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Calcutta High Court

Case No: Writ Petition No. 2340 (W) of 2003

Calcutta Dock Labour Board Workers		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: April 9, 2003

Acts Referred:

- Constitution of India, 1950 - Article 74
- Dock Workers (Regulation of Employment) Rules, 1962 - Rule 3
- Dock Workers (Regulation of Employment) Scheme Rules, 1970 - Rule 10

Citation: (2003) 1 ILR (Cal) 557

Hon'ble Judges: Kalyan Jyoti Sengupta, J

Bench: Single Bench

Advocate: Rabindra Nath Bag, for the Appellant;Alok Banerjee and Subimal Mukherjee for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Allowed

Judgement

Kalyan Jyoti Sengupta, J.
By this writ petition the Petitioners have prayed for a writ of quo-warranto asking the espondents to dislodge the private Respondent, namely, Sri Pankaj Roy alias P. Roy, the Respondent No. 6, from the office of the Deputy Chairman of Calcutta Port Trust.

2. The fact of the case, in short, is that on refusal of grant of extension of the service of the previous Deputy Chairman the Respondent No. 6 has been appointed as a Deputy Chairman not on regular basis but by way of temporary measure by the Chairman himself. He has been appointed undisputedly on May 29, 2002. Since then undisputedly again, he has been continuing in this office. According to the writ Petitioners, he cannot continue for a period of more than one month.

3. So on expiry of June 29, 2002 continuation of Respondent No. 6 in the office of the Deputy Chairman amounts to usurpation of the public office without any authority of law as he has not been appointed by the Central Government by way of regular process in exercise of the provisions of Rule 3 of sub-r. (iii) of the Dock Workers (Regulation of Employment) Rules, 1962, hereinafter referred to as "the said Rule" which has been framed under the provisions in Sub-sections (i) and (2) of Section 8 of the Dock Workers (Regulation of Employment) Act, 1948 by the Central Government.

4. The writ Petitioners have not challenged the power of the Chairman to appoint on ad hoc basis but their objection is the continuation of the office of the Respondent No. 6. Aforesaid facts are more or less admitted excepting it is stated in the affidavit-of-opposition that the appointment has not been made by the Chairman rather under the directives of the Director of Ministry concerned and also the Secretary and such appointment cannot be termed to be an irregular one

5. Moreover, a point has been taken as to maintainability of the writ petition on two grounds (i) delay in making this application, and (ii) the locus standi of the Petitioners in relation to the subject matter of the writ petition in which the Petitioners themselves are not affected by this order of appointment in favour of the Respondent No. 6.

6. Learned lawyer Mr. Bag appearing for the Petitioners contends that as far as delay is concerned there is none by reason of the fact that the Respondent No. 6 is wrongfully continuing with the office so each and every day gives rise fresh and new cause of action. Delay will arise in a case when the cause of action has its terminus and further there is no continuation. Particularly in case of a writ of quo-warranto there cannot be any question of delay as the wrong is perpetrated in continuity. So each and every moment gives rise to a separate cause of action.

7. As far as locus standi is concerned he submits that usurpation of public office is such a wrong which affects the public at large and not any individual particularly. Even the person who is a lawful claimant is also one of the affected person. A public wrong cannot be allowed to be perpetrated and such a wrong can be remidied at the instance of the member of the public who is a citizen of a democratic policy where the rule of law is the foundation for governing the country: In support of his submission he has relied on the decisions of the Supreme Court in the case of The University of Mysore and Another Vs. C.D. Govinda Rao and Another, , Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , Satish Chandra Sharma v. University of Rajasthan AIR 1990 Raj. 184, G.D. Karkare v. T.L. Shevde AIR 1952 Nag. 330 , Mocherla Venkataraya Sarma Vs. Y. Sivarama Prasad and Others, Therefore, he contends that the appropriate writ of quo-warranto should be issued directing the Respondent No. 6 to discontinue and at the same time the writ of mandamus should be issued asking the Respondent-Government to appoint in accordance with law on regular basis as provided under the Rules.

8. Mr. Banerjee, the Learned Counsel appearing for the Respondents submits that it is undisputed that the initial appointment of the Respondent No. 6 by the Chairman is lawful. The writ of quo-warranto shall be issued in a case where the initial appointment is bad. Moreover, he contends that in essence the appointment was not made by the Chairman but by the Government. He has taken me through the various documents, namely, the letter of the Director of the Ministry concerned as well as subsequent letters concerned, when the period of the erstwhile Deputy Chairman was not extended and so as a stopgap measure under the direction of the Ministry concerned the Chairman had to appoint this person. Rule 10(r) of the Dock Workers (Regulation of Employment) Scheme, 1970 envisages appointment in case of unexpected vacancy in the post of Deputy Chairman for a period of less than one month and report such matter to the Central Government for approval. So it will appear from the facts and circumstances of the case the Chairman did not exercise such power under the aforesaid Scheme. Rather he has implemented the direction and order of the Ministry concerned.

9. He contends, moreover, that it is an absolutely malafide action and the Petitioners being the concerned employees Union do not have any stake in the office of the Deputy Chairman and as such the present writ petition is wholly incompetent apart from the same having been made after a quite long time.

10. Having heard the respective contentions of the Learned Counsels the first point has to be considered as to whether the Petitioners approached this Court late or not. In order to decide this question the Court is to go by the averments and the statements made in the writ petition and the prayer portion as well. I find substance in the submissions of Mr. Bag that to maintain the writ of quo-warranto the question of delay does not arise as each and every moment gives rise fresh cause of action as the wrong is perpetrated by the usurpation of the public office each and every moment. There cannot be any terminus-quo as to the accrual of cause of action. It accrues each and every day and each and every moment, so long the wrong is not set to right.

11. In my view, usurpation in the public office by an incompetent and inappropriate person is one of the branch of the tort and it is legal wrong. When the statute does not enjoin anybody to hold any office and even then he holds such office, rather he is permitted to hold office then such wrong as against the law, in my view, is an actionable wrong and such actionable wrong can be remedied on appropriate proceeding, may be in the private law-field or public law-field in the Court.

12. In the public law-field this action can be brought where the wrong is committed ignoring and/or infringing the constitutional provision by the state or statutory body, in that case, it is called constitutional tort and when the wrong is committed in relation to legal provision it is called legal wrong, and in that case in the public law-field by an appropriate proceeding such wrong can be remedied. But in other cases, namely, civil wrong of a private character, namely, the breach of obligation arising out of a contract or failure to discharge any obligation emanating from any law by private individual, in that case the

civil suit or any other appropriate mode of action in the private law-field can lie.

13. It appears that the appointment has been made in this case in accordance with the provision of law however his continuation in the office shall be examined in the context of the legal provision. The allegation in the writ petition is that holding of the office of Deputy Chairman by the Respondent No. 6 after expiry of one month is unauthorised in view of incompetency of the Chairman to appoint him or to allow him to continue in the office. So this wrong is alleged to have been committed in relation to the legal provision. Such wrong can be remedied in the public law-field by the instant petition. So, I hold that the present Petitioner not having any direct affectation of interest can maintain the writ petition.

14. Now I shall discuss the question of issuance of writ quo-warranto at the instance of any member of the public. The decisions cited by Mr. Bag as quoted above, in my view, are authoritative on this issue. In those decisions it has been observed that the usurper of the public office can be dislodged at the behest of the member of the public. So, one need not have any direct or special interest in the subject matter. I think it is the obligation of the member of the public in a democratic policy where the rule of law governs the country, to see that all actions taken by the Government are in accordance with law in relation to the public office. No doubt the Board of Trustees for the Port of Calcutta may be statutory body, but it discharges public duty and for the public interest.

15. Therefore, if any inappropriate or unauthorized person is appointed in the public office and his functioning in the office is no functioning under the law, so public at large will be affected by the decision of the inappropriate person. Therefore, I hold with the absolute agreement with the ratio laid down by the aforesaid decisions that the writ Petitioners can maintain the present writ for issuance a writ of quo-warranto.

16. Now it has to be examined whether the Respondent No. 6 has been in the office illegally or not. For this I am to examine the mode of appointment in this case. Mr. Banerjee does not dispute that if it is held that the appointment has been made by the Chairman in exercise of his power under the provisions of Section 10(1)(r) of the Scheme as above, then certainly the continuation in the office by the Respondent No. 6 would be authoritative by the provision as regards appointment. He contends that all the documents regarding appointment have to be examined in the context of the facts and circumstances of the case. He has drawn my attention to a letter being annexure-R/1 being a letter dated December 5, 2001 written by the Director, Ministry of Shipping, whereby the tenure of one Sri Utpal Sinha being the previous incumbent was not extended and he was asked to give current charge of duties for the post of Deputy Chairman to any of the appropriate officials. He submits that pursuant to that aforesaid direction this present arrangement has been made by the Chairman until further order. According to him, this appointment in a real sense has been done by the Government in exercise of power under Sub-rule (3) of Rule 3 as quoted above.

17. Mr. Bag, on the other hands, contends that the Director is not the Secretary representing the Government and under the provisions of Article 74 of the Constitution, all action has to be taken by the concerned Secretary on behalf of the President of India. So, the direction as above cannot be constured to be an exercise of power of giving appointment of regular incumbent. I think the contention of Mr. Bag seems to be logically sound. Firstly because I find that ultimate appointment has been made by the Chairman may be on advice or direction of the Director but then no appointment has been made in express terms by the Director, even assuming that he has the power to do so. The Chairman concerned cannot appoint anybody else on temporary basis excepting otherwise than the provision of Section 10(1)(r) of the Scheme. No Government functionary can ask another Government functionary to pass any order without any expressed provision of law.

18. In my view, the stipulation of the Director to make an adhoc arrangement to fill in the post of Deputy Chairman simply was not necessary at all. When the extension was not granted the Chairman should have and could have in ordinary course taken an action in this matter. Indeed, in my view, factually and legally he has done so. So, I hold that this appointment has been made by the Chairman in exercise of the power as aforesaid though not quoted in the impugned order. The Chairman has authority to appoint for a temporary period of less than one month and then he has to ask for approval of the same. I find he sought for approval by a subsequent communication but the time mentioned in the said communication was more than one month. This period of more than one month, in my view, is unauthorised. It is for the Government to make permanent arrangement as I find from the record that this post is a substantive one and appointment of regular incumbent is necessary. Therefore, I upheld the contention of the writ Petitioners that the continuation of the Respondent No. 6 for a period of more than one month is wholly unauthorised. I do not find any regular appointment by the Government in exercising the power of Sub-section (3) of Rule 3 as quoted above.

19. Therefore, the writ petition succeeds. There will be a writ of quo-warranto as prayed for.

20. However, I grant stay of operation of this order for a period of six weeks from date.

21. It would be open for the Government and the Respondents to take steps in accordance with law for taking measure on regular post.

There will be no order as to costs.