Article 191 of [Constitution of India](#) and it is permissible to read into Article 164(4), limitations based on language of Article 164(1) and (2) of the [Constitution of India](#). The Apex Court also held that in the case of appointment of Chief Minister the Constitution prevails over will of people and the Governor asked by majority party in legislature to appoint as Chief Minister a person who is not qualified to be member of legislature, the Governor can exercise his discretion and can decline to make appointment and appointment however made contrary to provisions of Constitution. The Authority of appointee can be challenged in quo warranto proceedings and can be quashed by Court and immunity available to the Governor is not vicariously available to the holder of office.

29. Further strong reliance was placed on the decision in *Pappu Venkata Rao v. Commissioner of Endowments, Hyderabad and Ors.* : 2005 (5) ALT 714 wherein it was held at para 11 as hereunder.

Jurisdiction of the High Court to issue a writ of Quo Warranto is limited. While issuing such a writ, the Court merely makes an order or declaration and would not consider its impact on the candidates or other factors which may be relevant for issuance of a writ of Certiorari. An information, in that nature of a quo warranto, lies against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined. Broadly stated quo warranto proceedings 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 inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the 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; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted, subject to the conditions recognized in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public offices may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue a writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. Before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by the 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. (Halsbury's Laws of England, 3rd Edition, Vol. 11, Page 145). A writ of Quo Warranto can only be issued when the appointment is contrary to statutory provisions. *The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Government, Haryana* : AIR 2002 SC 2513; *High Court of Gujarat v. Gujarat Kishan Madoor Panchayat* (2003) 4 SCC 712.

30. Reliance also was placed on the decision of the Division Bench of this Court in *Mocherla Venkataraya Sarma v. Y. Sivarama Prasad and Ors.* : AIR 1961 AP 250

wherein it was held at paras 10 and 12 as hereunder.

The only controversy that survives is whether this irregularity in the holding of the election of the Chairman and the Vice-Chairman would warrant the granting of the rule. At the outset we must say that we cannot accede to the theory propounded on behalf of the Government that the relator having no personal interest in the matter could not exhibit this information against the chairman and the vice-chairman. It is argued on behalf of the Government that the petitioner has no locus standi to seek the jurisdiction of the Court for this purpose.

In our opinion, information would lie even at the instance of a relator who has no personal interest in the matter. Information in the nature of quo warranto could be filed in the case of Municipal Corporations or Local Boards on the relation of private parties. It is open to a private individual to bring it to the notice of the Court that a person who is disqualified to hold an office is still holding it. A person who is not legally entitled to hold an office should not be permitted to hold it.

Therefore it is competent for a voter or a member of any of the local bodies to invoke the jurisdiction of this court for the issue of information in the nature of quo warranto. Consequently, the proceedings could be entertained by this Court for the purpose for which its jurisdiction is invoked.

31. Further strong reliance was placed on the decision in *The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana and Anr.* : AIR 2002 SC 2513 : 2002 (5) ALT 13.2 (DNsc) wherein it was held that the appointment of Chairman of Regional Transport Authority and the challenge on the ground that appointment was made in breach of statutory provision of mandatory nature, refusal by High Court to exercise writ jurisdiction on the ground that no averments of misuse of power by appointee had been made not proper.

32. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules observed in *High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors.* (2003) 4 SCC 712.

33. Further strong reliance was placed on the decision of the Apex Court in *State of Gujarat v. Shantilal Mangaldas and Ors.* : AIR 1969 SC 634 wherein it was held that where power given under a statute to do a certain thing in certain way, it must be done in that way alone and not at all.

34. The bio-datas of the respective parties, the writ petitioner, the second respondent and also the third respondent had been referred to above. It may be the prerogative of the Government in making such appointments or nominations, the members of the committee in question, but however, the same to be made in accordance with the provisions of the Act aforesaid.

35. As already specified supra Section 4 of the Act deals with composition of committees and Section 4(1) of the Act specifies that four members to be nominated by the Government of whom one member shall be from the Minorities and three members shall be nominated from the experts of the subject. It may be that apart from the writ petitioner certain other experts also may be available in the District. This aspect need not be further gone into at this juncture in the present context. The exercise of the comparative study of the merits and demerits of these candidates also need not be further gone into by this Court, especially, in the light of the specific stand taken by the first respondent that it is the prerogative of the Government in constituting these committees.

36. The prerogative of the Government cannot be said to be unfettered prerogative. The Government is expected to follow the provisions of the Constitution and also the provisions of the relevant statute governing the field while making appointments as members or nominating such members. The arena of discretion of the Government also, while exercising the prerogative, cannot be stretched too far so as to defeat the clear constitutional mandate or statutory dictate.

37. Suffice to state that an expert, even in ordinary sense, is expected to possess special skill and knowledge in the particular subject. Despite the merit of the writ petitioner, it may be that the first respondent is not interested in appointing him as member of the committee or nominating him as a member of the committee, it is no doubt, within the discretion of the first respondent. However, on a careful

analysis of the bio-datas placed before this Court which are not put into serious controversy, the merit of the writ petitioner is self-explanatory from the bio-datas of the writ petitioner specified supra. The interest or disinterest falling within the realm of the prerogative of the Government and within the realm of the discretion of the Government, these aspects need not be dealt with in elaboration. It is made clear that it is for the first respondent to consider the representation of the petitioner and take appropriate decision. This Court is not inclined to express any further opinion relating to this aspect.

38. On a careful analysis of the bio-datas, as can be seen from column No. 9 and column No. 10 of the bio-data of third respondent, it cannot be said that the third respondent would not fall within the category of 'expert' at all and, hence, the prerogative and the discretion exercised by the first respondent in appointing or nominating the said respondent to the committee cannot be found fault. But however, as far as the second respondent is concerned, column No. 9 and column No. 10 of the bio-data are kept blank and it is not known what qualifications the second respondent possesses, to be qualified to fall under the 'expert' category. However, since columns 9 and 10 are kept blank, this Court is satisfied that as far as the appointment or nomination of second respondent to the committee is concerned, the same cannot be said to be in accordance with the provisions of the Act aforesaid. Hence, G.O.Ms. No. 418, Panchayat Raj and Rural Development (Elections & Rules), 6th September, 2007, is partly held to be invalid in so far as it relates to the appointment or nomination of the second respondent, but however, it is made clear that the first respondent is at liberty to consider the case of the second respondent also in the event of producing relevant material to satisfy the first respondent about his qualifications and the merit to fall within the category of 'expert'. It is also made clear that it is for the first respondent to consider the case of the petitioner if the first respondent is so advised.

39. Accordingly, the writ petition is partly allowed to the extent indicated above holding that the appointment or nomination of the second respondent cannot be said to be in accordance with the provisions of the Act. No costs. It is suffice to state that educational qualification is shown as B.A., and let the second respondent satisfy the first respondent about the other qualifications, if any, so as

to fall under the category of the 'expert' as ordained by the provisions of the Act aforesaid.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com