

Durga Chand Vs. Administrator and ors.

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Court : Delhi

Decided On : Aug-14-1970

Reported in : AIR1971Delhi73

Judge : Hardayal Hardy and T.V.R. Tatchari, JJ.

Acts : [Constitution of India](#) - Article 226; Himachal Pradesh Board of School Education Act, 1968 - Sections 18(1)

Appeal No. : Civil Writ Petn. No. 72 of 1970

Appellant : Durga Chand and anr.

Respondent : Administrator and ors.

Advocate for Def. : Inder Singh and ; Chhabil Das, Advs.

Advocate for Pet/Ap. : M.G. Chitkara and; K.D. Sud, Advs

Judgement :

Hardayal Hardy, J.

1. The petitioners Kanwar Durga Chand and Shri Daulat Ram Chauhan, are elected members of the Legislative Assembly for the Union Territory of Himachal Pradesh. They have filed the present petition under Article 226 of the Constitution in which their prayers are as follows:-

'(a) to quash notification No. 1222/70 Sectt. Edu. 1, dated 19th February 1970, whereby the respondent No. 2 was nominated as Chairman of the Board of School Education for Himachal Pradesh.

(b) to issue a writ in the nature of quo warranto to oust respondent No. 3 from the office of Chairman of the Board, which is held by him without any legal authority as usurper;

(c) to issue a writ in the nature of mandamus directing the respondent No.1 to nominate an eminent educationist having special experience in school education as Chairman of the Board; and to elect a third person as member of the Board from amongst the members of Legislative Assembly of Himachal Pradesh;

(d) to direct respondent No. 3 not to function as Chairman of the Board'.

2. The respondents imp leaded in the petition are : The Administrator Himachal

Pradesh (respondent No. 1) Union of India (respondent No. 2) Rana Kultar Chand (respondent No. 3) and 16 others.

3. The facts as to which there is no dispute are briefly as follows:-

The Himachal Pradesh Board of School Education Act (No. 14 of 1968), hereinafter referred to as 'the Act' which was passed by the Legislative Assembly of the Union Territory of Himachal Pradesh came into force on 5-8-1968. Section 3 of the Act provides for the establishment of a Board of School Education for Himachal Pradesh while Section 4 provides for the composition of the Board. Apparently the Board is a fairly large body and has to perform several important functions and exercises enormous powers in relation to School Education in Himachal Pradesh as set forth in Section 10 of the Act.

4. According to Section 4 among others members the Board is to consist of three persons elected by the Himachal Pradesh Legislative Assembly from amongst its members. It has also to have a Chairman who is to be nominated in accordingly with Section 18 of the Act.

5. By a notification issued by the Government of Himachal Pradesh dated 3-11-1969 the Administrator (lieutenant Governor) Himachal Pradesh directed that Shri Tapindra Singh, M. L. A. Shri. Kultar Chand Rana, M. L. A., and Shri Lekh Ram Thakur M. L. A shall be the elected members of the Board, besides several other persons who were designated as nominated and co opted members thereof on 19-2-1970 the Government issued another notification whereby Shri Kultar Chand Rana, M. L. A. was nominated as Honorary Chairman of the Board with immediate effect.

6. The petitioner contend that Shri Kultar Rana (respondent No. 3) does not possess the qualification required by Section 18 (1) of the Act and as such he could not have been nominated as Chairman of the Board. They also contend that respondent No. 3 has been nominated by the Government as Chairman of the Board with a view to bring the whole educational set up in Himachal Pradesh under the direct control of the political party the power to which he belongs. His nomination it is alleged, has thus been made with the collateral object of advancing the interests of the ruling party, is an abuse of power and is mala fide.

7. The petitioners further contend that under Section 4 of the Act, in addition to the nominated ex officio and co-opted members, the Board has to consist of at least three elected members of the Legislative Assembly, besides the Chairman. But with the appointment of respondent No. 3 who is a member of the Legislative Assembly as Chairman of the Board, the representation of the Legislative Assembly on the Board has been reduced from three elected members to two. As such the Board is not properly constituted.

8. When this petition first came up for admission before us on 26-6-1970, we felt disinclined to issue a rule nisi straightway and instead notice to the Administrator (Lieutenant-Governor) Himachal (respondent No. 1) and Kultar Chand Rana, (respondent No. 3) to show cause why the petition should not be admitted. On 20-7-1970 the respondents' replies to the show case notice were received and the case was posted for arguments on 24-7-1970. Although no notice had been issued by us to the Union of India (respondent No. 2) appearance was entered by Mr. Inder Singh not only on behalf of respondent No. 1 but also on behalf of respondent No. 2 and a reply

supported by an affidavit of Shri. R.V. Gupta, Education Secretary to the Government of Himachal Pradesh, Simla, was also filed on behalf of both the respondents. Respondent No. 3 filed a separate reply supported by his own affidavit and also by an affidavit sworn by one Shri. Amar Nath Sharma who claimed to be a member of the Executive Committee of the Sanatan Dharma Sabha since 1924 and Senior Vice-President of the Sanatan Dharm Pratinidhi Sabha since 1924 and Senior Vice-President of the Sanathan Dharam Pratinidhi Sabha, Punjab for the last two years. He also claimed to be the Secretary of the Sanathan Dharam Education Board which, according to him, had been controlling and co-ordinating the activities of a large number of Sanatan Dharam Educational institutions in Punjab, Harayana, Himachal Pradesh, Rajasthan and Meerut Division of Uttar Pradesh.

In the affidavits filed by respondent No. 3 and Shri Amar Nath Sharma a claim was made that respondent No. 3 had been associated as a member of the Sanatan Dharam Education Board since the year 1960. This claim of respondent No. 3 was hotly contested by the learned counsel for the petitioners in the course of his arguments and it was urged that the affidavit of Shri Amar Nath Sharma was false in material particulars and the respondent No. 3 was at no time connected either with the Sanathan Dharam Education Board or with any of the institutions mentioned in the affidavit of Shri. Amar Nath Sharma. Learned counsel even doubted the existence of any such Board and prayed for an opportunity being afforded to the petitioners to file a counter-affidavit to establish the falsity of the averments made in the said affidavit.

9. We acceded to the request made by the learned counsel for the petitioners and granted time till 10-8-1970 for filing necessary affidavits.

10. Those affidavits have since been filed. Among the persons who have filed affidavits are Shri Dalip Singh who says that he was accounts clerk with the Santatan Dharam Sabha. Baijnath, from 1950 to 1965 and that respondent No. 3 was not a member of the Education Board of the Sabha nor did the deponent see him attending any meeting during his service with the Sabha. Dr. Jai Chand is another person who claims to have been associated as a member of the Education Board since its inception. He also states that respondent No. 3 has never been a member of the Sanatan Dharam Education Board. The third affidavit is by Shri. K. L. Bhatta. He was Principal of Goswami Ganesh Dutt College, Baijnath from 22-7-1966 to 22-4-1970. He also says that during the period he was the principal of the said institution respondent No. 3 was not a member of the Board nor did he attend any meeting of the Board.

The next affidavit is by Shri Shanta Kumar Advocate who says that he had been a teacher in Santan Dharam Sabha Schools as Krishnan Nagar. Gopalpur Palampur and Thural during the years 1953 and 1955-56. He too says that the Santan Dharam Education Board was established in the year 1952 but respondent No. 3 has not been connected with educational activities of Santan Dharam Sabha or with any other educational activity in the District of Kangra. The last affidavit is by Shri. Satya Parshad who says that he had been serving in the Santan Dharam Sabha. Kangra from 1949 to 1959 in the capacity of a clerk and also as a teacher and although there was an Educational Board consisting of nominated members the Board had no written constitution nor was it registered with the Government of the Educational Department. Its main function was to collect funds and that respondent No. 3 was not a member of the Board.

11. The affidavit filed on behalf of the petition establish at least one thing and that is that there was a Sanatam Dharam Educational Board in Kangara district which controlled a large number of primary middle, High and technical Schools. There is also no denial of the fact that Shri Amar Nath Sharma has been associated with the said Board and has been holding the office of Secretary of the Board since its inception as stated by him. To this extent therefore, the statement made by the learned counsel for the petitioners on 24-7-1970 that it was doubtful if there was any such Board in existence does not appear to be correct. The only point on which the averment in the affidavits of respondent No. 3 and Shri Amar Nath Sharma is directly in conflict with that made in the affidavits filed on behalf of the petitioners in with respect to the connection of respondent No. 3 with the said Board.

Since the affidavits of Shri. Satya Parshad itself makes it clear that the Board had no written constitution nor was it registered with the Government of the Education Department and there is also no evidence as to whether the Board had any regular membership, it is not possible on the strength of these affidavits alone to come to a conclusion that the averments made in the affidavits of respondent No. 3 and Shri Amar Nath Sharma about the association of respondent No. 3 with the said Board are false. *prima facie*, Shri Amar Nath Sharma is a highly responsible person, being the Senior Vice President of the Sanatam Dharama Pratinidhi Sabha, Punjab which, according to him, has its affiliations with Sanatan Dharma institutions in Punjab, Harayana, Himachal Pradesh, Rajasthan and Meerut Division of Uttar Pradesh. He is also the Secretary of the Sanatan Dharma Education Board since 1949. We are, therefore, not inclined to hold on the basis of the affidavits filed on behalf of the petitioners alone that the affidavits of respondent No. 3 and Shri Amar Nath Sharma are false in any material particulars.

12. In the reply filed on behalf of respondents 1 and 2 which, as we have already said, is supported by an affidavit of the Educational Secretary to the Government of Himachal Pradesh and in the counter affidavit filed by respondent No. 3 the petitioners' allegation that the Board is not properly constituted has been controverted and it is averred that Section 4 of the Act nowhere lays down that a member of the Board who is also an elected member of the Legislative Assembly shall cease to hold that character if he is appointed as Chairman of the Board. In any case merely because one of the three elected members of the Legislative Assembly is appointed as Chairman it cannot have the effect of invalidating the constitution of the Board as such.

13. As regards the qualifications of respondent No. 3 to be nominated as Chairman of the Board it is averred in the reply filed on behalf of respondents 1 and 2 that the Government had thoroughly taken into consideration the standing experience and reputation of respondent No. 3 in the field of education specially in school education and had come to the conclusion that he was a fit person to be nominated as Chairman of the Board, being an eminent educationist having special experience of school education. It is further averred that respondent No. 3 was appointed by the Himachal Pradesh Government as member of the Advisory Committee on education vide Notification No. 14-26/67-Edu. (Genl) dated 9-5-1967. Respondent No. 3 was reappointed to the said Committee after it was reconstituted vide Notification No. 14-26/67-Edu/Plan dated 28-4-1969. In the year 1969 when the question of setting up a separate University for Himachal Pradesh was under consideration by the Government, a Planning Board was constituted to advice the State Government on matters relating to the establishment of a separate University. Respondent No. 3 was

appointed as member of the Planning Board vide Notification No. 61/69-Edu (U & P.) dated 28-10-1969. Copies of all the three notifications have been attached to the reply of respondent 1 and 2.

14. Finally it is averred that having considered all the relevant factors including the experience, qualification and reputation etc. the Government had come to the conclusion that respondent No. 3 fulfilled all the requirements of Section 18(1) of the Act for being nominated as Chairman of the Board and that the opinion formed by the Government is not justiciable.

15. The petitioners' allegations regarding mala fides and abuse of power are controverted and it is submitted that it is absolutely wrong to say that Government has exercised its power of nomination for achieving a collateral object of benefiting the party in power.

16. At the hearing of the arguments learned counsel for the petitioners confined his attack only to two points:- (1) that respondent no. 3 did not satisfy the qualifications prescribed by Section 18 (1) of the Act; (2) That nomination of respondent No. 3 was made with the collateral object of bringing the control of educational set up in Himachal Pradesh under the Congress party and was as such an abuse of power and mala fide.

17. As we are of the opinion that even after the rule is issued in this petition the final arguments in the case are not likely to advance further the positions taken up by the parties, we would like to deal with their respective contentions as they have been presented before us at this stage.

18. From the petitioners' prayers, as extracted above, it is clear that their only object in seeking to quash the notification dated 19-2-1970 is to oust respondent No. 3 from the office of Chairman of the Board. Clauses (a) and (b) of their prayer have therefore the same purpose in view. The object of Clause (c) is not that the petitioners seek the office of the Chairman of the Board for themselves though they do allege that as members of the Legislative Assembly have a right to be nominated to the Board under Section 4 (ii) (b) of the Act. Their prayer however is that some other person who is an eminent educationist having special experience in school education be appointed in place of respondent No. 3 and they seek a writ in the nature of mandamus directing respondent No. 1 to do so. They also want one other person from amongst the elected members of the Legislative Assembly to be nominated to the Board and meanwhile they want respondent No. 3 to be restrained from performing the functions of Chairman of the Board.

19. It is thus clear that the actual writ that the petitioners seek is a writ of quo warranto. Under what circumstances and for what purpose such a writ will issue has been made clear by the Supreme Court in the *University of Mysore v. C.D. Govinda Rao*, : [1964]4SCR575, where it is said 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 a usurper without legal authority and that necessarily leads to the inquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

20. In the present case, it is common ground that the office of the Chairman of the Board of School Education for Himachal Pradesh is a public office and respondent No.

3 has been nominated thereto under Section 18 of the Act. Sub section (1) of Section 18 which lays down the qualifications for appointment to that office reads as under:-

'The Chairman of the Board to be nominated by the Government shall be an eminent educationist having special experience of school education'.

21. The argument of the learned counsel for the petitioners is that respondent No. 3 is not only a person who can by any means be described as an eminent educationist having special experience of school education but he has infact no experience of school education at all. He argues that the question as to whether respondent No. 3 has the necessary qualifications does not depend upon the subjective option formed by the Administrator to the Government. The opinion has to be formed on the basis of objective facts and is open to scrutiny and review by this Court.

22. Strong reliance is placed in support of his argument on the decision of the Supreme Court, referred to above where the High Court of Mysore not only went into the qualifications required for the appointment of Shri Anniah Gowda whose appointment to the post of a Research Reader in English in the Central College, Bangalore was challenged in a petition for a writ of quo warranto under Article 226 of the Constitution but his appointment was also quashed. It is true, learned counsel concedes, that no appeal, the Supreme Court did not agree with the High Court's assessment of those qualifications but the High Court's power to scrutinize those qualifications was not disputed at any stage.

23. Mr. Inder Singh, learned counsel for respondents 1 and 2, on the other hand, relied upon a decision of Patna High Court in *Vidyasagar Singh v. Krishna Ballabha Sahay*, : AIR1965Pat321 and submits that this Court cannot be called upon to enter into the question of fact for determining whether respondent No. 3 has or has not the required qualifications necessary for the purpose of being nominated as Chairman of the Board under the Act when the assertion of the petitioners has been denied by the Government and that concludes the matter.

24. We are not prepared to accede to the extreme position taken by Mr. Inder Singh nor are we convinced that the decision relied upon by him supports his submission. In our opinion if the statute prescribes certain qualifications for holding a public office it is certainly open to this Court on a petition filed by a citizen, provided the other requirements for issuing a writ of quo warranto are satisfied, to scrutinize the qualifications of the person holding such office. In the present case the statute in terms prescribes the qualification necessary for nomination of a person by the Government to the office of the Chairman of the Board.

25. The short question for decision, therefore, is whether respondent No. 3 has or has not those qualifications.

26. It seems that so far as the petitioners are concerned they are under the impression that in order to come within the ambit of the section the person who is nominated as a Chairman of the Board should either be a school teacher or should have been connected with the management of an educational institution. In fact, this is what the petitioners expressly say in paragraph 10 of the petition which runs as under:-

'That the respondent No. 3 had never been associated with the education or

educational institutions in anyway. He has never remained a teacher in a school or lecturer in the college and has also no experience with regard to the management of any educational institution. He had never any concern with the education and as such is not an educationist at the time of his nomination. He has no experience to his credit of the school education.'

27. Learned counsel for the petitioners however goes further and contends that in order that a person may be qualified to be nominated as Chairman of the Board he should, in the first instance, be an eminent educationist and he should also have special experience of school education. According to him it is only a person who has made some special contribution to the theory or philosophy of education specially in the field of school education who can claim to be described as eminent educationist. We find no such criterion having been laid down in Section 18 which deals with this matter. We can understand that if the section had laid down certain academic qualifications e.g., the holding of a degree from any Indian or Foreign University or for a teaching experience in a school or college and the person appointed to the office did not have that degree or teaching experience it could be said that he did not have the requisite qualification to hold the post as was the situation in the case with which the Supreme Court had to deal. But the statute with which we are concerned in this case does not require any such concrete qualifications nor does it prescribe any yardstick with which to measure the eminence of experience of the person appointed to the office.

28. Assuming without conceding that the association of respondent No. 3 with the educational institutions mentioned in the affidavit and in the affidavit of Shri Amar Nath Sharma is not established, the question still remains whether there is any other material on record to show that respondent No. 3 has the necessary qualifications for holding the office to which he has been nominated by the Government. The three notifications produced with the reply filed on behalf of respondent 1 and 2 make it clear that respondent No. 3 was appointed as far back as 1967 a member of the Advisory Committee on education for Himachal Pradesh with a view to advise the Government in matters relating to Education Department of Himachal Pradesh. The functions of the Committee as set out in the said notification were as follows:-

- (i) the educational policies of the Pradesh;
- (ii) the preparation of Five-Year Plans and annual Plans of Education;
- (iii) the implementation of the Five Year Plans and Annual Plans;
- (iv) the review of achievements and shortcomings of the Education Department;
- (v) the consideration of new policies including the recommendations of the Kothari commission;
- (vi) any other matters that may be referred to it by the Hon'ble Minister.

29. The committee was constituted for a period of one year only. Its term was however extended and when it was reconstituted on 28-4-1969 with added strength and the names of some of the members were deleted, respondent No. 3 continued to remain on the Committee and still continues to be its member. On 28-10-1969 respondent No. 3 was appointed to the Planning Board constituted by the

Administrator to advise the Government on matters relating to the establishment of a separate University for Himachal Pradesh.

30. These notifications clearly show that respondent No. 3 has been actively associated, at least during the past three years, with the activities of the Government in the matter of formulating educational policies of the Pradesh, the review of achievements and shortcomings of the Education Department, the preparation and implementation of the Plans and the consideration of the new policies. It cannot, therefore be said, as the petitioners would us have believe, the respondent No. 3 has never been associated with education or educational institutions in anyway nor has he any experience of school education. With the kind of work respondent No. 3 is supposed to have been doing as a member of the Advisory Committee on education and there is nothing to show that the assignment held by him was a sinecure, it can hardly be contended with any show of reason that respondent No. 3 did not possess the qualifications mentioned in Sec 18 (1) of the Act.

Eminence in any field of human activity and a fortiori in the field of education, is a relative term. There is no universal norm and standard for it. The same is true of experience. If the Government and for the matter of that the Administrator, having regard to the association of respondent No. 3 with the educational policies of the Pradesh during the past three years or so, have formed on option that the contribution of respondent No. 3 in that field has been such as to entitle him to be nominated to the Board as its Chairman it is not for this Court to substitute its own opinion for their opinion. It cannot be said that the opinion is not one which any reasonable body of persons charged with the duty of making the appointment will or cannot form. We, therefore, find no substance in the argument of the learned counsel for the petitioners that respondent No. 3 does not possess the qualifications required by Section 18 of the Act.

31. We also do not find any material on record to justify the petitioners' allegation that the nomination of the respondent No. 3 has been made with the collateral purpose of advancing the interests of the political party in power. No parties of the above allegation have been furnished and there is only a bald assertion in the petition that the political party in power wants to bring under its control the educational set up in the Pradesh. It is well known that in a Parliamentary System of Government the business of Government is run by the political party having support of the majority of members in Legislature and in making appointments to public offices the politics of a candidate is often considered for preferment. The fact that while making such nomination the Government selects a member belonging to the party in power can by no means be described as abuse of statutory power not can the appointment be described as having been made with a collateral purpose in view.

32. It is true that the question as to how for the practice of paying more attention to merit than to political advantage has often been debated by writers on constitutional law and history and the practice has varied from Prime Minister to Prima Minister even in England. Sir Ivor Jennings in his monograph on Cabinet Government has devoted a full chapter to the discussion of patronage and honours under the Parliamentary System of Government. In that chapter there is a reference to Sir Robert Peel and Sir James Graham having established the system of paying more attention to merit than to political advantage. Peel is said to have observed: 'The party interests of a Government are in the long run much better promoted by the honest exercise of patronage than by the preservation of it for the purpose of

satisfying individual supporters.

Similarly, speaking of honours he said: ' I am resolved to consider the power of conferring them as a great public trust, to be administered on some public principle, such as, for instance the strengthening of the Administration by rewarding those who do not hold office, or, in the case of those who do hold office, bestowing honours as the reward for public service, distinguished either by the length and fidelity of it, or by the eminence of it'.

33. Jennings, however, notes that the acceptance of these principles and not imply a complete dissociation between party advantage and the exercise of powers of appointment and conferring honours. Mr. Gladstone, as member of the Parliament for Oxford University was particularly insistent in pressing the claims of his constituents on Lord Palmerstone. At least one bishopric was given because the person appointed had been Gladstone's election agent. Few politics of candidates for preferment though none went so far in the direction as Mr. Disraeli.

34. If in the present case the Government has preferred a member of the Legislative Assembly who belongs to the political party in power to the member who is either in opposition or who does not belong to that party or to some one who has no affiliation with any political party the nomination cannot be challenged merely on the ground that it has been made with a collateral purpose in view or is a dishonest exercise of statutory power. The appointment of respondent No. 3 is neither to a judicial office nor is it an appointment to public service under the State. So long as the appointment satisfies the statutory requirements of Section 18 it is not open to attack in a Court of law whatever may be the chances of its being attacked in some other form.

35. That apart, in the absence of any material establishing what of good faith on the part of the Government the nomination of respondent No. 3 cannot be struck down on this ground.

36. The result of the foregoing discussion is that there is no merit in either of the two contentions urged by the learned counsel for the petitioners. The petition therefore fails and is dismissed.

37. Petition dismissed.