

Hari Vs. State of Kerala

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Court : Kerala

Decided On : Feb-10-1993

Reported in : (1993)IILLJ145Ker

Judge : Balakrishnan, J.

Acts : [Constitution of India](#) - Article 226; [Kerala University Act, 1974](#) - Sections 7

Appeal No. : O.P. No. 15779/1992

Appellant : Hari

Respondent : State of Kerala

Advocate for Def. : V.K. Beeran, Addl. A.G. II

Advocate for Pet/Ap. : K. Karthikeya Panicker, Adv.

Disposition : Petition dismissed

Judgement :

Balakrishnan, J.

1. The petitioner claims to be a Research Scholar in Mass Communication, Department of Communication and Journalism, University of Kerala. Petitioner challenges the appointment of third respondent J.V. Vilanilam as Vice-Chancellor of the Kerala University. Petitioner has prayed for several reliefs in the Original

Petition, the main relief being to issue a writ of quo-warranto. In the alternative, the petitioner has also prayed for a writ of mandamus to direct the 5th respondent, the Chancellor of the University of Kerala to take action against the third respondent under Section 7(9) of the [Kerala University Act, 1974](#). Another prayer of the petitioner is to issue a writ of certiorari to call for the records leading to the appointment of the 3rd respondent as Vice-Chancellor and quash the same.

2. Brief facts necessary to consider the case are as follows: The 3rd respondent was appointed as the Vice-Chancellor of the University of Kerala by the 5th respondent, the Chancellor, by virtue of the powers conferred on him under Section 10 of the Kerala University Act. The Chancellor appointed a Committee and the Committee suggested the name of 3rd respondent. The Committee consists of three members, one elected by the Senate and another nominated by the Chairman of University Grants Commission and the third member nominated by the Chancellor. No academic qualification as such is prescribed for the post of Vice-Chancellor. Under Section 10(5), it is made clear that no person who is more than 60 years of age shall be appointed as Vice-Chancellor and as per Section 6 the Vice-Chancellor shall hold office for a term of 4 years from the date on which he enters upon the office. The petitioner contends that the third respondent was not competent to be appointed as Vice-Chancellor as he had committed grave misconduct and submitted false information to the Committee.

3. I shall first consider the prayer of writ of quo-warranto sought for by the petitioner, Quo-warranto was originally a prerogative writ which the Crown could use to inquire into the title to any office or franchise claimed by a subject. It fell out of use in the 16th Century and was replaced by the information in the nature of quo-warranto, which in form was a criminal proceeding instituted in the name of Crown by the Attorney-General or by a private prosecutor. In England this prerogative writ was statutorily abolished by the Supreme Court Act, 1981. Now that relief is available in the form of an injunction. Unlike other prerogative writs, the issue of writ in the nature of quo-warranto is purely discretionary. His Lordship Justice Gajendragadkar as he then was in University of Mysorev. Govinda Rao (AIR 1965 SC 491) while speaking for the Constitution Bench explained the content and scope of writ of quo-warranto in the following terms:

'Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independence 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 appointment 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 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'.

An earlier decision reported in *King v. Speyer* 1916- KB 595 is considered to be a locus classicus on the subject of writ of quo warranto. The dictum laid down in the above case was followed in later decisions. This Court also had occasion to consider the scope and ambit of the writ of quo warranto (See the decisions reported in *Narayanan v. Dr. T.K. Raveendran* 1991 (2) KLT 198) and *K.J. Joseph v. Justice Sukumaran and Ors.* 19871 KLT 37.)

4. Under our Constitution, Article 226 is couched in comprehensive phraseology and it ex facie confers wide powers on the High Court, The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It was observed by Subba Rao, J., in *Pearakanath v. Income Tax Officer* AIR 1966 SC 81 that;

'.....Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.'

5. From the various dicta laid down by the Courts, it is now clear that the writ of quo warranto could be issued only under exceptional circumstances. The petitioner has to establish that the incumbent of the public office has no right to hold that post. Even the ordinary grounds on which a judicial review could be exercised are not available in strict sense for issuance of a writ of quo warranto. The mala fides of the appointing authority or in other words, the motives of the appointing authority in making the appointment of a particular person are irrelevant consideration for issuance of the writ of quo warranto. The writ could be issued only against the usurper of an office or in other words, against a person who holds office without any authority. Information in nature of 'quo warranto' does not command performance of official functions by an officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed.

6. At the outset, I may point out that the third respondent was appointed as Vice-Chancellor by the Chancellor of the University on the recommendation of a High Power Committee. In such academic matters, the Court would be slow to interfere with. The court has to treat the recommendations of the Expert Committee with the respect that they deserve and the petitioner has no case that the Chancellor acted against the provisions of the statute in appointing the third respondent as the Vice-Chancellor.

7. The petitioner has alleged various other grounds to sustain the plea that the third respondent should not have been considered for appointment as Vice-Chancellor. It is contended that the third respondent obtained Ph.D. Degree from Sussex College of Technology and on that basis he claimed to be a Doctor in

Mass Communication. It is alleged that the third respondent submitted application for the post of Professor of Journalism in the University of Kerala on August 20, 1992 and in that application form he has shown that he had obtained Ph.D. degree from Sussex College of Technology, D. Litt, from Bhagalpur University and Ph.D from Amsterdam University. According to the petitioner, these facts are not true and the 3rd respondent did not possess a degree of Ph.D. from Amsterdam University as on the date of that application and that the Ph.D degree allegedly obtained from Sussex College of Technology is only a title which could only be used for non-academic purposes. According to the petitioner, the 3rd respondent was awarded Ph.D. degree only in 1986.

8. To support these contentions, the petitioner has produced several documents. As regards Sussex College degree, the petitioner produced a photocopy of the Times Higher Education Supplement dt. June 13, 1975. In Ext. P9 it is stated that Sussex College of Technology was started by one Bruce Copen, a former Corporal and this University offers wide range of degrees. The petitioner has also produced a photostat copy of the Times' dt. June 18, 1972. There is an article with the caption 'Sussex degree factory sells Ph.D. for 155 pounds'. It is stated that this institution sells various educational degrees and these degrees are not recognised by the educational authorities in U.K. Ext. P14 is only an article published in a newspaper and I cannot place much reliance on this report. The petitioner has produced a communication issued from the Department of Education & Science, Sanctuary Buildings, Great Smith Street, Westminster, London (Ext. P11) to show that in U.K. there are several unrecognised institutions and the Sussex College of Technology also appeared to be one such independent establishment. It is further stated that in Britain it has been made a criminal offence to issue unrecognised degrees.

9. Based on the above facts, the petitioner contended that the third respondent, who obtained Ph.D. degree from the Sussex College of Technology, made use of that degree for academic purposes and this amounted to grave misconduct. It may be noted that the application of the third respondent was filed in 1982. That happened nearly 10 years prior to his appointment as Vice-Chancellor. The counsel for the petitioner strenuously contended that the production of Ph.D.

degree from the Sussex University is a criminal offence and therefore the third respondent is not morally bound to continue as Vice-Chancellor. Even if it is assumed that Ph.D. degree from Sussex University was used by the third respondent for academic purposes in 1982, it cannot be said that it would disentitle the third respondent from holding the post of Vice-Chancellor.

10. The counsel for the petitioner further contended that the third respondent acquired Ph.D. degree from Amsterdam University in 1986, but he claimed that he had this degree even prior to 1986. To substantiate this contention, the petitioner has produced several documents. Ext. P16 is a copy of the bio-data of the third respondent allegedly submitted to the University Grants Commission getting financial assistance for a major research project. Therein, it is shown that in 1982 the third respondent was awarded Ph.D. degree from the University of Amsterdam. Ext. P19 is a photostat copy of the Annual Report for the year 1982 of the Department of Journalism. The third respondent's name is shown against the post of Professor and Head of the Department. It is also shown that the third respondent is a holder of Ph.D. degree. There is nothing in evidence to show that when exactly the third respondent obtained Ph.D. degree from Amsterdam University. The submission of the application before the University Grants Commission was in the year 1988. That cannot be said to be a misconduct or illegality committed by him after he assumed charge of Vice-Chancellor for.

11. The petitioner's case in short is that the third respondent made use of a false degree for academic purposes and he misrepresented that he had Ph.D. degree from Amsterdam University at a time when he did not possess the same. According to the petitioner, these incidents happened prior to the appointment of the third respondent as Vice-Chancellor of the University. It is alleged by the petitioner that the Expert Committee appointed to nominate the name of the Vice-Chancellor did not have these materials before them and had these information been furnished to them they would not have nominated the name of third respondent for the post of Vice-Chancellor. As already stated, an Expert Committee suggested the name of the third respondent for appointment as Vice-Chancellor. This court cannot enquire into such things and come to a different conclusion, especially in an original petition seeking writ of quo warranto. The

petitioner has not challenged the legality of the appointment of third respondent as Vice- Chancellor. His only contention is that because of these misdeeds the 3rd respondent has become incompetent to hold the post of Vice-Chancellor. Such a contention is not sustainable.

12. The petitioner has also sought for a writ of mandamus to direct the 5th respondent to take action under Section 7(9) of the Kerala University Act. Section 7(9) empowers the Chancellor to remove the Vice-Chancellor from office by an order in writing on charges of misappropriation or mismanagement of funds or misbehaviour. Petitioner has no case that the third respondent has committed any misappropriation or mismanagement of fund or misbehaviour. All the allegations in the Original Petition relate to past conduct. The counsel for the petitioner contended that the production of Ph.D. degree from Sussex University in 1982 was a misbehaviour and it came to light only recently and therefore the Chancellor should have taken steps against the third respondent. I find no force in this argument. To attract Section 7(9) mismanagement or misbehaviour should have been done after he assumed the office of the Vice-Chancellor.

13. Yet another contention raised by the petitioner is that the third respondent was holding the post of Professor of Journalism prior to his appointment as Vice-Chancellor and there were complaints against his appointment as Professor of Journalism and a Committee was constituted to inquire into that allegation. The Committee was constituted by the Government under Section 73 of the Kerala University Act. The Committee later filed report and the report was considered by the Syndicate and the matter was placed before the Government. During the pendency of this enquiry, the third respondent had entered on leave and he later joined duty. According to the petitioner, one Dr. N. Narayanan Nair was a Member of the Syndicate which appointed the third respondent as Professor of Journalism in 1982 and he later filed affidavit before the Inquiry Committee and supported the appointment of third respondent as Professor of Journalism. It is further alleged by the petitioner that the report of the Committee was considered by the Syndicate and in that Syndicate Dr. N. Narayanan Nair was also a Member and therefore the petitioner contends that the whole procedure is vitiated by illegality. I am unable to accept this contention. The Committee was constituted by the

Government and the matter was placed before the Syndicate on the basis of the statutory provision. As Dr. N. Narayanan Nair was a syndicate member he was entitled to discharge his function as Syndicate Member. He might have filed the affidavit as he was a Member of the Syndicate, who had knowledge about the appointment of the third respondent as Professor of Journalism. It is impossible to find any sort of illegality in the procedure regarding the inquiry and the subsequent consideration by the Syndicate. Therefore, I find no reason to issue a writ of certiorari to quash the proceedings leading to the Syndicate decision dated November 2, 1992.

14. The petitioner is not entitled to any of the reliefs prayed for. Original Petition is without any merit and the same is dismissed.

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