

D.B. Binu Vs. State

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Court : Kerala

Decided On : Jun-25-2015

Judge : Honourable the Chief Justice Mr.Ashok Bhushan

Appellant : D.B. Binu

Respondent : State

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE THURSDAY, THE 25^H DAY OF JUNE 2015 4TH ASHADHA, 1937 WP(C).No. 1339 of 2011 (S)

----- PETITIONER : ----- D.B.BINU, ADVOCATE, GENERAL SECRETARY, RTI KERALA FEDERATION, COCHIN CHAMBER OF LAWYERS, PROVIDENCE ROAD, COCHIN-18. BY ADV. SRI.P.K.IBRAHIM
RESPONDENTS : ----- 1. THE STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION (COORDINATION) DEPARTMENT, THIRUVANANTHAPURAM.

2. V.S.ACHUTHANANDAN, THE CHIEF MINISTER, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

3. UMMEN CHANDI, LEADER OF OPPOSITION, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM.

4. KODIYERI BALAKRISHNAN, MINSITER OF HOME, DEPARTMENT OF HOME MINISTRY SECRETARIAT, THIRUVANANTHAPURAM.

5. SONI THENGAMAM, SARASAM, 14, KADAPPAKADA NAGAR KADAPPAKADA.P.O., KOLLAM-691 008.

6. THE CHIEF INFORMATION COMMISSIONER, KERALA STATE INFORMATION COMMISSION, THIRUVANANTHAPURAM-01. R1 TO R4 BY SRI.P.C. IYPE, ADDL. ADVOCATE GENERAL R1 TO R4 BY SENIOR GOVERNMENT PLEADER SRI. VIJU ABRAHAM R3 BY ADV. SMT.JEBI MATHER HISHAM R5 BY ADV. SRI.A.JAYASANKAR BY ADV. SRI.MANU GOVIND R6 BY ADV. SRI.M.AJAY, SC, THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2705-2015, THE COURT ON2506-2015 DELIVERED THE FOLLOWING: bp WP(C).No. 1339 of 2011 (S) APPENDIX PETITIONER'S EXHIBITS : P1: COPY OF THE MINUTES OF THE SELECTION COMMITTEE DT87/2010 AND ENGLISH TRANSLATION OF EXT.P1. P2: COPY OF THE REPRESENTATION DT97/2010. P3: COPY OF THE NEWS ITEM PUBLISHED IN JANAYUGAM DAILY, ON57/2010 AND ENGLISH TRANSLATION OF EXT. P3. P4: COPY OF THE LETTER DT217/2010 ADDRESSED TO THE GOVERNOR BY MR. ARAVIND KEJRIWAL, . P5: COPY OF THE LEGAL ADVISE RENDERED TO THE GOVERNOR P6: COPY OF THE NOTE DT127/2010 OF THE COMOTROLLER OF THE KERALA, RAJ BHAVAN. P7: COPY OF THE RELEVANT PAGE OF THE DECISION OF THE GOVERNOR TO APPOINT THE R5 AND ANOTHER AS STATE INFORMATION COMMISSIONERS. P8: COPY OF THE REFERENCE

ORDER

OF THE CHIEF MINISTER DT147/2010 TO THE LAW SECRETARY. P9:(a): COPY OF THE BIO DATE DATED NIL OF THE R5. P9(b): COPY OF THE DECLARATION DT147/2010 BY THE R5. P10: COPY OF THE OPINION OF THE LAW SECRETARY DT167/2010. P11: COPY OF THE NOTE DT207/2010 ENDORSING THE OPINION OF THE LAW SECRETARY. P12: COPY OF THE NOTE OF THE SECRETARY TO THE GOVERNOR DT267/2010 PLACING THE FILE FOR

ORDER

S IN RELATION TO THE APPOINTMENT OF THE R5. P13: COPY OF THE OPERATING PORTION OF THE

ORDER

OF THE GOVERNOR. P14: COPY OF THE NOTIFICATION APPOINTING THE R5 AND ANOTHER AS THE STATE INFORMATION COMMISSIONERS OF KERALA STATE INFORMATION COMMISSION DT317/2010. P15(a): COPY OF THE ESSENTIALLY CERTIFICATE PRODUCED I SUPPORT OF THE CLAIM FOR MEDICAL REIMBURSEMENT. P15(b): COPY OF THE RECEIPT ACKNOWLEDGING THE MEDICAL REIMBURSEMENT BILL. P16: COPY OF THE CHART GIVING DETAILS OF THE COMMISSIONER WISE DISPOSAL OF CASES AS ON 18/11/2010. P17: COPY OF THE DECLARATION STATEMENT OF THE R5 REGARDING THE ASSETS OF HIS MOVABLE AND IMMOVABLE PROPERTIES. P18: COPY OF THE DECLARATION OF THE R5 AND THE APPLICATION FILED BY THE R5 CLAIMING REIMBURSEMENT OF MEDICAL EXPENSES. WP(C).No. 1339 of 2011 (S) P19: COPY OF THE CASE SUMMARY AND DISCHARGE RECORD ISSUED BY SREE CHITRA TIRUNAL INSTITUTE FOR MEDICAL SCIENCES AND TECHNOLOGY, TRIVANDRUM AND THE ESSENTIALITY CERTIFICATE. P20: COPIES OF THE COMMISSIONER WISE DISPOSAL OF CASES OF OCTOBER, NOVEMBER AND DECEMBER. RESPONDENT'S EXHIBITS : EXT.R1(a): COPY OF THE LETTER NO. 60/2011/LO DT271/2011 OF THE PS TO LEADER OF OPPOSITION. //TRUE COPY// P.S. TO JUDGE bp ASHOK BHUSHAN, CJ & A.M. SHAFFIQUE, J.

===== W.P (C) No. 1339 Of 2011 ===== Dated
this, the 25th day of June, 2015

JUDGMENT

Shaffique, J This writ petition is filed as a public interest litigation seeking for a writ of quo warranto against the 5th respondent and to quash the notification appointing him as State Information Commissioner under the Right to Information Act, 2005, (hereinafter referred to as the RTI Act for short).

2. Petitioner claims to be a social activist and General Secretary of RTI Kerala Federation, an organization of RTI activists. He raised a concern regarding appointment of the 5th respondent as State Information Commissioner in terms of Ext.P14 Government notification. By virtue of the aforesaid notification dated 31/7/2010, the Government appointed the 5th respondent along with another person as State Information Commissioners of the Kerala State Information Commission exercising power under Section 15(3) of the RTI Act. Petitioner W.P(C) No. 1339/2011 -:2:- contends that the 5th respondent was not qualified to be appointed as State Information Commissioner (hereinafter referred to as the SIC) on account of the following factors; (i) His candidature was doubted by the Comptroller of Kerala Raj Bhavan as he has been an active member of the Communist party of India. The Governor returned the file to examine whether the provisions of Section 15(6) of the RTI Act is attracted as the 5th respondent was connected with the political party as evident from his bio data. The file was returned by the Governor to the Chief Minister. The original bio data of the 5th respondent was replaced by a new one and a fresh declaration was obtained by him. The Chief Minister referred the matter to Law Secretary to examine the points and the Law Secretary opined that there was no legal impediment to appoint the 5th respondent, which was considered by the Chief Minister, who approved the legal opinion and requested the Government to agree to the proposal of appointing the 5th respondent as a member of SIC pursuant to which the Governor permitted appointment of the 5th respondent. (ii) As per the statutory provisions under the RTI Act, W.P(C) No. 1339/2011 -:3:- recommendation has to be made by a Selection Committee. When the Governor sent back the files to the Government, it was not placed before the Committee in terms of Section 15(3) of the Act, whereas it was placed only before the Chief Minister who obtained opinion from the Law Secretary and thereafter a recommendation was made, which procedure is bad in law. (iii) The 5th respondent is a person actively involved in politics and therefore disqualified to become State Information Commissioner. (iv) The 5th respondent is not physically capable of attending duties as he is sick and suffers from illness on account of poor health. He is under treatment for relapsing/remitting multiple sclerosis and was under medication, in terms of Section 17(3) (d) of the Act.

3. The learned counsel also relied upon the judgment of the Supreme Court in Centre for PIL v. Union of India [(2011) 4 SCC1. Paragraphs 51 to 53 of the said judgment reads as under;

"1. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive W.P(C) No. 1339/2011 -:4:- action in the matter of making appointments to public offices against the relevant statutory provisions. 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 it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority.

52. One more aspect needs to be mentioned. In the present petition, as rightly pointed out by Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner, a declaratory relief is also sought besides seeking a writ of quo warranto.

53. At the outset it may be stated that in the main writ petition the petitioner has prayed for issuance of any other writ, direction or order which this Court may deem fit and proper in the facts and circumstances of this case. Thus, nothing prevents this Court, if so satisfied, from issuing a writ of declaration. Further, as held hereinabove, recommendation of the HPC and, consequently, the appointment of Shri P.J.

Thomas was in contravention of the provisions of the 2003 Act, hence, we find no merit in the submissions advanced on behalf of Respondent 2 on non-maintainability of the writ petition. If public duties are to be enforced and rights and interests are to be protected, then the court may, in furtherance of public interest, consider it necessary to inquire into the state of affairs of the W.P(C) No. 1339/2011 -:5:- subject-matter of litigation in the interest of justice (see Ashok Lanka v. Rishi Dixit)." 4. Counter affidavit is filed by the 5th respondent inter alia stating that he was selected by a committee consisting of the Chief Minister, Leader of Opposition and Minister for Home, respondents 2 to 4. It is stated that though he was having active politics earlier, he was not a member of any political

party at the time of selection. According to him, he is a graduate in Chemistry, he had completed the 3 year LL.B Course and was actively involved in student and youth movements. He had visited about 50 countries and participated in various conferences and he was involved in social and organizational activities, had written articles in English and Malayalam in various periodicals and journals. According to him, he was qualified for the appointment in terms of Section 15(5) of the RTI Act. He submits that though the Governor entertained a doubt regarding his involvement in Politics, the same was clarified by a declaration filed as Ext.P9. The Chief Minister also clarified the matter. Hence, the objection raised against him was brushed aside by the Governor and the proposal of the Committee was accepted. The allegation that he W.P(C) No. 1339/2011 -:6:- was in poor health has been denied.

5. Counter affidavit is filed by the 1st respondent supporting the stand taken by the Governor in appointing the 5th respondent as SIC. It is stated that 5th respondent had given a declaration that he is not a political activist and was not holding membership of any political party. The 1st respondent also had given a statement of cases disposed of by the State Information Commissioners. According to the 1st respondent, 5th respondent was a person fully qualified to be posted as SIC.

6. Heard the learned counsel for the petitioner, learned Government Pleader and the learned counsel appearing for the 5th respondent.

7. It is argued by the learned counsel for the petitioner that the entire procedure adopted for appointing the 5th respondent is not in accordance with the statutory provisions. He referred to Ext.P6 by which the Comptroller of Raj Bhavan has made a note stating that the 5th respondent being an active member of Communist Party of India, his appointment cannot be made in terms of Section 15(6) of the RTI Act and the opinion of the legal advisor also indicated that his appointment is prohibited W.P(C) No. 1339/2011 -:7:- under Section 15(6) of the RTI Act. Ext.P6 was placed before the Governor, who by Ext.P7, has requested the Chief Minister to examine whether the provisions of Section 15 (6) of the RTI Act will be attracted as the 5th respondent was connected with a political party as per his bio data. Further, there is also a reference to the petition dated 9/7/2010

received in that regard. By Ext.P8 note, the Chief Minister seems to have obtained a declaration from the 5th respondent in which he has stated that he is not connected with any political party and the matter was referred to Law Secretary. Ext.P9(a) is the bio data of the 5th respondent wherein he has stated that he was a former member of National Council of Communist Party of India and former National General Secretary of All India Students Federation and All India Youth Federation. Ext.P9(b) is the declaration in the form of an affidavit in which 5th respondent has stated that he is not a political activist and was not holding membership of any political party. Ext.P10 is the report of Law Secretary in which he states that in the bio data furnished by the 5th respondent, he has only stated that he was only a former member of the political party and other associations and in the declaration he has stated that W.P(C) No. 1339/2011 -:8:- he was not holding any membership in any political party and there is no legal obstacle in appointing him as SIC. The Chief Minister by Ext.P11 has endorsed the opinion of the Law Secretary and it is on this basis that the Governor by Ext.P13 accepted the proposal for appointing the 5th respondent.

8. Going by the aforesaid factual details as borne out from the records, we do not think that there is any illegality in the Governor seeking the opinion of the Chief Minister in the matter relating to a query that was raised regarding the qualification of the 5th respondent. The name of the 5th respondent was recommended by the Committee and only in respect of a doubt expressed by the Governor's office, the Governor has referred the matter to Chief Minister. We do not think that, such a procedure adopted by the Governor in getting the opinion of the Chief Minister and relying upon the said opinion based on materials on record can be said to be in violation of the statutory provisions under the RTI Act to issue a writ of quo warranto against the 5th respondent.

9. The contention of the petitioner is that the 5th respondent is actively involved in politics and therefore he should W.P(C) No. 1339/2011 -:9:- not have been appointed on account of the disqualification under Section 15(6). This position of law is covered by the judgment of Supreme Court in Union of India v. Namit Sharma (2013 (4) KLT S.N. 1 (C. No.1), which is relied on by the learned Government Pleader. In the above judgment, the Supreme Court had occasion to

consider the scope and effect of "connected with any political party" which is a disqualification under Sec.15(6) of the RTI Act. It is held that; "Sections 12(6) and 15(6) of the Act, however, provide that the Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carry on any business or pursue any profession. There could be two interpretations of Sections 12(6) and 15(6) of the Act. One interpretation could be that a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession will not be eligible to be considered for appointment as a Chief Information Commissioner and Information Commissioner. If this interpretation is given to Sections 12(6) and 15(6) of the Act, then it W.P(C) No. 1339/2011 -:10:- will obviously offend the equality clause in Article 14 of the Constitution as it debars such persons from being considered for appointment as Chief Information Commissioner and Information Commissioners. The second interpretation of Sections 12(6) and 15(6) of the Act could be that once a person is appointed as a Chief Information Commissioner or Information Commissioner, he cannot continue to be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession. If this interpretation is given to Sections 12(6) and 15 (6) of the Act then the interpretation would effectuate the object of the Act inasmuch as Chief Information Commissioner and Information Commissioners would be able to perform their functions in the Information Commission without being influenced by their political, business, professional or other interests." "We declare that Sections 12(5) and 15(5) of the Act are not ultra vires the Constitution. (ii) We declare that Sections 12(6) and 15(6) of the Act do not debar a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession from being considered for appointment as Chief W.P(C) No. 1339/2011 -:11:- Information Commissioner or Information Commissioner, but after such person is appointed as

Chief Information Commissioner or Information Commissioner, he has to discontinue as Member of Parliament or Member of the Legislature of any State or Union Territory, or discontinue to hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession during the period he functions as Chief Information Commissioner or Information Commissioner. We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Sections 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner. We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12 (5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Sections 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners. We further direct that the Committees under Sections 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the W.P(C) No. 1339/2011 :-12:- facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made. (vi) We also direct that wherever Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law." 10. Having regard to the aforesaid law as held by the Supreme Court, it is rather clear that if a person remains unconnected with political party, though he was a member of a political party earlier, he could as well be appointed as SIC. Learned counsel for 5th respondent placed reliance on the judgment in Madhukar G.E. Pankakar v. J.C.Rajani and others [(1977) 1 SCC70. Reference is made to para 22 of the judgment to emphasize what is "office of profit" viewed in the background of Maharashtra Municipalities Act, 1965. It is held at para 22 as under;

"2. Back to the issue of "office of profit". If the position of an insurance medical officer is an "office", it actually W.P(C) No. 1339/2011 -:13:- yields profit or at least probably may. In this very case the appellant was making sizeable income by way of capitation fee from the medical services, rendered to insured employees. The crucial question then is whether this species of medical officers are holding "office" and that "under Government". There is a haphazard heap of case-law about these expressions but they strike different notes and our job is to orchestrate them in the setting of the statute. After all, all law is a means to an end. What is the legislative end here in disqualifying holders of "offices of profit under the "government"? Obviously, to avoid a conflict between duty and interest, to cut out the misuse of official position to advance private benefit and to avert the likelihood of influencing government to promote personal advantage. So this is the mischief to be suppressed. At the same time we have to bear in mind that our Constitution mandates the State to undertake multiform public welfare and socio- economic activities involving technical persons, welfare workers, and lay people on a massive scale so that participatory government may prove a progressive reality. In such an expanding situation, can we keep out from elective posts at various levels many doctors, lawyers, engineers and scientists, not to speak of an army of other non-officials who are wanted in various fields, not as full-time government servants but as part- time participants in people's projects sponsored by government? For instance, if a National Legal Services Authority funded largely by the State comes into being, W.P(C) No. 1339/2011 -:14:- a large segment of the legal profession may be employed part-time in the ennobling occupation of legal aid to the poor. Doctors, lawyers, engineers, scientists and other experts may have to be invited into local bodies, legislatures and like political and administrative organs based on election if these vital limbs of representative Government are not to be the monopoly of populist politicians or lay members but sprinkled with technicians in an age which belongs to technology. So, an interpretation of "office of profit" to cast the net so wide that all our citizens with specialities and knowhow are inhibited from entering elected organs of public administration and offering semi-voluntary services in para-official, statutory or like projects run or directed by Government or corporations controlled by the State may be detrimental to democracy itself. Even athletes may hesitate to come into Sports Councils if some

fee for services is paid and that proves their funeral if elected to a panchayat. A balanced view, even if it involves "judicious irreverence" to vintage precedents, is the wiser desideratum." 11. Therefore, having regard to the aforesaid law laid down by the Supreme Court, we do not think that 5th respondent, being a former member of a political party or its student organizations, has to be debarred from being SCI.

12. Another contention urged by the learned counsel for W.P(C) No. 1339/2011 - :15:- the petitioner is regarding the ill health of the 5th respondent. This fact has been disputed by respondents 1 and 5. In fact, the argument raised is based on removal of SIC from their position by the Governor and one of the reasons is infirmity of body. The principle underlying writ of quo warranto is well settled. Only when the appointment is illegal and against the statutory provision, a writ of quo warranto can be issued. Further, there is no material to indicate that the 5th respondent was suffering from any disease that incapacitates him from attending his duties. Under such circumstances, we do not think that any of the grounds urged for issuance of the writ of quo warranto are justified. In the result, we do not find any merit in the writ petition and accordingly, the same is dismissed. Sd/- ASHOK BHUSHAN, CHIEF JUSTICE Sd/- A.M. SHAFFIQUE, JUDGE Rp

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