

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3546 of 2017**

Shaktinath Mishra, S/o Late J.N. Mishra, aged about 38 years,
Occupation – Contractor, Public Works Department, Chhattisgarh,
R/o Near Bus Stand, Patthalgaon, District Jashpur (C.G.)

---- **Petitioner**

Versus

1. The State of Chhattisgarh, Through: The Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, P.S. Rakhi, Tahsil & District Raipur (C.G.)
2. Engineer-in-Chief, Public Works Department, Civil Lines, Raipur (C.G.)
3. K.G.S. Rao, Executive Engineer, Public Works Department (Electrical & Mechanical), Division Raipur (C.G.)

---- **Respondents**

For Petitioner	: Shri S.C. Verma, Advocate.
For State	: Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/01/2018

(1) The petitioner mainly seeks writ of quo warranto on the ground that as respondent No. 3 has been appointed on the post of Superintending Engineer on contract basis for a period of one year de hors the Chhattisgarh Civil Sewa (Samvida Niyukti) Niyam, 2012 (henceforth "Rules of 2012") and, therefore, he is not entitled to hold the post of Superintending Engineer in the office of Engineer-in-Chief, Public Works Department, Raipur.

(2) Mr. S.C. Verma, learned counsel appearing for the petitioner, would submit that appointment of respondent No. 3 on the post of Superintending Engineer is contrary to the Rules of 2012 and, therefore, he is not entitled to hold the office and as such, it is a fit case where the writ of quo warranto can be issued.

(3) I have heard learned counsel for the parties and perused the documents available on record with utmost circumspection.

(4) 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 lacks eligibility criteria.

(5) Way back in the year 1963, the Constitution Bench of the Supreme Court in the matter of **The University of Mysore and another v. C.D. Govinda Rao and another**¹ 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 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,

1 AIR 1965 SC 491 : (1964) 4 SCR 575

or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the enquiry 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.”

(6) Similarly, in the matters of High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others² and R.K. Jain v. Union of India³ similar proposition of law has been propounded with regard to writ of quo warranto.

(7) In the matter of Centre for PIL and another v. Union of India and another⁴, Their Lordships of the Supreme Court have laid down the requisites and object of issuance of writ of quo

2 (2003) 4 SCC 712

3 (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464

4 (2011) 4 SCC 1

warranto. Paragraph 51 of the report states as under:-

“51. 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. 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.”

(8) Similarly, in the matter of **Rajesh Awasthi v. Nand Lal Jaiswal and others**⁵, it has been held that writ of *quo warranto* lies when appointment is made contrary to statutory provisions and laid down the test to issue a writ of *quo warranto* to see whether person holding the office is authorised to hold the same as per law. Thus, the petitioner seeking issuance of writ of quo warranto has to satisfy that the appointment of 3rd respondent K.G.S. Rao is contrary to statutory rules and he lacks eligibility.

(9) Now, the question is whether in case of contractual appointment, petition for writ of quo warranto would be maintainable.

(10) In the matter of **Satish Chandra Anand V. Union of India**⁶, Their Lordships of the Supreme Court, while dealing with a case of a contract appointment which was being terminated by notice under one of its clauses, have held that Articles 14 and 16 of the

⁵ (2013) 1 SCC 501

⁶ 1953 SCR 655 : AIR 1953 SC 250

Constitution of India had no application as the petitioner therein was not denied equal opportunity in a matter relating to appointment or employment who had been treated just like any other person to whom an offer of temporary employment under these conditions was made. Their Lordships of the Supreme Court further held as under:

“The State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who choose to accept those terms and enter into the contract are bound by them, even as the State is bound.”

(11) In the matter of **P.K. Sandhu v. Shiv Raj V. Patil**⁷, Their Lordships of the Supreme Court have held as under:-

“The power to make an appointment includes the power to make an appointment on substantive basis, temporary or officiating basis, ad hoc basis, on daily wages or contractual basis.”

(12) In the matter of **B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. and others**⁸ Their Lordships of the Supreme Court have held that writ of *quo-warranto* would not be applicable in a case of contractual appointment and held as under: -

“43. Whether a writ of *quo warranto* lies to challenge an appointment made “until further orders” on the ground that it is not a regular appointment? Whether the High Court failed to follow the settled law that a *writ of quo warranto* cannot be issued unless there is a clear violation

⁷ (1997) 4 SCC 348 : 1997 SCC (L&S) 954

⁸ (2006) 11 SCC 731 (II)

of law? The order appointing the appellant clearly stated that the appointment is until further orders. The terms and conditions of appointment made it clear that the appointment is temporary and is until further orders. In such a situation, the High Court, in our view, erred in law in issuing a *writ of quo warranto* the rights under Article 226 which can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus.

60. Thus it is seen that a *writ of quo warranto* does not lie if the alleged violation is not of a statutory provision.”

(13) Their Lordships of the Supreme Court in a Constitution Bench judgment in the matter of **Statesman (Private) Ltd. v. H. R. Deb and others**⁹ have held that in an unclear case, writ of quo warranto should not be issued and observed as under:-

“The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law.”

(14) Thus, on the basis of above-stated analysis, this Court is satisfied that the petitioner seeking a writ of quo warranto has demonstrably failed to plead and establish that appointment of 3rd respondent K.G.S. Rao as Superintending Engineer in Public Works Department is in violation of the statutory rules and further, it is apparent that as respondent No.3 was appointed on contractual basis by order Annexure P-10 dated 10-10-2017 on the post of Superintending Engineer (Electrical/Mechanical) only for a period of one year, writ of quo warranto cannot be issued as held by Their Lordships of the Supreme Court in **B. Srinivasa**

Reddy (supra). The law laid down by Their Lordships of the Supreme Court in **Statesman** (supra) sounding a of caution for this Court to slow in issuing a writ in the nature of quo warranto in unclear case, which aptly and squarely applies to the factual score of the present case, as the petitioner has failed to establish clear infringement of law for the writ claimed in the nature of quo warranto and as such, the petitioner is not entitled for any of the reliefs claimed in the writ petition.

(15) As a fallout and consequence of aforesaid discussion, the writ petition being sans substratum, deserves to be and is accordingly, dismissed *in limine* but without imposition of cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

D/-