
(2011) 12 JH CK 0108

Jharkhand High Court

Case No: Writ Petition (S) No. 393 of 2011

Rajesh Kumar

APPELLANT

Vs

The State of Jharkhand
and Others

RESPONDENT

Date of Decision: Dec. 2, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 224, 32

Citation: (2011) 12 JH CK 0108

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Prashant Kumar, J.

In the present writ application petitioner has prayed for issuance of an appropriate writ, direction or order, preferably in the nature of Quo Warranto, for quashing appointment of respondent no.3 on the post of Managing Director, Jharkhand State Mineral Development Corporation(hereinafter referred as JSMD C).

2. It is stated that J.S.M.D.C is a premiere organization of the State of Jharkhand engaged in mining of various minerals such as coal, iron etc. It is further stated that State of Jharkhand considering the importance of J.S.M.D.C had decided to appoint an expert professional on the post of Managing Director from amongst the persons, who have expertised in the field of mine, planning and operation. In view of aforesaid decision, an advertisement issued inviting applications for appointment on the post of Managing Director, J.S.M.D.C on deputation or contractual basis. The said advertisement(Annexure-1) issued in the daily newspaper under the signature of Under Secretary, Department of Mines and Geology of the State of Jharkhand. In the advertisement, following essential qualifications prescribed for the post :

First Class Bachelor Degree in Engineering/Sciences with an MBA from an institution of repute.

Higher managerial experience of at-least 15 years in the field of mines/minerals development in a responsible position.

3. It appears that in pursuance of aforesaid advertisement different persons applied and they were interviewed by a Selection Committee on 26.10.2009. Thereafter, name of respondent no.3 and one Abhijeet Ghosh was recommended for appointment on the post of Managing Director, J.S.M.D.C. It further appears from Annexure-2 that the respondent no.2 proposed the name of respondent no.3 for appointment on the said post and sought approval of Hon"ble Chief Minister on aforesaid proposal through Chief Secretary. Annexure-2 further reveals that Hon"ble the Chief Minister found that respondent no.3 does not possess degree of MBA, thus, he made query as to whether aforesaid proposal of respondent no.2 is in accordance with law ? Annexure-2 further reveals that aforesaid query was never replied.

4. It then appears from the counter affidavit of respondents that during the President Rule, the State Government has decided to fill up the vacant post of Managing Director of J.S.M.D.C. from amongst the officers, of Central Public Sector Undertakings (herein after referred as C.P.S.U.) working in the rank of G.M./C.G.M. or above, on deputation basis for a period of three years. Thereafter, respondent no.2 sent letters to Chairmans -cum-Managing Director of Coal India Limited/ Central Coalfields Ltd/ Neyelli Lignite Corporation Ltd/National Mineral Development Corporation Limited requesting them to send names of officers who are working in the rank of GM/CGM or above. The aforesaid letters annexed with the counter affidavit as Annexures- E series. In the said letters, object for taking such decision by the State Government is mentioned, which is quoted herein below for ready reference :

I may mention that Jharkhand State Mineral Development Corporation (J.S.M.D.C.) is a premier government undertaking working in the field of the development of mines and minerals within the State of Jharkhand. Further, it operates Sikni Coal Mines and has been allotted several coal blocks namely Rabodh, Patratu, Jageshwar and Khas Jageshwar and several other mines. Besides it has interest in iron ore mines for which Joint Venture with National Mineral Development Corporation (N.M.D.C.) is being proposed.

We are in the look out of professionally sound, knowledgeable, honest and dynamic person who could take the corporation on upward trend of growth and achievement.

5. In the said letters, the respondent no.2 categorically stated that only those officers of the rank of C.G.M. or above will be considered preferably, but the officers of the rank of G.M. would also be considered if they possess aforesaid quality and qualification.

6. It further appears that in pursuance of aforesaid letters names of altogether six persons recommended, two by National Mineral Development Corporation (hereinafter referred as N.M.D.C.) and four by C.C.L. It is not out of place to mention here that recommendation letter of respondent no.3 annexed as Annexure- R-3/G. in the counter affidavit filed by respondent no.3. From perusal of the said annexure, it appears that at the time of recommendation, respondent no.3 was holding a post in the rank of Dy. G.M. (Mines) in N.M.D.C. It appears that on receipt of aforesaid recommendation, a Selection Committee constituted by Annexure-F, under the Chairmanship of the Principal Secretary of Personnel and Administrative Reforms Department. It then appears that thereafter the State Government changed the criteria of appointment. As per changed criteria candidates having higher managerial experience of at least 10 years or above in the field of Mine, Planning, Development and Operation are eligible to be considered. It further explained that Higher Managerial experience would mean position of Superintending Engineer/DGM or equivalent.

7. It further appears that Selection Committee took interview of candidates on 31.7.2007 on the basis of changed criteria and recommended names of three candidates, showing the name of respondent no.3 at S.No.1. Thereafter, department took approval of His Excellency the Governor of Jharkhand and then appointed respondent no.3 on the post of Managing Director, J.S.M.D.C. on deputation for a period of three years by Annexure-H.

8. Shri Rajendra Krishna, learned counsel for the petitioner, challenged aforesaid appointment of respondent no.3 on the ground that recommendation made by Chairman-cum-Managing Director, N.M.D.C. is not in consonance with letter issued by respondent no.2 because on the date of recommendation, respondent no.3 was not an officer in the rank of G.M./C.G.M. or above. It is further submitted that it is not open for the State Government to change criteria for appointment after commencement of selection process. He submits that from perusal of counter affidavit filed on behalf of respondents, it is clear that the criteria for selection has been changed after receiving nomination of different candidates. He submits that aforesaid criteria changed with a view to favour respondent no.3, which is a colourable exercise of power, therefore, violative of Article 14 and 16 of the Constitution of India. It is submitted that if after receiving the names of different nominees, qualification, as prescribed in Annexure E, had been changed then it is imperative for the State Government to send another request letter inviting the names of other officers, who are in the rank of D.G.M., so that a suitable candidate could be selected on the post of Managing Director. He submits that the object to fill up the post from amongst the officers of C.P.S.U. who are in the rank of GM/CGM or above is for the betterment of J.S.M.D.C. It is submitted that respondents ignored the interest of J.S.M.D.C. and changed the criteria of appointment with a view to accommodate respondent no.3. It is submitted that since appointment of respondent no.3 is violative of Articles 14 and 16 of the Constitution of India, therefore, this court can issue suitable writ for quashing aforesaid appointment.

9. Shri Anil Kumar Sinha, learned Advocate General appearing for the State of Jharkhand has submitted that petitioner has prayed for a writ of "Quo Warranto". He further submitted that writ of "Quo Warranto" can be issued only if the appointment is contrary to statutory Rules. It is submitted that petitioner has not brought anything on record to show that any statutory Rule has been violated while appointing respondent no.3 on the post of Managing Director, J.S.M.D.C. He submitted that even if some procedural irregularities committed in the Selection process then also it is not open for this Court to issue a writ of "Quo-Warranto". He submitted that those irregularities may be relevant for issuance of a writ of "certiorari" but no writ of "Quo Warranto" can be issued on that basis. He submitted that since petitioner is not an aggrieved person, therefore, writ of "certiorari" can not be issued on his behest. Accordingly, he submits that present writ application is fit to be dismissed.

10. Shri Anoop Kumar Mehta, learned counsel for respondent no.3 has adopted the argument of learned Advocate General so far as maintainability of writ application is concerned. He submitted that as per changed criteria, respondent no.3 is qualified for being appointed on the post of Managing Director, J.S.M.D.C. Therefore, he submitted that there is no illegality in the appointment of respondent no.3 on the said post. Hence, this writ application is liable to be dismissed.

11. It is submitted by Sri Rajendra Krishna, learned counsel appearing for the petitioner that in the case of [Centre for PIL and Another Vs. Union of India \(UOI\) and Another](#), Hon"ble Supreme Court expanded the jurisdiction of Court for issuance of writ of "Quo Warranto". He submitted that in the aforesaid case Hon"ble Supreme Court has held that it is open for the courts to do judicial review of the decision of Government for the purpose of issuance of writ of "quo warranto" if legality of its decision impugned on the ground that procedure adopted was not fair, just and reasonable. It is submitted that in the instant case besides seeking writ of "Quo- Warranto", petitioner also prayed for issuance of other appropriate writ or orders for quashing appointment of respondent no.3. He submitted that while reviewing the decision of Government, if this Court satisfied that the manner of appointment of respondent no.3 is not fair, just and reasonable then it can issue a writ of declaration. He submitted that as state above, the State Government had changed the criteria of appointment with a view to accommodate respondent no.3 and thereby ignored the interest of J.S.M.D.C. thus, process of appointment of respondent no.3 is not fair, just and reasonable. Accordingly, he submits that in the instant case, a writ of declaration can be issued as held by the Hon"ble Supreme Court in Centre for PIL and another case (Supra).

12. At the outset, I think it appropriate to consider various submissions raised by counsels for the parties on the point of maintainability of the writ application. It is true that in the case of "High Court of Gujarat and another.Vs.Gujarat Kishan Mazdoor Panchayat and others" reported in (2003) 4 SCC 712 and in the case of [B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees" Association and Others](#), Hon"ble Supreme Court has held that writ of Quo Warranto does not lie if the alleged

violation is not of a statutory nature. But the Hon"ble Supreme Court has expanded the scope of writ of Quo Warranto in Centre for PIL and another case (Supra). For better appreciation paragraph 64 of the said judgment is quoted herein below :

Even in R.K.Jain case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/ legality of its decisions when impugned under the judicial review jurisdiction. We do not wish to multiply the authorities on this point.

13. In the aforesaid case at paragraph no.53 Hon"ble Supreme Court held that besides seeking writ of "Quo-Warranto" if the petitioner prayed for issuance of any other writ, direction or order from the Supreme Court then nothing prevent the Supreme Court, if so satisfied from issuing a writ of declaration.

14. In N.Kannadasan Vs. Ajoy Khose case reported in (2009)7 SCC 1 the Hon"ble Supreme Court at paragraph no.129 has held that "a writ of quo warranto can be issued when the holder of a public office has been appointed in violation of Constitutional or Statutory provision."

In the same judgment at paragraph no.149 Hon"ble Supreme Court observed that :

In this case, moreover, a writ of declaration was sought for. This Court in Kumar Padma Prasad issued a writ of declaration although a writ of quo warranto was sought for. Declaring that the appellant there in was not qualified to be appointed as a judge of the High Court, a consequential order directing him not to appoint was also issued.

In the aforesaid judgment at paragraph no.163 the Hon"ble Supreme Court held that :

163 The Summary of our discussion is as under :

(i) Judicial review although has a limited application but is not beyond the pale of Superior Judiciary in case of this nature"

(ii) The superior courts may not only issue a writ of quo warranto but also a writ in the nature of quo warranto. It is also entitled to issue a writ of declaration which would achieve the same purpose....

15. In the instant case, petitioner alleged that selection process adopted by the State Government for appointment is not fair, just and reasonable, thus violative of Article 14 & 16 of the Constitution of India. Therefore, it is open for this Court to make judicial review of aforesaid decision of the State Government. Thus, on review if this Court come to the conclusion that the said appointment is not fair, then it is open for it to issue a writ of

declaration, because petitioner besides seeking a writ of "Quo Warranto" has also prayed for issuance of any other appropriate writ, direction or order.

16. It is well settled that power of this Court under Article 226 of the Constitution is similar to the power of Hon"ble Supreme Court as contained under Article 32 of the Constitution of India. Since, Hon"ble Supreme Court, while entertaining a PIL, has issued a declaratory writ under Article 32 of the Constitution in the case of Centre for PIL (Supra) because process of appointment of Mr. P.J.Thomas on the post of Vigilance Commissioner was not fair, therefore, in my view, this writ application is also maintainable and it is open for this Court to make judicial review of the decision of appointment of respondent no.3 and if satisfied can issue a writ of declaration.

17. Now, I am proceeding to consider next question whether selection process adopted by the State Government for appointing respondent no.3 on the post of Managing Director of J.S.M.D.C. is fair, just and reasonable ?

18. As noticed above, in the instant case respondent no.3 was considered by Selection Committee on the basis of advertisement as contained in Annexure-1, though, respondent no.3 does not possess qualification of MBA. It appears that a query was made by the then Hon"ble Chief Minister "whether the proposal of appointment of respondent no.3 is in accordance with law". Said query never answered by the department.

19. Counter affidavit filed by respondent nos. 1 and 2 reveals that President Rule promulgated in the State of Jharkhand and, thereafter, appointment process in pursuance of advertisement had not continued, though there is nothing to show that said appointment process was cancelled by a competent authority. It appears that State of Jharkhand, with the advise of Advisor to his Excellency the Governor of Jharkhand, had decided to fill up the post of Managing Director of J.S.M.D.C. by seeking services of Officers from C.P.S.U working in the rank of G.M./C.G.M. or above on deputation basis, because in view of Government such officer may take the Corporation upward on trend of growth and achievement. Accordingly, respondent no.2 send request letters to Chairmans-cum-Managing Director of Coal India Ltd. / Central Coalfields Ltd./ Neyelli Lignite Corporation Ltd./N.M.D.C. for sending names of officers, who were working in the rank of G.M./C.G.M. or above. From perusal of Annexure-R-3/G, it appears that name of respondent no.3 was recommended by Chairman-cum-Managing Director of N.M.D.C. though he was holding a post of Dy.G.M. (Mines) in the N.M.D.C. Thus, he was not qualified for consideration as per the criteria fixed in aforesaid letter. It is worth mentioning that said recommendation was made on 12.07.2010. It is stated in the counter affidavit filed by respondent no.3 that the criteria/qualification for selection of candidate was changed on 30.7.2010 by the State Government. Thus, it is clear that the criteria/qualification of candidate changed after receipt of recommendation of respondent no.3. It is also not out of place to mention that while changing the criteria words "higher managerial experience" has been explained to mean position of Superintending Engineer/D.G.M. or equivalent. This manifestly shows that said criteria changed, so that

same would suit with the qualification of respondent no.3. It is worth mentioning that after change of criteria respondent no.2 did not write request letter to the Chairmans of different C.P.S.U. for sending the names of officers, who are posted in the rank of Superintending Engineer/D.G.M. or equivalent. This clearly shows that department had not given opportunity to other equally qualified officers to compete with respondent no.3, thus process adopted by the authorities of the State Government is violative of Article 14 and 16 of the Constitution of India.

20. As stated above, the State Government took decision to appoint a professionally sound, knowledgeable, honest and dynamic person with a view that he could take the corporation on upward trend of growth and achievement. Thus, said decision was taken by the State Government for the betterment of J.S.M.D.C. But in the instant case, criteria of appointment has been changed in the interest of respondent no.3. Which, in my view, is not fair, just and reasonable. If the object of appointment is betterment of J.S.M.D.C. then the State Govt./Department of Mines and/or Selection Committee ought to have taken into consideration what is good for the J.S.M.D.C. and not what is good for respondent no.3. In the instant case, respondents had made a departure from aforesaid principle with a view to accommodate respondent no.3, which is not permissible in law.

21. The Hon"ble Supreme Court in the case of [Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and Others](#), held that "Rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authority concern in the middle or after process of selection is commenced." The same view was reiterated by the Hon"ble Supreme Court in the case of [K. Manjusree Vs. State of A.P. and Another](#),

22. As noticed above, in the instant case, the process of appointment started when letters sent to the Chairman-cum-Managing Director of different C.P.S.U.s. In the said letters, it is specifically mentioned that appointment on the post of Managing Director, J.S.M.D.C. will be made from amongst the officers who were in the rank of G.M./C.G.M. or above. But after receiving the nomination from the Chairman of different C.P.S.U.s. the criteria has been changed in the middle of selection process, just before the meeting of the Selection Committee. This shows that the said criteria has been changed with a view to accommodate respondent no.3 because he was not an officer working on the rank of G.M./C.G.M. or above. Thus, I find that the aforesaid change in the criteria of selection is against the law laid down by their Lordships of Hon"ble Supreme Court in the aforesaid two decisions.

23. In view of the discussions made above, on review of entire selection process, I find that the procedure adopted by the State Government for appointment of respondent no.3 was not fair, just and reasonable. The said process is not only against the judgments of Hon"ble Supreme Court, rather the same are violative of Articles 14 and 16 of the Constitution of India. Thus, I am satisfied that this is a fit case in which writ of declaration can be issued.

24. Accordingly, I declare that appointment of respondent no.3 on the post of Managing Director, J.S.M.D.C. is violative of Articles 14 and 16 of the Constitution of India and is also against the law laid down by their Lordships of Hon"ble Supreme Court.

25. I, therefore, allow this writ application. Consequently, appointment of respondent no.3 (Arun Kumar Shukla) on the post of Managing Director J.S.M.D.C. is quashed. However, parties shall bear their own costs.