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**ILR 2015 KAR 2688**

**H.G . RAMESH, J**

**S. Rajendran vs. State of Karnataka, by its Principal Secretary,  
Department of Personnel and Administrative Reforms  
and Others\***

**CONSTITUTION OF INDIA – ARTICLE 226 – Writ of *quo warranto* – Nominations made to the Legislative Council under sub-Clause(e) of Clause(3) of Article 171 of the Constitution of India – Grievance of the petitioners that the nominated persons were not qualified as required under Clause(5) of Article 171 of the Constitution – Judicial review of the nomination made to the Legislative Council – HELD, A writ of *quo warranto* will lie, if the appointment made to a public office is contrary to law. The qualification of a person to hold a public office can be examined in a *quo warranto* proceeding immaterial of who made the appointment. Whether the persons nominated by the Governor possessed the qualification required under Clause (5) of Article 171 of the Constitution is legal question. Whether the selection of the persons made is appropriate or not is a political question. Merely because the matter also involves a political question is no bar for judicial review on limited grounds as power to nominate is not totally discretionary. – FURTHER HELD, Whether an authority under the Constitution has acted in accordance with the provisions of the Constitution can**

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\*W.P. No. 32141/2014 (GM-RES) C/w etc., Dated: 26<sup>th</sup> day of March, 2015.

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**certainly be examined by the High Court as it is also its constitutional obligation to do so. There is also no bar under the Constitution for judicial review of the nominations made to the Legislative Council. The immunity extended to the Governor under Article 361 of the Constitution is not extended to the person nominated by the Governor, and hence, Article 361 is not a bar to examine the validity of the nominations made by the Governor. Therefore, the validity of nominations made to the Legislative Council is not immune from judicial review though its scope is very limited inasmuch as examination of suitability of the person nominated does not fall within the scope of a proceeding for *quo warranto*. If the persons nominated is found to be not qualified as required under Clause(5) of Article 171 of the Constitution, the nomination is liable to be set-aside. – Hence, Writ Petition is maintainable. – CONSTITUTION OF INDIA – ARTICLE 171, CLAUSES 1 TO 5 – DISCUSSED. (Para 4)**

**Advocate for Petitioner/s:**

Sri. S. Basavaraj, Advocate,  
Sri Reuben Jacob, Advocate.

**Advocate for Respondent/s:**

Sri Ravivarma Kumar, Advocate General A/w Sri Tharanath Poojary,  
AGA,  
Sri D.R. Anandeeswara, Advocate,  
Sri A. Nanjappa, Advocate,  
Sri D.N. Nanjunda Reddy, Senior Advocate for Sri B.M. Arun, Advocate,  
Sri D. Krishna Murthy, Advocate,

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Sri S.M. Chandrashekar, Senior Advocate for Sri H.M. Siddarth,  
Advocate,  
Sri D.N. Nanjunda Reddy, Senior Advocate for Sri D. Krishna Moorthy,  
Advocate.

**ORDER**

**Ramesh , J (Oral)**

1. In these writ petitions, the petitioners have sought for issue of a writ of *quo warranto* against the persons nominated to the Karnataka Legislative Council as per the Order dated 24.06.2014 made by the Governor of Karnataka under sub-Clause (e) of Clause (3) of Article 171 of the Constitution of India. The ground urged is that they were not qualified as required under Clause (5) of Article 171 of the Constitution.

2. Learned Advocate General appearing for the State Government submitted that the writ petitions are not maintainable inasmuch as there are no *judicially* manageable standards to examine as to whether the persons nominated had *special knowledge* or practical experience in respect of matters referred to in Clause (5) of Article 171 of the Constitution. Sri S.M.Chandrashekar, Learned Senior Counsel submitted that Article 361 of the Constitution bars *judicial review* of nominations made to the Legislative Council.

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3. In the context of the challenge made in these petitions, and, to examine as to whether the nominations made to the Legislative Council is amenable for *judicial review*; it is relevant to notice sub-Clause (e) of Clause (3) and Clause (5) of Article 171 of the Constitution; Article 171 reads as follows:

**171. Composition of the Legislative Councils.-**

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State.

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

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(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

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(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:-

Literature, science, art, co-operative movement and social service.

(Underlining supplied)

4. A writ of *quo warranto* will lie, if the appointment made to a public office is contrary to law. The qualification of a person to hold a public office can be examined in a *quo warranto* proceeding immaterial of who made the appointment. Whether the persons nominated by the Governor possessed the qualification required under Clause (5) of Article 171 of the Constitution is a *legal question*. Whether the selection of the persons made is appropriate or not is a *political question*. Merely because the matter also involves a political question

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is no bar for *judicial review* on limited grounds as power to nominate is not totally discretionary. It is *inter alia* regulated by Clause (5) of Article 171 of the Constitution. Whether an authority under the Constitution has acted in accordance with the provisions of the Constitution can certainly be examined by the High Court as it is also its constitutional obligation to do so. There is also no bar under the Constitution for *judicial review* of the nominations made to the Legislative Council. The immunity extended to the Governor under Article 361 of the Constitution is not extended to the person nominated by the Governor, and hence, Article 361 is not a bar to examine the validity of the nominations made by the Governor. Therefore, the validity of nominations made to the Legislative Council is not immune from *judicial review* though its scope is very limited inasmuch as examination of *suitability* of the person nominated does not fall within the scope of a proceeding for *quo warranto*. If the person nominated is found to be not qualified as required under Clause (5) of Article 171 of the Constitution, the nomination is liable to be set-aside.

5. In view of the above, the writ petitions are held maintainable. The contention urged to the contrary is unsustainable in law.

6. The averments made in the writ petitions require examination and call for an answer. The matter requires consideration.

*Issue rule.*

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