

HIGH COURT OF CHHATTISGARH, BILASPURW.P.(S) No.88 of 2016

Bandela Alphonsus, S/o Bandela Ramaswamy, aged 49 years, Asst. General Manager (HR), Hindustan Copper Limited, Khetri Copper Project, Khetrinagar, PIN Code 333 504, District Jhunjhunu, Rajasthan.

---Petitioner

Versus

1. Regional Director, DAV Public Schools, MP & Chhattisgarh Region, Hudco Complex, Bhilai 490 009, District Durg (Chhattisgarh).
2. Principal, DAV Public School, Kirandul, PIN Code 494 556, District Dantewada (Chhattisgarh).
3. Chief Vigilance Officer, NMDC Limited, BIOM Deposit 14 NMDC Limited, Kirandul 494 556 (Chhattisgarh).
4. Collector, South Bastar, Dantewada, District Dantewada (Chhattisgarh).
5. District Education Officer, South Bastar, Dantewada, District Dantewada (Chhattisgarh).
6. Superintendent of Police, South Bastar, Dantewada, District Dantewada (Chhattisgarh).
7. Thana In-charge, Kirandul Police Station, Kirandul, District Dantewada (Chhattisgarh).
8. Superintendent of Police, CBI, Bhilai Sector 9, Bhilai – 490009, District Durg (Chhattisgarh).
9. Smt. Deepasri, Senior Primary Teacher Biology, DAV Public School, Kirandul – 494 556, South Bastar, District Dantewada (Chhattisgarh).

---Respondents

For Petitioner: Ms. Rajni Soren, Advocate.
 For Respondents No.1 to 3: Mr. Vaibhav Shukla, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

27/01/2017

1. The petitioner has filed this writ petition seeking a writ of quo warranto stating *inter alia* that the appointment of respondent No.9 as Senior Primary Biology Teacher, DAV Public School, Kirandul, South Bastar, is contrary to law and therefore appropriate writ be issued quashing her appointment by declaring the appointment illegal.
2. Ms. Rajni Soren, learned counsel for the petitioner, would submit that appointment of respondent No.9 on the post of Senior Primary Biology Teacher, DAV Public School, Kirandul, is illegal and contrary to law.
3. Mr. Vaibhav Shukla, learned counsel for respondents No.1 to 3, would submit that the writ petition is not bona fide, as the petitioner has made a complaint under Sections 107 & 116 of the Cr.P.C. against respondent No.9 – Smt. Deepasri Nair for initiating proceedings against her (Annexure P-10) and also filed a complaint to the Chhattisgarh State Commission For Minorities on 2-8-2014 (Annexure P-3) and she also served a legal notice to the petitioner.
4. In order to decide the lis, it is appropriate to understand the nature of writ of quo warranto.

5. Halsbury's Laws of England, 3rd Edition, Vol. II Para 281 contains a succinct summary of the decisions of English Courts with regard to the discretion of the Court in issuing a writ of quo warranto. It states as under:-

"An information in the nature of a quo warranto was not issued, and an injunction in lieu thereof will not be granted as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case..... the Court might in its discretion decline to grant a quo warranto information where it would be vexatious to do so, or where an information would be futile in its results, or where there was an alternative remedy which was equally appropriate and effective."

6. In **King v. Speyer**¹ it was considered that :-

"An information in the nature of a quo warranto will lie at the instance of a private relator against a member of the Privy Council whose appointment is alleged to be invalid."

In this case, a rule nisi was issued calling upon Sir Edgar Speyer and Sir Ernest Joseph to show cause why information in the nature of a quo warranto should not be exhibited against them to show by what authority they were or claimed to be, members of His Majesty's Privy Council for Great Britain. Tindal CJ. has said :-

"The result appears to be, that this proceeding by information in the nature of quo warranto will lie for usurping any office, whether created by charter alone, or by the Crown, with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the

1 (1961) 1 KB 595

function or employment of a deputy servant held at the will and pleasure of others; for, with respect to such an employment, the Court certainly will not interfere, and the information will not properly lie."

7. The judgment of **King v. Speyer** (supra) has been followed by a Division Bench of Nagpur High Court in **G. D. Karkare v. T. L. Shevde & others**².

8. **Rex. v. Stacey**³ holds that a writ of quo warranto is not a motion of course and it is in the discretion of the Court to issue it considering the circumstances of the case. The Canadian view as stated in **The King ex rel Beudret v. Johnston**⁴ is that the court has to take into consideration public interest, the consequences to follow the issue of a writ of quo warranto and all the other circumstances of the case.

9. Unlike the other prerogative writs, the issue of writ in the nature of quo warranto was purely a discretionary writ. S.A. de Smith in his Book, The Judicial Review of Administrative Action (2nd Edition) at page 371 says thus :-

"The fact that some of the prerogative writs were discretionary came to be directly linked with their designation as prerogative writs. Thus, in one case. it was said : 'An application for mandamus is an application to the discretion of the court; a mandamus is a prerogative writ and is not a writ of right'. But although none of the prerogative writs is a writ of course, not all are discretionary. Prohibition, for example, issue as of right in

2 AIR 1952 Nagpur 330

3 (1785) 99 ER 938

4 (1923) 2 DLR 278

certain cases, and habeas corpus and subjudiciendum the most famous of them all, is a writ of right which issues ex debito justitiae when the applicant has satisfied the court that his detention was unlawful. These two writs, therefore, are not in the fullest sense writ of grace."

Further he has stated in the same book that

"the application may be refused for undue delay, and is in any event not to be brought if the respondent has acted in the office for six years."

10. Regarding the discretionary nature of writ, I shall also refer to the American Law as stated in American Jurisprudence (Vol. 65) Notes 5 and 10.

Note 5. Nature of remedy.

"Quo warranto is an extraordinary prerogative, writ and as such is administered cautiously and in accordance with certain well defined principles. Although the ancient writ of quo warranto was an original one issuing out of chancery, the remedy is now of legal, rather than of equitable, cognizance. Inquiry in quo warranto proceedings into the regularity of a judgement has been ordinarily, although not invariably, regarded as a collateral attack on the judgement.

The reasons for this cautious application of this jurisdiction is stated thus :-

"This approach has been justified on the ground that the writ or a judgement of ouster thereunder, may have drastic consequences affecting the public welfare." (Vide Note 10).

11. Both English Law and the American Law definitely state that in exercising the discretion, the court should consider all the

circumstances of the case, including lapse of time, and circumstances which would establish laches, acquiescence or estoppel, and whether the public interest will be served. Chief justice Chagla said in **Bhairulal Chunilal v. State of Bombay**⁵ thus :-

“Now the writ of 'quo warranto' is not issued as a matter of right, It is discretionary relief and the court has always to ask itself whether under the circumstances of each case the petitioner should be given the relief in the nature of quo warranto which he seeks. In this particular case every factor which can be taken into consideration weighs against the petitioner being entitled to this relief.”

12. It is well settled that issuance of writ of quo warranto is a discretionary remedy, authority of a person to hold a public office can be questioned *inter alia* in the event the appointment is violative of statutory provision and unquestionably a writ of quo warranto can be issued *inter alia* when the appointment is contrary to statutory rules and holder of the office lacks eligibility as per rules.

13. Way back in the year 1963, the Constitution Bench of the Supreme Court in the matter of **The University of Mysore & another v. C. D. Govinda Rao & another**⁶ while dealing with the nature of writ of quo warranto has held in no uncertain terms that before a citizen can claim a writ of quo warranto, he must satisfy the Court that the office in question is a public office and is held by

⁵ AIR 1954 Bombay 116

⁶ AIR 1965 SC 491 : (1964) 4 SCR 575

usurper without legal authority by observing as under:-

"7. 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 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."

14. Similarly, in the matters of **High Court of Gujrat and another v. Gujrat Kishan Mazdoor Panchayat and others**⁷ and **R. K. Jain v. Union**⁸ similar proposition of law has been propounded with regard to writ of quo warranto.

⁷ (2003) 4 SCC 712

⁸ (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464

15. The Madhya Pradesh High Court in the matter of **Rajendra Kumar Chandanmal v. Government of M.P.**⁹ while considering the issue as to at whose instance the writ of quo warranto can be issued, it was held that relator who is member of public and acts bonafide can maintain the writ petition for writ of quo warranto and it was held as under:-

“It is enough for its issue that the relator is a member of the public and acts bona fide and is not a mere pawn in the game having been set up by others. If the Court is of the view that it is in the interest of the public that the legal position with respect to the alleged usurpation of an important public office should be judicially cleared, it can issue a writ of quo-warranto at the instance of any member of the public. The authorities on this point are practically unanimous.”

16. Similar is the proposition struck by the Rajasthan High Court in the matter of **Dr. D. C. Jain v. University of Jodhpur**¹⁰ in which it has been held as under:-

“The matter does not stop at that. It is well to remember that the writ of quo warranto is not a writ which issues as a matter of course and as a matter of right. Indeed it is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case. This Court would inquire into the conduct and motive of the petitioner and the Court might in its discretion decline to grant quo warranto information where the petitioner is moved by extraneous consideration and not in public interest.”

17. Their Lordships of the Supreme Court in the matter of **Arun Kumar Agrawal v. Union of India and others**¹¹, in a writ

9 AIR 1957 MP 60

10 AIR 1977 Raj. 89

11 (2014) 2 SCC 609

petition challenging appointment and seeking removal of respondent No.4 from the post of Chairman of SEBI finding that the writ petition to be motivated, dismissed the writ petition holding as under:-

“95. This now brings us to the preliminary objections raised by the respondents that the writ petition deserves to be dismissed on the ground that it is not a bona fide petition. According to the respondents, the petitioner has been set up by interested parties. We entirely agree with the submissions made by the learned Attorney General that the first requirement for the maintainability of a public interest litigation is the uberrima fides of the petitioner. In our opinion, the petitioner has unjustifiably attacked the integrity of the entire selection process. It is virtually impossible to accept the submission that Respondent 6 was able to influence the decision-making process which involves the active participation of ACC, a High-Powered Search-cum-Selection Committee with the final approval of the Finance Minister and the Prime Minister. The proposition is so absurd that the allegations with regard to mala fides could have been thrown out at the threshold. We have, however, examined the entire issue not to satisfy the ego of the petitioner, but to demonstrate that it is not entirely inconceivable that a petition disguised as “public interest litigation” can be filed with an ulterior motive or at the instance of some other person who hides behind the cloak of anonymity even in cases where the procedure for selection has been meticulously followed. The respondents have successfully demonstrated how the petitioner has cleverly distorted and misinterpreted the official documents on virtually each and every issue. In our opinion, the petition does not satisfy the test of utmost good faith which is required to maintain public interest litigation. We have been left with the very unsavoury impression that the petitioner is a surrogate for some powerful phantom lobbies.”

18. The matter can be considered from another angle. In order to issue writ of quo warranto, the officer must be substantial office of public nature and permanent character.

19. *Sir William Wade* in his *Administrative Law - 10th Edition* at page 479 pertinently states about the nature of office qua writ of quo warranto as under:-

“The remedy as now defined applies to usurpation of ‘any substantive office of a public nature and permanent character which is held under the Crown or which has been created by any statutory provision or royal charter’. But it must not be a case of ‘merely the function or employment of a deputy or servant held at the will and pleasure of others’. Here once again we meet the difference between office and mere contractual employment. The procedure was typically used to challenge the right to such offices as those of freeman or burgess of a borough, mayor, town councilor, sheriff, justice of the peace, county court judge, chief constable or member of the General Medical Council. But the alleged usurper has to be in possession of the office and to have acted in it.”

20. The Division Bench of Nagpur High Court in **G. D. Karkare** (supra) while considering the nature of writ of quo warranto has held as under:-

“What the Court has to consider in an application for a writ of 'quo warranto' is whether there has been usurpation of an office of a public nature and an office substantive in character i.e., an office independent of title. If the office be of a very small nature the Court may refuse to grant the information.”

21. Applying the law laid down in the aforesaid decisions, it is *quite vivid* that there is serious dispute pending between the parties as the petitioner has lodged petition under Sections 107 & 116(3) of the Cr.P.C. against respondent No.9 and served legal notices to respondent No.9, and the petitioner's wife and respondent No.9 both are working in the DAV Public School, Kirandul and as such the writ petition is nothing but an outcome of serious service dispute between the petitioner's wife and respondent No.9 just to settle their personal dispute. Even otherwise, the post of Senior Primary Teacher (Biology) of DAV Public School is not an office in line with the decision as indicated by Sir William Wade in his Administrative Law and in **G.D. Karkare** (supra). Therefore, I have no hesitation to hold that this petition is not a bona fide writ petition seeking writ of quo warranto and as such discretionary relief of quo warranto cannot be granted at the instance of the petitioner. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge