Maseh Ullah Shah vs Abdul Rehman Sufi And Ors. on 5 November, 1952

Equivalent citations: AIR1953ALL193, AIR 1953 ALLAHABAD 193

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Bhargava, J.

1. This is a petition under Article 226 of the Constitution for the issue of a writ in the nature of 'Quo-warranto' filed by one Masih Ullah Shah, a resident of the Municipal town of Etah directed against one Abdul Rehman Sufi, opposite-party 1, who was nominated as a member of the Municipal Board of Etah by the State Government some time about the end of the year 1950. There are further prayers for issue of direction or order or a writ in the nature of mandamus or prohibition directing opposite-party 3, the State of Uttar Pradesh, to remove opposite-party 1 from membership of the Municipal Board and to restrain opposite-party 1 from acting as a member of the Bpard and further directing opposite-party 2, the Chairman of the Municipal Board of Etah, not to recognise opposite party 1 as a member of the Board.

2. When this case came for hearing before us after service or notices on the opposite-parties, learned counsel for opposite parties 1 and 3 raised a preliminary objection that this application for the issue of a writ of 'quo-warranto' could not be entertained by this Court at the instance of the petitioner, Masih Ullah Shah. Learned counsel argued that as the procedure for presentation of application for the issue of a writ of 'quo-warranto' in the High Courts in India has not been prescribed by the Constitution, the procedure that applied in England should be taken into account. His contention was that historically the writ of 'quo-warranto' was originally issued by the king himself and later, when Courts could issue directions for laying an information in the nature of 'quo-warranto', this could only be done if the Courts were moved either by the Attorney General or by the Coroner. He also referred to Section IV of 9 Anne C20 (1710) to show that, even after that statute had been passed, a private relater could only file information before the appropriate officer of the Court and the information in the nature of 'quo-warranto' could be exhibited only by that officer of the Court with the leave of the Court. On this ground, he contended that a private individual cannot move a Court for a writ in the nature of 'quo-warranto' and that the move could only be made by the Government, some public servant or officer of the Court, or other appropriate authority.

It does not appear necessary for us to go into the old history of the writ of 'quo-warranto' when it originated in England. The procedure in England has varied from time to time and we are only concerned with the procedure as it was followed in England when the writs or informations in the nature of 'quo-warranto' were last being issued in England. Order 68 Rule 2 of the Rules of the Supreme Court published in the Annual Practice 1935 shows that to writ of 'quo-warranto' the provisions of Order 52 of the Rules of the Court were applicable. Order 52 made provision for the making of motions before the Supreme Court and consequently a motion for a writ of 'quo warranto' could be made in exactly the same manner as any other motion before the Court, The latest case on this question that has been brought to our notice is that of -- 'Rex v. Speyer', reported in (1916) 1 KB 595. The judgment of Lord Reading C. J., shows that in that case orders of the Court were made against Sir Edgar Speyer and Sir Ernest Joseph at the instance of Sir George Makgill. The Attorney General was only served with a notice subsequently. This clearly indicates that at least in 1915 when order for laying information in the nature of 'quo warranto' was made, the application had been entertained at the instance of a private individual without the intervention of the Government or any public authority. Under Rules 1 and 7 of Chap. 22 of the Rules of this Court 1952, an application for the issue of a writ of this nature has to be made to a Division Bench and by an advocate and not by the party personally. The present application was presented by an advocate who represented the petitioner before a Division Bench. The application has, therefore, been properly presented and the preliminary objection fails.

3. On merits we find that this application must succeed. Opposite party 1 was nominated by the State of Uttar Pradesh under the provisions of Section 9, U.P. Municipalities Act, on the occurring of a vacancy in the Board in respect of a seat to which a member had to be nominated. The proviso to Section 9 placed certain limitations on the persons who could be nominated and one of the restrictions was that a person who had stood as a candidate at the previous general election and had not been elected could not be nominated. The petitioner alleged that opposite party 1 was a candidate at the previous general election of this Municipal Board and had failed in getting elected. This was not denied by the opposite parties. Clearly therefore, under the proviso to Section 9, the nomination of the opposite party was in contravention of the provisions of law and his membership of the Board is, therefore, invalid.

4. Learned counsel for the opposite parties argued that the membership of a Board is not an office in respect of which a writ of 'quo warranto' can be issued by this Court. This argument has no force in view of the fact that the Municipalities Act, which creates the membership of a Board, itself declares that membership to be an office. In Section 38, U.P. Municipalities Act, there is clear mention of the term of office of a member of Board. In view of the provisions of the U.P. Municipalities Act itself, therefore, the contention that the membership of a Board under that Act is not an office must fail.

5. Learned counsel also argued that the discretion which we have, to issue the writ of 'quo warranto', should not be exercised in this case when there is an adequate alternative remedy, the remedy is being sought at such a late stage and there is a likelihood that there will be a fresh general election in the near future. At the stage when the application was admitted, this ground could have been taken into consideration. After the application has been admitted and parties have been heard and we have come to the view that opposite party 1 is wrongly exercising the powers of the membership of

the Board which office he is not entitled to hold, it does not appear appropriate to refuse the writ asked for and to permit opposite party 1 to continue as a member and exercise all the rights and privileges of that office. We do not think it necessary to go into the question whether the existence of an alternative specific remedy or the delay in moving the Court can be adequate grounds for refusing a writ of 'quo warranto' after the application for the issue of the writ has once been admitted. Even if this be permissible, the present case is one where we think that the writ should be issued.

6. In the circumstances we allow the application, make the rule absolute and direct opposite party 1 not to exercise or use the rights, liberties, and privileges in respect of the office of a member of the Municipal Board of Ftah.

The petitioner will be entitled to his costs from opposite party 1.