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Court : Chennai

Decided On : Dec-10-2012

Reported in : 2012(6)CTC797; 2013WLR267

Judge : V. Ramasubramanian & M.M. Sundresh

Appeal No. : W.P.SR.No.132192 of 2012

Appellant : K. Bharathi

Respondent : Union of India, Represented by the Secretary, Ministry of Law, Justice and Company Affairs and Others

Advocate for Pet/Ap. : For the Petitioner: K. Bharathi (Party-in-Person). For the Respondents: -----

Judgement :

(Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Quo Warranto against the third respondent requiring him to show the authority to hold the Office of Judge of the Madras High Court and consequently declare that he is not entitled to continue to hold the said Office.)

V. RAMASUBRAMANIAN, J.

The petitioner, who is an Advocate practising in this Court and who is also the State Convener of Democratic Advocates' Association, has come up with the above writ petition, seeking the issue of a Writ of Quo Warranto, questioning the authority of the third respondent to continue in Office.

2. Heard Mr.K.Bharathi, the petitioner-in-person.

3. The third respondent belonged to the Subordinate Judiciary of the State of Tamil Nadu. His name was recommended for elevation to the Bench of this Court by the Collegium of Judges of this Court. After the approval of the said recommendation, by the Collegium of the Supreme Court, the third respondent was appointed as an Additional Judge of this Court by a Warrant issued by the President of India in terms of the Article 217 of the Constitution of India. He assumed Office on 26.3.2012.

4. The petitioner has not raised any objection to the appointment of the third respondent as such. It is not the case of the petitioner that the third respondent had suffered any disqualification at the time when his name was recommended for appointment or at the time when the Warrant of Appointment was actually issued. There is no dispute about the fact that the third respondent is also qualified for appointment to the post of Additional Judge of this Court in terms of Clause (2) of Article 217 of the Constitution of India.

5. It is also not the case of the petitioner that the process of appointment of the third respondent was actually faulty. The petitioner does not contend that there was no proper recommendation by the Collegium nor does he contend that certain relevant considerations that should have weighed with the Collegium, were not taken into account before recommending his name for appointment.

6. Actually, the complaint of the petitioner is that an advertisement appeared in the Tamil Newspaper viz., 'Daily Thanthi' in its Madurai Edition dated 21.11.2012. The advertisement carried a group photograph purportedly taken on the occasion of the wedding reception of the third respondent's son. Seen in the said photograph were, the third respondent, and his wife, apart from the Chief Minister of Tamil Nadu, the newly married couple and the parents of the bride. The advertisement

contained at the bottom, a message of thanks to the Chief Minister for having blessed the couple. At the bottom of of the advertisement, the names of the third respondent, his wife and the names of the parents of the bride are also printed. The message of thanks carries certain adulations to the Chief Minister of Tamil Nadu.

7. On the basis of the said advertisement, it is contended by Mr.K.Bharathi, the petitioner, appearing in person, that the third respondent would not henceforth be able to discharge his functions as a Judge of this Court in an unbiased manner. According to the petitioner, the Office of Judgeship of the High Court carries with it, onerous duties and responsibilities and that they could be effectively discharged only by persons of tried integrity, impeccable character and sterling qualities. Therefore, the petitioner contends that once a person appointed to the post, identifies himself as a person belonging to a political party by issuing such advertisements, it would tarnish the image of the judiciary and make people lose faith that they repose in the judiciary.

8. The above contention of the petitioner is based only upon presumptions and surmises. The entire writ petition proceeds on the presumption that the advertisement in question had actually been issued by the third respondent. But, we have no proof before us to show that the advertisement was actually issued either by the third respondent or at his behest. When confronted on this, Mr.K.Bharathi, the petitioner contended that it is for the third respondent to come up with a denial. But, we do not think so. At the outset, it is the bounden duty of the petitioner to produce some materials of probative value to show that the advertisement was either issued by or at the behest of the third respondent. It is only after some material worth consideration is produced, that we can call upon the third respondent to admit or deny the same.

9. It is needless to point out that advertisements, especially of this nature, could be issued by any person. Just as wedding invitations printed in Tamil Nadu contain the names of several friends and relatives as hosts, these types of advertisements also normally carry the names of several persons, with or without their concurrence. Unless the advertisement had been issued by or at least with the

tacit approval of the person concerned, we cannot presume that the person involved, actually subscribed to the same.

10. From the grievance projected by the petitioner in his affidavit and the contentions raised before us, it is clear that the objection of the petitioner is not to the very appointment of the third respondent, but to his continuance in Office after the issue of the advertisement. If an objection is made to the continuance in Office of a person, who is a Judge of any High Court, the same could be done only in impeachment proceedings.

11. While it is open to the High Courts and the Supreme Court to entertain a Writ of Quo Warranto challenging an appointment, it may not be possible for the High Court to question the continuance in Office of a person, on the ground that he had actually misconducted himself. The law on this aspect is very clear. Under limited circumstances, as was done by this Court and confirmed by the Supreme Court in *N.KANNADASAN vs. AJAY KHOSE AND OTHERS* reported in (2009) 7 SCC 1, it would be open to this Court to see if the procedure prescribed by law was followed in the matter of appointment of a person. But any act of omission or commission attributed to a person after his appointment to the Office, cannot be made the subject matter of a Writ of Quo Warranto.

12. Though the writ petitioner, despite being an Advocate, has failed to make even a remote reference to the principles of judicial conduct that bind Judges morally, his writ petition is essentially directed towards the same. But the resolution of the conflict between the principle of accountability and the principle of judicial independence, has been receiving the attention of Jurists and concerned citizens the world over for several decades. While a statutorily enforceable frame work could not so far emerge (with the exception of the recent Bill that is pending before the Parliament), Groups of Judges of various countries have evolved Codes of Judicial Conduct at the National level right from 1972. Some of them are:-

(i) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association in August 1972.

(ii) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories.

(iii) Code of Conduct for the Judges of the Supreme Court of Bangladesh prescribed by the Supreme Judicial Council.

(iv) Ethical Principles for Judges drafted at the Canadian Judges Conference and endorsed by Canadian Judicial Council in 1998.

13. Taking clue from the above, the Conference of Chief Justices of India convened in 1999, adopted what is known as "Re-statement of Values of Judicial Life". Immediately following the adoption of the same, a Meeting of the Judicial Group on Strengthening Judicial Integrity, which later came to be known as Judicial Integrity Group, was held at the United Nations Office in Vienna in April 2010. The Group took two decisions at this Meeting. The first was the Strengthening of Judicial Integrity by effecting systematic reforms. The second was the preparation of universally acceptable statement of judicial standards. The work of preparation was entrusted to the Co-ordinator. After the Co-ordinator submitted a report, a second Meeting of the Judicial Integrity Group was held in Bangalore in February 2001. At this Meeting, the Group identified the core values, formulated relevant principles and agreed upon a Draft Code of Judicial Conduct. This Draft Code was disseminated among the Judges of both Common Law and Civil Law systems. In Meetings and Conferences of Judges of several countries, the Draft Code was discussed and comments received from the participants.

14. Subsequently, at a Meeting held in Strasbourg, the Bangalore Draft was reviewed by the Consultative Council of European Judges. Based upon the deliberations, the Bangalore Draft was further revised, with particular reference to the principles and rules governing Judges' professional conduct, ethics, incompatible behaviour and impartiality.

15. A revised version of the Bangalore Draft was then placed before a Round Table Meeting of Chief Justices held at The Hague in November 2002. It will be of interest to note that there was a significant consensus among the Judges of Common Law and Civil Law systems, concerning the core values. But there was

also some disagreement on certain areas. One of the areas in which there was a major divergence was, regarding political activity. It was pointed out that in one European country, Judges are elected on the basis of their party membership. In some other European countries, Judges have the right to engage in politics and be elected as Members of Local Councils (even while remaining as Judges) or of Parliament (their judicial status being in this case suspended). Therefore, the Judges from Civil Law countries took a stand that there was no general international consensus that Judges should either be free to engage in, or should refrain from, political participation. They also suggested that each country should strike its own balance on this issue.

16. What emerged from the said Meeting, came to be popularly known as "The Bangalore Principles of Judicial Conduct". The core values recognised in this document are (i) independence (ii) impartiality (iii) integrity (iv) propriety (v) equality (vi) competence and (vii) diligence.

17. In 2006, the 15th Session of the Commission on Crime Prevention and Commercial Justice adopted a Resolution in its Meeting held in Vienna. The title of the Resolution was "Strengthening Basic Principles of Judicial Conduct". The Commission recommended that the United Nations Economic and Social Council should invite the Member States to encourage their judiciaries to take into consideration the Bangalore Principles. The United Nations Economic and Social Council adopted the Resolution bearing No.2006/23 without a vote.

18. From the above discussion, it will be clear that the Code of Judicial Conduct which has evolved over the years, is still not given statutory force. Even if it is given such a status, the conduct of a Judge can be questioned only in different sets of proceeding, either under the provisions of such a Statute (if it ever comes) or in proceedings for impeachment. The right to seek a Writ of Quo Warranto is not available to anyone on the ground that a Judge is guilty of violation of the Bangalore principles.

19. In the case of MAHESH CHANDRA GUPTA vs. UNION OF INDIA reported in (2009) 8 SCC 273, the Supreme Court brought out the fine distinction between "eligibility" and "suitability". In paragraphs 41, 43 and 71 of the said decision, the

Supreme Court indicated that when "eligibility" is put in question, it could fall within the scope of judicial review. In cases involving lack of eligibility, Writ of Quo Warranto would certainly lie. But, there is a vital difference between judicial review and merit review.

20. Similarly, there is a vast difference between the eligibility of a person for appointment and the suitability of a person to continue in Office after appointment. There is also a vast difference between conduct/misconduct before appointment and conduct/misconduct after appointment. In the latter type of cases, no Writ of Quo Warranto would lie. Therefore, the writ petition cannot be entertained as it is not maintainable. Hence, it is dismissed. No costs.

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