

IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced on: February 01st, 2018

+ W.P.(C) 5374/2002

PARVEEN KUMAR

..... Petitioner

Through: Mr. Parveen Kemz, Adv.

versus

UOI

..... Respondents

**Through: Mr. Sidharth Khatana, Adv. for R-7,
9, 10, 15, 17, 18, 19, 20 and 21.
Mr. L.R. Khatana, Adv. for R-1 to 6.
Mr. Rajvinder Singh, Adv. for R-18.
Mr. Ravi Shankar, Adv. for R-18.
Mr. Raju Mandrik, Adv. for R-14.**

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

DATE: February 01st, 2018

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1. The petitioner claims to be aggrieved by the appointment, of Respondents 7 to 21 as Assistant Directors in the Export Inspection Council of India (impleaded as Respondent No.2 herein). Consequently, the petition prays, essentially, that the appointments of the aforementioned Respondents 7 to 21 be quashed.

2. The petitioner joined the Export Inspection Agency, stated to be a subordinate office under Respondent No. 2, as a Junior Scientific Assistant on 01st December 1989. Sixteen vacancies of Assistant Director (Technical) (hereinafter referred to as “the A.D.”), to be filled by direct recruitment, were notified by Respondent No.2 *vide* advertisement dated 23rd June 2001.

3. Recruitment to various posts in the office of Respondent No. 2, it may be stated, was governed by the Export Inspection Agency (Recruitment) Rules 1980 (hereinafter referred to as “the RRs”).

4. Rule 4 of the RRs, which covered “method of recruitment, scale of pay, age limit, qualifications etc.”, to various posts in the office of Respondent No.2, stipulated that the method of recruitment, to the posts, age limit, qualifications and other matters connected therewith would be as specified in Columns 3 to 9 of the schedule annexed to the said RRs. In so far as posts of A.D. (Technical) were concerned, the schedule to the RRs stipulated the age limit of 25-30 years and prescribed under the head “Educational and other qualifications required for direct recruits”, the following:

“Degree in Engineering/Technology or Post-Graduate in science or its equivalent.

About 5 years experience in inspection, standardization , testing etc. in the respective field.”

5. Column 8 of the schedule further stipulated that the recruitment, to the posts of A.D., would be “50% by promotion and 50% by direct recruitment failing which, by transfer on deputation”.

6. The procedure for direct recruitment was prescribed in Rule 6 of the RRs, which read as under:

“Procedure for direct recruitment:

(1) The posts to be filled in by direct recruitment shall be advertised on all India basis in selected newspapers having wide circulation in different parts of India.

(2) All appointments to the posts shall be made on the recommendations of the Staff Selection Committee, the composition of which shall be the same as for Departmental Promotion Committee under Rule 5 of

these rules”:

7. Rule 6 (2) of the RRs, therefore, stipulated that the composition of the Staff Selection Committee, to make recommendations for direct recruitment, would be the same as the Departmental Promotion Committee for making promotions. The constitution of the said Committee was prescribed in Clause (b) of the Rule 5(2) of the RRs, as under:

- “(i) Director (In the absence of Director a member of the Council) – Chairman
- (ii) Additional Director of the Council/Agency - Vice Chairman
- (iii) Joint Director of the Council/Agency or [Additional Joint Member

Director] of the Agency - Member

- (iv) Nominee from the Central Government Department or any Member other Authority, as may be decided by the Director – Member”

8. The petitioner, too, submitted his application for being selected as A.D. by direct recruitment, pursuant to the aforementioned advertisement, dated 23rd June 2001. The writ petition asserts that, though no response, to his application, was received by the petitioner, the respondents proceeded with the process of selection and direct recruitment, towards which end interviews were conducted, by the Selection Committee, on 25th November 2001 and 26th November 2001.

9. Aggrieved thereby, the petitioner moved this Court by way of W.P (C) 102/2002, which was dismissed by a learned Single Judge of this Court *vide* judgment dated 07th May 2002, on the ground that the upper age limit stipulated for direct recruitment as A.D., was 35 years whereas the petitioner was 36 years of age. The said judgment also noted that the petitioner was not entitled to age relaxation, as such relaxation was available only to government servants working in the posts in the same line or in allied cadres, subject to its being established that the service already rendered in a particular posts would be useful for efficient discharge of duties in the higher post.

10. LPA 463/2002, preferred thereagainst by the petitioner, was also dismissed by a Division Bench of this Court *vide* judgment dated 19th September 2003.

11. The resultant factual and legal position is, therefore, that the petitioner was not eligible for recruitment as A.D., pursuant to the advertisement dated 23rd June 2001.

12. Inasmuch as the petitioner, who appears in person, has advanced detailed submissions on merits, I proceed to deal with the said submissions, reserving my observation, on the issue of *locus standi*, of the petitioner, to maintain the writ petition, “for later”.

13. On a query being posed to the petitioner, who appears in person, regarding his *locus standi*, to prosecute the present challenge, given the fact that he himself was not eligible for being recruited as A.D., the response of the petitioner was that the prayer in his writ petition was for issuance of a writ of *quo warranto*, and that every Indian citizen was entitled to maintain such a writ petition, unshackled by considerations of *locus* and the like.

14. Consequent to the interview held pursuant to the aforementioned advertisement dated 23rd June 2001, Respondents No. 7 to 21 were recruited as A.D. The petitioner submits that the said recruitments were illegal and prays, therefore, that they be quashed and set aside.

15. The petitioner premises his challenge, to the selection and recruitment of Respondents 7 to 21 as A.D., on various grounds, which are dealt with, *ad seriatim*, herein below.

16. The constitution of the Selection Committee which considered the applications of Respondents 7 to 21 and recommended them for recruitment as A.D., was not in accordance with the RRs. The petitioner invites my attention, in this context, to the minutes of the meeting of the said Selection Committee, which took place on 23rd and 26th November 2001, pursuant to which Respondents 7 to 21 were recommended for appointment as A.D. The members of the Selection Committee, as stated in the first para of the said minutes, were the following:-

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|-----|--|------------------|
| “1. | Ms. Shashi Sareen, Director,
Export Inspection Council | Chairperson |
| 2. | Sh. K.J. Srivastava, Additional
Director, Export Inspection
Council | Vice
Chairman |
| 3. | Shri P.K. Sarkar, Director, Bureau
of Indian Standard | Member |
| 4. | Sh. A.K. Pal, (Co-opted as HRD
Specialist) | |
| 5. | Shri Anil Jauhri, Advisor, Export
Inspection Council (Co-opted as
Internal member for Assistant
Director (Technical)
Computers/Assistant Director
(Non-Tech.) Technical | |
| 6. | Sh. Sanjiv Aggarwal, Dy. General
Manager, IBM Ltd. (Co-opted as | |

- External Member for Computers)
7. Ms. Shanta Rao, Chief Finance Manager, SAIL (Co-opted as External Member for Asstt. Director (NT)/Finance)
8. Sh. U. Thanu, Joint Director Bureau of India Standard, (Co-opted as External Member for Technical Officer in Electric Engineering)”

Of these, the petitioner would contend that Mr. P.K. Sarkar and Mr. Pal were both incompetent to sit as the members of the Selection Committee.

17. In so far as Mr. A.K. Pal is concerned, the record of the Selection Committee was produced, before me in Court by Mr. Khatana appearing on behalf of the respondent, and a perusal thereof reveals that Mr. Pal did not, in fact, participate in the selection process. As such, the grievance of the petitioner, against Mr. Pal, is rendered academic, and does not survive for consideration. I do not, therefore, propose to deal with the submissions, of the petitioner, qua Mr A. K. Pal, on merits.

18. In so far as Mr. P.K. Sarkar is concerned, the petitioner drew my attention to a letter, dated 17th November 2001, whereby Mr. Sarkar was invited to attend and participate in the selection to be held from 21st to 23rd November and 26th November 2001 for recruitment to the posts of A.D., which read as under:-

“Shri. P.K. Sarkar,
Director (FAD)
Bureau of Indian Standards,
Manak Bhawan,
9, Bahadur Shah Zafar Marg,
New Delhi-110002
Member SSC.

Subject: Interview for the post of Assistant Directors (Tech. & Non Tech) and Technical Officers.

Sir,

As discussed in the minutes of meeting of Staff Selection Commission held on 07.11.2001, it has been decided to hold interviews for the post of Assistant Directors (Tech & Non Tech) and Technical Officers in the Food discipline from 21 – 23 November 2001 and 26 November, 2001 beginning 1000 h at the address given above.

Kindly make it convenient to attend.

Yours faithfully,

(M. Mohan)
Deputy Director”

19. The petitioner would urge that the authority, of the respondent, with respect to the “nominee from the Central Government or any other authority”, preferred to in Clause (b) of Rule 5 (2) of the RRs, would only be to choose the Department or authority from whom the nominee was to be requisitioned, and would not extend to choosing the “nominee” himself or herself. The petitioner would submit that the respondent had no authority to invite any particular officer to participate in the selection process. I find nothing, in Clause (b) of

Rule 5(2) of the RRs to support such an interpretation. The words used in the said sub-Rule are “nominee from the Central Government or any other authority, as may be decided by the Director”. The contention of the petitioner essentially is that the “decision” of the Director had to be confined to selecting the Department or other authority from whom the nominee was to be invited, and not to selecting the nominee. No such restriction, in my view, can be placed on the interpretation of the said clause. That apart, it is not the contention of the petitioner that the Bureau of Indian Standards (hereinafter referred to as “the BIS”) where Mr. Sarkar was working at the time, was not involved in the decision to co-opt him as a member of the Selection Committee, or that the decision to co-opt Mr. Sarkar as the nominee was taken without involving the BIS, or without its concurrence.

20. The petitioner, thereafter, draws my attention to an attendance register, for the month of November 2001, stated to be of the BIS, where Mr. Sarkar was working at the time. The contention of the petitioner is that a perusal of the said Register would reveal that, on the dates when Mr. Sarkar was shown as having participated in the Selection Committee constituted for recruitment to the post of A.D. in the office of Respondent No 2, he, in fact, was present in his office in the BIS. The petitioner has not sought to make out a case that it was physically impossible for Mr. Sarkar to reach his office in the BIS, and participate in the selection process, on the same day. Though I am unable to understand why the fact that Mr. Sarkar had attended his

office in the BIS – even if assumed to be true – would militate against the possibility of his having participated in the selection process, I have, nevertheless, gone through the page of the Attendance Register filed by the petitioner in support of this stand. It is seen that, in the said register, against the dates 20th, 21st, 22nd and 23rd i.e. during the period 21st November 2001 to 23rd November 2001, the expression “OD” has been marked against the name of Mr. Sarkar on each of the said dates. These, the petitioner would contend, indicated that Mr. Sarkar was “on duty” in the BIS on the said dates, thereby negating the possibility of his having participated as a member of the Selection Committee. He seeks to support this assumption of his by a response, dated 02nd August 2006, received by him from the Human Resources Development Department of Respondent No. 2. The said communication reads as under:

“The applicant has raised some queries regarding participation of Mr. P.K. Sarkar (Ex-Director, FAD) as member of Selection Committee in Export Inspection Council of India for the period 21-23rd Nov 2001 and on 26th Nov 2001. The point-wise reply on the same is given below.

a. Was any request made by the Director of Export Inspection Council of India (MOC) to Director General of BIS to send Mr. P.K. Sarkar as a member of Selection Committee for the above period? If yes, kindly provide the certified copy of the request.

Reply: The details are not available in the personal file of Shri P.K. Sarkar.

b. Did Mr. P.K. Sarkar took permission to join officially as a Member of Selection Committee? If yes, provide the certified

copy of request for the same and permission granted to attend the same with terms and conditions of sanction of permission.

Reply: The details are not available in the personal file of Shri P.K. Sarkar.

c. If no permission was granted, could Shri Sarkar participate in above selection process and represent the organization.

Reply: The details are not available in the personal file of Shri P.K. Sarkar.

d. Whether Shri Sarkar took leave for that period. If yes, kindly provide the certified copy of leave with reason quoted and sanction of leave.

Reply: As per the leave file of Shri P.K. Sarkar, no leave (other than Casual Leave) was taken by him during the period 21-23 Nov 2001 and on 26 Nov 2001.

e. Did Shri Sarkar get any remuneration for that? If yes, please give details.

Reply: The data is not available in the HRD deptt.

f. Kindly make arrangement to inspect the complete personal file of Shri P.K. Sarkar including the leave file and intimate me accordingly with information.

Reply: The personal file & the leave file of Shri P.K. sarkar, Ex-Director (FAD) are available in the HRD department and may be inspected by the applicant. The date and time of inspection which is mutually convenient may kindly be conveyed to the HRD deptt.”

21. The petitioner would contend that the answers to the queries in the aforementioned communication, dated 02nd August 2006, revealed that Mr. Sarkar was actually attending to his duties in the BIS during the period 21st to 23rd November 2001 and 26th November 2001. He

could not, therefore, be present in the Selection Committee on the said dates.

22. This submission, too, is totally presumptuous and hopelessly without merit. This Court cannot hazard any guess as to what the letters “OD”, as figuring in the purported Attendance Register in the BIS, means. In fact, against some of the names, the figure “3” is seen against the column where attendance was to be marked. The petitioner, on being queried in this regard, sought to submit that “3” stood for the vernacular “u” meaning “upasthit”, i.e. is present, and that attendance was generally marked in vernacular. This ingenious submission, apparently conjured up by the petitioner on the spur of the moment, would lead to a host of other questions. Why would the Attendance Register mark attendance, at times in vernacular and at others in English (“OD”)? What is the difference between the two? These questions, like many others, must, however, remain unasked and unanswered. Further, assuming that Mr. Sarkar had marked his attendance in his office in the BIS on the dates when he was shown, on record, as having participated in the Selection Committee in the office of Respondent No.2, this Court, found no incongruity therein. It is quite possible that Mr. Sarkar marked his attendance and proceeded to participate in the Selection Committee in the office of Respondent No. 2. As regards, the above extracted, communication received by the petitioner, from Respondent No.2, under the RTI Act, it is seen that the answers to the various questions passed by the petitioner, in the said communication, are largely non-speaking. Clearly, there is no

legally tenable material on the basis of which it can be concluded, with any degree of certainty, that Mr. Sarkar had, as the petitioner would emphatically urge, “practiced a fraud” on the selection process and had signed the minutes of the Selection Committee at a later point of time, without actually having participated therein.

23. In any case, the official record of the selection, including the recommendations of the Selection Committee, were shown to me by Mr. Khatana, and it is apparent, therefrom, that Mr. Sarkar participated in the proceedings of the Selection Committee and signed the minutes thereof.

24. As such, I find no merit whatsoever, in the grievance, of the petitioner against Mr. P.K. Sarkar, or against the selection process on the ground that Mr. Sarkar was fraudulently shown as having participated therein.

25. The next ground of challenge, as ventilated by the petitioner, is on the ground that Respondent No. 7 was not qualified to be appointed as A.D. The petitioner has in this regard, sought to submit that while the qualification prescribed in the RRs, for appointment as A.D. in the office of respondent No. 2, was a “Degree in Engineering/Technology or post-graduate in science or its equivalent”, Respondent No. 7 did not possess the said qualification as the degree awarded to her was that of “Bachelor of Applied Sciences (10+2+3 Scheme)”. His submission is that the said degree could not be treated as a degree in

Engineering/Technology, as it was not a “B.E or B. Tech” degree, and was not a post-graduate degree in Science either, as it was a degree of Bachelor of Applied Sciences. In response, to this submission of the petitioner, Mr. Khatana draws my attention to the noting, on the face of the degree awarded to Respondent No. 7, to the effect that the subject in which the said degree was awarded was “Food Technology”. He submits that while the said degree undoubtedly could not be recorded as a post-graduate degree in Science, it satisfied the requirement of a “degree in Engineering/Technology”, as it was a Bachelor’s Degree in Applied Sciences, in the specialized subject of “Food Technology”. The petitioner, in rejoinder, sought to submit that the words “degree in Engineering/Technology” had necessarily to be regarded as a B.E or B. Tech degree, and nothing else.

26. I am unable to agree with this submission of the petitioner. There is merit in the submission of Mr. Khatana that, as it was specifically entered, on the face of the degree awarded to Respondent No. 7, that the subject pursued by her was “Food Technology”, due weight has to be given to the said endorsement, which was obviously consciously entered. In my opinion, a degree of Bachelor’s Degree in Applied Sciences, in the subject of “Food Technology”, would sufficiently meet the description “degree in Engineering/Technology”, and it is not possible for this Court to rewrite the RRs by substituting the expression “degree in Engineering/Technology” with “B.E/B.Tech”.

27. In so far as the remaining private respondents (respondents 8 to 21) are concerned, the petitioner has not advanced any submissions regarding their qualifications or eligibility to be appointed as A.D. Qua the said respondents, the petitioner's grievance is that some of them were appointed as A.D. on 21st November 2001 itself, whereas the interview process for the said post, continued till 07th December 2001. He has invited my attention in this regard, to certain communications, figuring at page Nos. 101 to 106 of the paper book.

28. Unfortunately, this submission too, is as ephemeral as the other submissions of the petitioner. The communications at pages 101 to 106 of the paper book, on which the petitioner relies, are letters written to candidates who were absent for interview on 21st and 22nd November 2001, calling them to re-appear on 07th December 2001. It is not, therefore, as though the interview process continued from 21st November 2001 to 07th December 2001. As such, the fact that the appointment letters may have been issued to some of the selected candidates, on 21st November 2001 itself, cannot vitiate the said appointments. Be it noted, it is not the case of the petitioner that the appointments were effected before interviews were held.

29. There is no merit, whatsoever, therefore, in the submissions of the petitioner, which deserve, therefore, to be rejected.

30. Though I have dealt with the submissions of the petitioner on the merits of the case, the writ petition is also liable to be dismissed on

the ground of maintainability. The petitioner is a candidate who thought himself to be eligible for the aforementioned selection to the post of A.D. and applied for the said post, but was rejected as being overage. The challenge, ventilated by him before this Court against the said rejection, was successfully dismissed by a learned Single Judge and thereafter, by a learned Division Bench of this Court. He, therefore, has been held, by judicial fiat, to have been ineligible to participate in the said selection process. A candidate who is, himself or herself not eligible to be considered for appointment against a post cannot challenge the selection of those who are appointed thereto. The existence of a legal right, inhering in the person seeking the enforcement thereof, is the *sine qua non* for a petition, under Article 226 of the Constitution of India, to be maintainable. In ***State of Orissa v Ramchandra Dev***, AIR 1964 SC 685, a Constitution Bench of the Supreme Court expounded, on Article 226 of the Constitution of India, thus:

“Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a

right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Art. 226.”

31. The only exception to this principle, is in the case of a public interest litigation for issuance of a writ of *quo warranto*. On the scope of the high prerogative writ of *qua warranto*, the Supreme Court, speaking through P. Sathasivam, J. (as the learned Chief Justice then was), held, in *Hari Bansh Lal v Sahodar Prasads Mahto*, (2010) 9 SCC 655, thus:

“16. Writ of *quo warranto* lies only when appointment is contrary to a statutory provision. In *High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors.* [(2003) 4 SCC 712: 2003 SCC (L&S) 565] (three-Judges Bench) Hon'ble S.B. Sinha, J. concurring with the majority view held: (SCC pp. 730-3, paras 22-23)

“22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of *quo warranto*. The jurisdiction of the High Court to issue a writ of *quo warranto* is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See *R.K. Jain v. Union of India*, [(1993) 4SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464], SCC para 74.)

23. A writ of *quo warranto* can only be issued when the appointment is contrary to the statutory rules. (See *Mor Modern Coop. Transport Society Ltd. v. Financial ComMr. & Secy. to Govt. of Haryana* [(2002) 6 SCC 269].)”

17. In **Mor Modern Cooperative Transport Society Ltd. v. Financial Commissioner & Secretary to Govt. of Haryana and Anr.** MANU/SC/0574/2002 : (2002) 6 SCC 269, the following conclusion in para 11 is relevant.

“11. ... The High Court did not exercise its writ jurisdiction in the absence of any averment to the effect that the aforesaid officers had misused their authority and acted in a manner prejudicial to the interest of the appellants. In our view the High Court should have considered the challenge to the appointment of the officials concerned as members of the Regional Transport Authority on the ground of breach of statutory provisions. The mere fact that they had not acted in a manner prejudicial to the interest of the appellant could not lend validity to their appointment, if otherwise, the appointment was in breach of statutory provisions of a mandatory nature. It has, therefore, become necessary for us to consider the validity of the impugned notification said to have been issued in breach of statutory provision.”

18. In **B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees Assn. and Ors.** [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 584 (2)] this Court held: (SCC p. 754, para 49)

“49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of *quo warranto*. *The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.*

19. It is clear from the above decisions that even for issuance of *writ of quo warranto*, the High Court has to satisfy that the appointment is contrary to the statutory rules. In the later part of our judgment, we would discuss how the appellant herein was

considered and appointed as Chairman and whether he satisfied the relevant statutory provisions.

(Emphasis supplied)

A petition seeking issuance of a writ of *quo warranto* cannot, therefore, challenge the process of selection; it has to be limited to the questioning the legality of the selections, or appointments, made, on the ground that they contravene applicable statutory- whether plenary or subordinate- provisions. In view of my above findings, to the effect that respondent no. 7 was qualified and eligible to hold the post of A.D., and no submission regarding the qualifications or eligibility of any of the other respondents, has been urged by the petitioner, the present writ petition deserves to be dismissed even on this score.

32. Having applied my mind holistically to the facts, it appears, to me that, on the face of it, this writ petition lacks in *bona fides* and is an attempt, by a side-wind as it were, to unseat persons validly appointed as A.D. merely because the petitioner is begrudged at having been unable to compete for the said post, and having failed in his challenge thereto. Equity is inherent in Article 226, the jurisdictional parameters whereof are essentially corrective, not coercive. Not for nothing are these writs characterized as “highly prerogative”; the court retains the prerogative to hold back its hands, whatever be the merits of the matter, where the invocation of the writ is not tempered by equity and *bona fides*.

33. For the aforementioned reasons, the writ petition stands dismissed.

**C. HARI SHANKAR
(JUDGE)**

FEBRUARY 1st , 2018
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