

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 30th July, 2020

+

W.P.(C) 4738/2020

DEV J ROY

..... Petitioner

Through: Mr. Sanjiv Sen, Sr. Advocate along
with Petitioner-in-person

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Monika Arora, CGSC for
Respondents along with Ms. Ankita Shah, Adv.
and Mr. Abhishek Khanna, GP

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D.N. PATEL, CHIEF JUSTICE (Oral)**

Proceedings of the matter have been conducted through video conferencing.

C.M.Nos.17070-17071/2020 (exemptions)

Exemptions allowed, subject to all just exceptions.

The applications are disposed of.

W.P.(C) No.4738/2020 & C.M.No.17069/2020 (stay)

1. This writ petition, styled as a public interest litigation, has been filed for the following reliefs:-

“(a) Issue a Writ of Mandamus or any other appropriate Writ quashing the Order No. 33/07/2020-EO(SM-I) dated 20.07.2020 passed by the Respondent No. 1, with respect to serial no. 9 which is extracted in the synopsis above; and

W.P.(C) 4738/2020

Page 1 of 6

(b) Pass any other directions/ order/s, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case as well as in the interest of justice."

2. The petitioner is a practicing Advocate. He has challenged an Order dated 20.07.2020, by which respondent No.3 has been appointed as the Custodian of Enemy Property for India [hereinafter referred to as "the Custodian"] under the Enemy Property Act, 1968 [hereinafter referred to as "the Act"]. The relevant extract of the impugned notification is reproduced below:-

*"No.33/07/2020-EO(SM-I)
Government of India
Secretariat of the
Appointments Committee of the Cabinet
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training*

New Delhi, 20.07.2020

The Appointments Committee of the Cabinet has approved the following appointments of officers at Joint Secretary/Joint Secretary equivalent level with pay at Level 14 (₹.1,44,200-2,18,200/-) of the Pay Matrix:

xxxx xxxx xxxx

*(9) Appointment of **Shri Saurav Ray, IDES (1994), as Custodian of Enemy Property for India (CEPI) (JS level) O/o CEPI, New Delhi, Ministry of Home Affairs, for a tenure of five years or until further orders, whichever is earlier by upgrading the post from DS/Director level to JS level, initially for two years, from the date of assumption of the charge of the post;***

xxxx xxxx xxxx

-sd-

*(Srinivas R. Katikithala)
Secretary*

*Appointments Committee of the Cabinet
& Establishment Officer*

*To
All Secretaries to the Government of India.*

xxxx xxxx xxxx"

3. The only ground of challenge advanced by Mr. Sanjiv Sen, learned Senior Advocate for the petitioner, is that the appointment of respondent No.3 as the Custodian, by temporary upgradation of the post from the level of Deputy Secretary/Director to Joint Secretary, falls foul of Article 14 of the Constitution, as the orders of the Custodian are appealable before another officer, also of the level of Joint Secretary. It is further contended that while respondent no. 3 is an officer of the 1994 batch of the Indian Defense Estates Service, the officer who at present exercises appellate jurisdiction under the Act, is junior in service to respondent No.3, being from the 1995 batch of the Indian Forest Service.

4. In support of this contention, Mr. Sen has drawn our attention to Section 5A and 18 of the Act, and to the Transfer of Property (Vested as Enemy Property in the Custodian) Order, 2018 [hereinafter referred to as ‘the 2018 Order’] issued by the Government of India under Section 18 of the Act.

5. The aforesaid provisions are as follows:

Section 5A of the Act

“5A. Issue of certificate by Custodian.-The Custodian may, after making such inquiry as he deems necessary, by order, declare that the property of the enemy or the enemy subject or the enemy firm described in the order, vests in him under this Act and issue a certificate to this effect and such certificate shall be the evidence of the facts stated therein.”

Section 18 of the Act

“18. Transfer of the property vested as enemy property in certain case.- The Central Government may, on receipt of a representation from a person, aggrieved by an order vesting a property as enemy property in the Custodian within a period of

thirty days from the date of receipt of such order or from the date of its publication in the Official Gazette, whichever is earlier and after giving a reasonable opportunity of being heard, if it is of the opinion that any enemy property vested in the Custodian under this Act and remaining with him was not an enemy property, it may by general or special order, direct the Custodian that such property vested as enemy property in the Custodian may be transferred to the person from whom such property was acquired and vested in the Custodian.”

Rule 3 of the 2018 Order

“3. Procedure for transfer of property (which is not an enemy property) vested in the Custodian.- (1) *The concerned Joint Secretary shall, on receipt of a representation from a person aggrieved by an order vesting a property as enemy property in the Custodian referred to in sub-paragraph (1) of paragraph 2, initiate process for giving hearing to the person from whom such property was acquired after giving at least thirty days’ notice to all concerned including the Custodian, requiring them to submit a reply, produce all documentary evidence and appear in person or through an authorised representative.*

(2) If any party fails to appear on the date fixed for hearing, a second and final notice shall be served through registered post and if he again fails to appear after the second notice, then the proceedings shall be heard ex-parte and the reasons thereof shall be recorded.

On completion of the proceedings, the details including depositions shall be furnished to the parties.

The concerned Joint Secretary shall, after examining the evidence and calling for further reports and inquiry as may be necessary, pass such orders thereon as he thinks fit, and a copy of the said orders shall be sent to the parties, after approval of the Central Government.”

6. The petitioner characterises Section 18 of the Act as a provision for an appeal against an order of the Custodian under Section 5A. We note at the outset that this question is itself debatable. Section 18 does not expressly

provide for an “appeal”, but for a decision to transfer vested property back to the acquiree, in the circumstances provided therein. On the other hand, Section 18C of the Act does expressly provide for an appeal from a decision rendered under Section 18. The appeal under Section 18C is to the High Court, and available both on facts and on law. However, we are not called upon to decide this question in the present litigation as, even assuming Section 18 to constitute an appellate power, we are not inclined to entertain a public interest litigation on the ground raised.

7. The appointment of respondent No.3 as the Custodian is not challenged on any ground relatable to his qualification or eligibility for the post, but on the ground of a perceived anomaly which results therefrom. It is clear from the impugned Order dated 20.07.2020 that the post of Custodian has been upgraded to the level of Joint Secretary temporarily, initially for two years. Any administrative exigencies which necessitate such upgradation cannot, in our view, be characterised as arbitrary or unreasonable, merely because the orders of the Custodian are subject to orders which may be passed by the concerned Joint Secretary under Section 18 of the Act. We are unable to accept Mr. Sen’s contention that such a situation constitutes a breach of the principles of judicial discipline and judicial hierarchy, rendering it vulnerable to a challenge under Article 14 of the Constitution. The concepts of judicial discipline and hierarchy are concerned with the requirement that the appellate order be followed by all concerned and bind the parties to the litigation. Neither judicial hierarchy nor judicial discipline require that the incumbents of particular posts must always be senior or junior to each other in their parent cadres. So long as the discharge of the functions of each of the posts is carried out in accordance

with the statutory mandate, these principles do not come into play.

8. It is also significant that the petitioner has sought to rectify the alleged anomaly only by quashing the appointment of respondent No.3, and not by designating a more senior officer as the authority empowered under Section 18. While approaching this Court by way of a public interest litigation, the petitioner has not considered this possibility at all. While, as stated above, we do not find any constitutional or legal infirmity in the upgradation of the post of Custodian on the ground urged by the petitioner, it is always open to the government to vest the power under Section 18 of the Act in an officer senior to respondent No. 3, if necessary by amending Rule 3 of the 2018 Order.

9. In view of the aforesaid facts, reasons and the provisions of law, we are not inclined to entertain this writ petition as a public interest litigation, without prejudice to the rights and contentions that may be raised in this regard by an affected party.

10. The writ petition along with the pending application is therefore dismissed.

CHIEF JUSTICE

PRATEEK JALAN, J

JULY 30, 2020

pk

W.P.(C) 4738/2020

Page 6 of 6