

(2013) 07 KAR CK 0343

In the Karnataka High Court

Case No : Writ Petition No"s. 25964-25967 of 2013 (EDN-RES) , W.P. No"s. 25612, 26170 and 26171 of 2013

A.M. Bhaskar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 156(1), 311
Karnataka State Universities Act, 2000 — Section 28(1)(g), 38(1), 39(1)

Citation : (2013) 4 AKR 339 : (2013) ILR (Kar) 4182 : (2013) 5 KarLJ 519 :
(2013) 4 KCCR 2988 : (2013) 3 LLN 663

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : K.M. Nataraj, for Haranahalli and Patil Associates and D.R. Ravishankar, for the Appellant; Ravivarma Kumar, Advocate General, R. Omkumar, Additional Government Advocate for Respondent Nos. 1 and 2 and T.P. Rajendra Kumar Sungay, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ashok B. Hinchigeri, J.—In these batches of Petitions, the challenge is raised to the orders withdrawing the nomination of the Petitioners to the Syndicates of the two Universities. Further, in W.P. Nos. 25612/2013 & 26170-26171/2013, the validity of Section 39(1) of the Karnataka State Universities Act, 2000 ("the said Act" for short) is also called into question. Sri K.M. Nataraj, the learned Senior Counsel appearing for M/s. Haranahalli and Patil Associates for the Petitioners in W.P. Nos. 25964-25967/2013 submits that in all the 17 Universities in the State, the nominations to the Syndicates were withdrawn even when there is no semblance of reasons for the same. In support of his submission that the pleasure doctrine cannot be exercised arbitrarily and in the absence of reasons, he relies on the Hon'ble Supreme Court's judgment in the case of B.P. Singhal Vs. Union of India (UOI) and Another, The relevant paragraphs of the said judgment read out by him are as follows:

70. We have however already rejected the contention that the Governor should be in sync with the ideologies of the Union Government. Therefore, a Governor cannot be removed on the ground that he is not in sync or refuses to act as an agent of the party in power at the Centre. Though Governors, Ministers and the Attorney General, all hold office during the pleasure of the President, there is an intrinsic difference between the office of a Governor and the offices of Ministers and the Attorney General. The Governor is the Constitutional head of the State. He is not an Employee or an agent of the Union Government nor a part of any political team. On the other hand, a Minister is a hand-picked member of the Prime Minister's team. The relationship between the Prime Minister and a Minister is purely political. Though the Attorney General holds a public office, there is an element of Lawyer-Client relationship between the Union Government and the Attorney General. Loss of confidence will, therefore, be a very relevant criterion for withdrawal of pleasure, in the case of a Minister or the Attorney General, but not a relevant ground in the case of a Governor.

71. When a Governor holds office during the pleasure of the Government and the power to remove at the pleasure of the President is not circumscribed by any conditions or restrictions, it follows that the power is exercisable at any time, without assigning any cause. However, there is a distinction between the need for a cause for the removal, and the need to disclose the cause for removal. While the President need not disclose or inform the cause for his removal to the Governor, it is imperative that a cause must exist. If we do not proceed on that premise, it would mean that the President on the advice of the Council of Ministers, may make any order which may be manifestly arbitrary or whimsical or mala fide. Therefore, while no cause or reason be disclosed or assigned for removal by exercise of such prerogative power, some valid cause should exist for the removal. Therefore, while we do not accept the contention that an order under Article 156 is not justiciable, we accept the contention that no reason need be assigned and no cause need be shown and no Notice need be issued to the Governor before removing a Governor.

82. The President in exercising power under Article 156(1) should act in a manner, which is not arbitrary, capricious or unreasonable. In the event of challenge of withdrawal of the pleasure, the Court will necessarily assume that it is for compelling reasons. Consequently, where the aggrieved person is not able to establish a prima facie instance of arbitrariness or mala fides, in his removal, the Court will refuse to interfere. However, where a prima facie case of arbitrariness or mala fides is made out, the Court can require the Union Government to produce records/materials to satisfy it that the withdrawal of pleasure was for good and compelling reasons. What will constitute good and compelling reasons would depend upon the facts of the case. Having regard to the nature of functions of the Governor in maintaining Centre-State relations, and the flexibility available to the Government in such matters, it is needless to say that there will be no interference unless a very strong case is made out. The position, therefore, is that the decision is open to judicial review but in a very

limited extent.

83. We summarise our conclusions as under:

(i) Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.

(ii) Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the Petitioner (that is physical/mental disability, corruption and behavior unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case.

(iii) A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has lost confidence in him. It follows therefore that change in Government at the Centre is not a ground for removal of Governors holding office to make way for others favoured by the new Government.

(iv) As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was Arbitrary, mala fide, capricious or whimsical, the Court will call upon the Union Government to disclose to the Court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or mala fide, the Court will interfere. However, the Court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.

2. Based on the above-extracted decision, Sri Nataraj would contend that the withdrawal of the nominations should be for good and compelling reasons. The learned Senior Counsel has also drawn support from the Apex Court's judgment in the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, wherein, the removal en mass of all District Government Counsel in U.P. fell for consideration. The Apex Court has taken the considered view that the presence of public element attached to the office or post of the District Government Counsel is sufficient to attract Article 14 of the Constitution of India and bring the question of validity of the impugned Circular terminating the appointment of all District Government Counsel in Uttar Pradesh within the scope of judicial review. It has vividly explained the provisions enabling the Government to terminate the appointment "at any time without assigning any

cause". The expression "at any time" merely means that the termination may be made even during the subsistence of the term of appointment and "without assigning any cause" means without communicating any cause to the appointee, whose appointment is terminated. However, "without assigning any cause" is not to be equated with without existence of any cause 1. It merely means that the reason for which the termination is made need not be assigned or communicated to the appointee. The non-assigning of reasons or the non-communication thereof may be based on the Public Policy, but the termination of an appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary.

3. He has also relied on this Court's decision, in the case of *Khusro Quraishi v. State of Karnataka and others*, 2012 (3) AIR Kar. 136, W.P. No. 26273/2010 (GM-RES), dated 22.11.2010, wherein it is held that while removing a person from the office, who is holding it during the pleasure of the Government, the conclusions in *B.P. Singhal's* case (*supra*) have to be strictly followed by the State Government. The action of removal would be open to a limited judicial review. This Court can interfere in the order of removal, if the aggrieved person can demonstrate *prima facie* that his removal is either arbitrary, *mala fide*, capricious or whimsical.

4. The learned Senior Counsel submits that only because of the change in the Government, the Petitioners, who are nominated in the category of eminent educationists u/s 28(1)(g) of the said Act, are being removed. The Government has not even reviewed the matter on case to case basis. It has removed them en mass. It has removed all the nominated members of the Syndicates of all the Universities in the State.

5. He submits that the provisions contained in Sections 38(1) & 39(1) of the said Act is to be construed harmoniously. The provisions contained in the said Sections are as follows:

38. The term of Office of the Members of the Academic Council and syndicate.--
(1) Save as otherwise provided the term of the office of the Members other than the ex officio Members of the Academic Council and the Syndicate shall be three years.

39. Restriction of holding the membership authority -(I) Any member nominated of any of the authorities under this Act shall hold office during the pleasure of the nominating authority concerned.

6. To ensure that one provision does not render the other provision nugatory, the only construction that can be put is that normally the nominated members of the Syndicate hold office for a fixed period of three years. Unless the good and compelling reasons exist, they cannot be removed on the ground of the loss of confidence of the Government.

7. The learned Senior Counsel, relying on the Apex Court's judgment in the case

of Sultana Begum Vs. Prem Chand Jain, submits that when there are two conflicting provisions in the same Act, which cannot be reconciled with each other, they should be so interpreted as to give effect to both of them. The relevant portions of Paragraph No. 12 of the said judgment are extracted herein below:

12. This Rule of Construction which is also spoken of as "ex visceribus actus" helps in avoiding any inconsistency either within a Section or between two different Sections or provisions of the same statute. On a conspectus of the case law indicated above, the following principles are clearly discernible:

(1) It is the duty of the Courts to avoid a head on clash between two Sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the Court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the Courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the Rule of "Harmonious Construction."

(4) The Courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose.

8. The learned Senior Counsel submits that the file does not disclose any reason for the withdrawal of the Petitioners' nominations to the Syndicate. The decision-maker, while withdrawing the nominations, has not even called for the original file containing the nomination-papers. The learned Counsel sought to draw support from the Apex Court's judgment in the case of Brij Mohan Lal Vs. Union of India (UOI) and Others, for advancing the submission that where the rule of law prevails, there can be nothing like unfettered discretion or unaccountable action. Based on the said decision, he would contend that the exercise of pleasure doctrine is subject to the fundamentals of the constitutionalism.

9. He also relies on the Hon'ble Supreme Court's judgment in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, for contending that the Respondents cannot supply either in their statement of objections or in the course of their reply-submissions the reasons for withdrawing the nominations in question.

10. The learned Senior Counsel read out Paragraph No. 14 of the Division Bench's judgment of this Court in the case of Khusro Quraishi v. State of Karnataka and others, 2012 (3) AIR Kar. 136:

14. We may now turn to the ground of challenge based on mala fide exercise of power. It is true that no reason need to be assigned for discontinuance of the pleasure resulting in removal, but such power cannot be exercised in an arbitrary, capricious or unreasonable manner. In other words, such power needs to be exercised for valid and compelling reasons. What would be compelling reason, would depend upon the facts and circumstances of each case. If a person such as the Petitioner is able to demonstrate prima facie that his removal was either arbitrary, or capricious, or unreasonable, or whimsical, the Government cannot disclose any reason or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical or mala fide, the Court has enough power to interfere.

11. Sri Ravishankar D.R., the learned Counsel for the Petitioners in W.P. No. 25612/2013 & W.P. Nos. 26170-171/2013 submits that the impugned Order withdrawing the nominations of the Petitioners to the Syndicate of the Respondent Bangalore University is passed on account of the change of Government in the state. He submits that for the first time in the history of the State, such a sweeping withdrawal of the nomination has taken place. He submits that there is no nexus between the exercise of powers of the State Government to withdraw the nomination and the object which is sought to be achieved by the State Government nominating the Petitioners in the category of eminent educationists u/s 28(1)(g) of the said Act. He submits that the Petitioners are not nominated for political consideration; they are nominated, as they are the eminent educationists. When their nomination is for non-political reasons, they cannot be removed for political reasons.

12. Sri Ravishankar submits that the nomination of the members to the Syndicate of the University u/s 28(1)(e) & (g) of the said Act is for a period of three years. He brings to my Notice that the Sections 28(1)(e) & (g) themselves do not specify the term of the nominated members. The fixation of term can be found in Section 38 of the said Act. He submits that earlier the said Section stood as follows:

38. The term of office of the members of the Academic Council and Syndicate.--
(1) Save as otherwise provided the term of the office of the members other than the ex officio Members of the Academic Council and the Syndicate shall be three years or till reconstitution, whichever is earlier.

(Emphasis supplied)

13. By Act 24 of 2007, which has come into force from 28.8.2007, the words "or till reconstitution, whichever is earlier" are omitted. What follows from this omission is that in the pre-amendment era, it was permissible to prematurely end the term of the office of the nominated members of the Syndicate by reconstituting the Syndicate. But in the post-amendment era, the term of the office of the nominated members of the Syndicate cannot be cut short at all.

14. The learned Counsel brings to my Notice the provisions contained in Section 39(2) of the said Act, which read as follows:

39. Restriction of holding the membership of the authority -

(1)....

(2) Any person nominated to any of the authorities under this Act shall not be eligible of being nominated or elected for a second term.

15. The person is made ineligible for being nominated for a second term, as he would have completed the first term. There cannot be multiple nominations in a given term.

16. The learned Counsel relies on the Rajasthan High Court's decision in the case of Dr. S.D. Kapoor Vs. The Chancellor, Jai Narain Vyas University and Others, . He read out Paragraphs 31 to 35 of the said decision, which are extracted herein below:

31. In my considered opinion the pleasure doctrine cannot be imported to Sections 18 & 23 of Act No. 8 of 1955 unless State Legislature makes specific provision to this effect. In case of Suresh Bhardwaj (supra) even in absence of any specific provision made by State Legislature doctrine of pleasure has been extended to Sections 15 & 20 of Himachal Pradesh General Clauses Act. I have the misfortune to be unable to agree with the erudite opinion of learned Judges constituting Division Bench of Himachal Pradesh High Court in case of Suresh Bhardwaj (supra). In my humble opinion the ratio of decision rendered by Apex Court in the case of Dr. D.C. Saxena (supra) and Om Narain Agrawal (supra) based on pleasure doctrine are not applicable to the facts of the present case inasmuch as in those two cases after change of State Governments in furtherance of its policy decisions the Chairman, Vice-Chairman and members of Haryana Board Education as well as two women nominated members of Municipal Board, Shahjahanpur were removed on political considerations whereas in the present case neither the Petitioner was nominated on political consideration nor he is being removed by the Chancellor on any political reasons to carry forward Policy decision. The Petitioner was nominated under Clause (iv) of sub-section (1) of Section 16 of Act No. 17 of 1962 as an educationist and he is being removed by impugned order to make body of Syndicate functional in the interest of public in general and Respondent-University in particular and also to ensure faithful compliance of decision rendered by Division Bench of this Court.

32. For deeper understanding of the controversy involved, I would like to recapitulate the distinctive features of Pleasure Doctrine and theory based on subjective satisfaction in following paragraphs.

33. The expression "discretionary power in administrative law" is in process of evolution. At one hand Constitutional functionaries, Statutory functionaries and other Executive Officers are asserting unfettered discretion in the garb of either Pleasure Doctrine or under theory based on subjective satisfaction while on the other hand the Courts of law are making constant efforts to curb and control such unfettered discretion by evolving principles of fairness akin to Principles of

Natural Justice to ensure that such wide discretions may not be abused but properly exercised.

34. In fact discretionary power can be divided into two main categories i.e. based on objective satisfaction and based on subjective satisfaction. The question of objective satisfaction is not involved in the present case, therefore, it is left open to be considered in an appropriate case. I would like to confine the discussion only with respect to Doctrine of Pleasure and theory based on subjective satisfaction.

35. In my opinion "Pleasure Doctrine" is genus while theory based on subjective satisfaction is its specie. Thus it is obvious that theory of subjective satisfaction is a taxonomic group of lower rank of pleasure doctrine and as such former is not comparable with the later although element of subjective satisfaction remains intact in both the form of discretionary power. It is true that genus includes specie but specie does not include genus.

17. He would contend that the Principles of Natural Justice are not observed while passing the impugned order, as the Petitioners are not put on any Notice. The premature removal of the Petitioners from the Syndicate visits them with serious consequences. When they are nominated as Syndicate members in their capacity as eminent educationists, the society cannot be made to believe that the Petitioners are not the eminent educationists.

18. The learned Counsel submits that just because there is no requirement to assign the reasons for exercising the pleasure doctrine, it does not mean that it can be exercised without or in the absence of the reasons. The arbitrary exercise of discretion would defy the rule of law.

19. He has also raised the challenge to the validity of the provisions contained in Section 39(1) of the said Act. He submits that the provisions contained in Section 39(1) are running contrary to the provisions contained in the statement of objects and reasons of the Act. He submits that the provisions contained in Section 39(1) are inconsistent with the provisions contained in Section 38(1) of the said Act.

20. He submits that Section 39(1) of the said Act is liable to be declared as unconstitutional, as the executive is exercising the unguided and unfettered discretion.

21. Sri Ravivarma Kumar, the learned Advocate General appearing for the State Government submits that the Notification, dated 23.4.2012 (Annexure-B1 in W.P. Nos. 25964-967/2013) nominating the Petitioners as the members of the Syndicate itself states that their nomination is for a period of three years or until further orders, whichever is earlier. He submits that they have not challenged the said Notification. Having accepted the condition in the said Notification that their term is for a period of three years or until further orders, whichever is earlier, they cannot now turn around and say that they are not nominated for a period of

three years. They have no vested right to continue as the members of the Syndicate. He submits that no Applications were called for before nominating them. They are hand-picked by the previous Government based on the recommendations of the Vice President of the State unit of B.J.P., the then ruling party.

22. The Petitioners cannot be considered as the holders of Civil Posts, as there was no equity of opportunity for all the citizens by calling for the Applications for the nominations in question. The nominated membership cannot be treated as a Public Employment. Therefore, the Petitioners cannot fall back on Article 16(2) of the Constitution of India. Further, as they are not the holders of any Civil Posts, the protection under Article 311 of Constitution of India is also not available to them.

23. The learned Advocate General relying on the Apex Court's judgment in the case of State of U.P. and others Vs. U.P. State Law Officers Association and others, submits that those who are appointed arbitrarily cannot complain that the termination of their appointment is arbitrary. Those, who come by back door, have to go by the same door. He read out Paragraph No. 19 of the Judgment, which is extracted herein:

19. It would be evident from Chapter V of the said Manual that to appoint the Chief Standing Counsel, the Standing Counsel and the. Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, the State Government is under no obligation to consult even its Advocate-General much less the Chief Justice or any of the Judges of the High Court or to take into consideration, the views of any committee that "may" be constituted for the purpose. The State Government has discretion. It may or may not ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door. This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily, vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the

inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.

24. He submits that there is no parallel between the cases on hand and Shrilekha Vidhyarthi's case (supra), because the appointments in the said reported case were made following the prescribed and elaborate procedure.

25. The learned Advocate General has also relied on this Court's decision in the case of Premalatha Vs. The State of Karnataka and Another, wherein it is held that the pleasure appointment can always be cancelled without Notice to the nominees. There is no question of observing the Principles of Natural Justice in the case of the pleasure appointments. He submits that the Premalatha's case (supra) was in the context of Section 29(3) of the Karnataka Co-operative Societies Act, 1959 ("KCS Act" for short). He submits that the provision contained in Section 39(1) of the Karnataka State Universities Act, 2000 are similar to the provisions contained in Section 29(3) of the KCS Act. He submits that pleasure and displeasure are the two faces of the same coin. The Petitioners cannot accept one face and refuse to accept the other face. The Petitioners' nominations by their very nature are vulnerable to the exercise of Pleasure Doctrine.

26. The learned Advocate General has also relied on this Court's decisions in Vishnu Vs. State of Karnataka, Paragraph No. 4 of the said decision read out by him is extracted herein below:

4. Under similar circumstances in Om Narain Agarwal and others v. Nagar Palika, Shahjahanpur and others, the Supreme Court held that there is no question of any violation of Principles of Natural Justice in not affording opportunity to the nominated members before their removal nor the removal under the Pleasure Doctrine contained in the Fourth Proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members.

27. He also relies on the Division Bench's judgment in the case of Ramanagouda Vs. State of Karnataka and Others, wherein it is held that the State Government is competent to revoke the nomination of a member of the Committee of the assisted Co-operative Society without assigning any reason before the expiry of the period for which he was nominated.

28. He has also relied upon the Division Bench's judgment in the case of Khusro Quraishi (supra). The relevant portions of the said judgment are as follows:

11. In short removal of the Chairman or a member by the Government is based on the Principle of Doctrine of Pleasure and it does not attach stigma. As against this, removal of the Chairman or a member u/s 5 is with penal consequences attaching stigma and therefore, the procedure contemplated by the proviso to sub-section (1) of Section 5 must be followed. In such a case, if the Chairman or a Member is removed, he cannot project any grievance that no opportunity was given to him. In other words, if any right which is a creature of statute, is limited

or curtailed by that very statute, in the absence of any other right under the Constitution of India, the person whose right is curtailed by that very statute, in the absence of any other right under the Constitution of India, the person whose right is curtailed, cannot claim any right based on the Principle of Natural Justice. (See Krishna Borate Vs. State of Maharashtra and Others, . Moreover, removal in the present case, in our opinion neither casts any stigma nor leads to any penal consequences. This clearly reveals the doctrine of pleasure, which is implicit in Section 4 of the Act."

12. The Petitioner, therefore, cannot contend that in view of Section 4 of the Act, he cannot be discontinued/removed by the Government till he completes the period of 3 years. If the Petitioner claims that his appointment ought to have been made for a period of 3 years, he should have, when nominated, insisted the Government to fix his tenure before assuming charge. He did not do so. The Notification/order by which he was nominated clearly speaks that he could hold the post until further orders of the Government and therefore, it was open to the Government to appoint any other person in place of the Petitioner by exercising the power of Pleasure Doctrine.

13. Thus, in our view the provisions containing Section 4 neither offend any article of Constitution nor the same is against Public Policy or democratic schemes enshrined in the Constitution. There is no question of any violation of Principles of Natural Justice in not affording any opportunity to the nominated members including the chairman before their removal nor their removal under the Pleasure Doctrine contained in Section 4 of the Act puts any stigma on their performance or character. At this stage, we cannot overlook that such appointments are purely on political considerations. In the circumstances, the first submission of Mr. Jayaram, learned Counsel for the Petitioner must be rejected.

29. He submits that there is no whisper of the Petitioners being the eminent educationists in the Memorandum of the Writ Petition. Be it as it may, the impugned orders do not attach any stigma to the Petitioners. As a matter of fact, the Petitioners are being given a safe, honourable and ceremonious exit. No reasons whatsoever are required to be assigned for exercising the Pleasure Doctrine.

30. The learned Advocate General submits that the Petitioners are not justified in trying to draw the support from the Apex Court's judgment in the case of B.P. Singhal (supra). In Singhal's case what fell for consideration was the removal of the Governors. He submits that Article 155 of the Constitution of India states that the Governor shall be appointed by the President. In the instant case, the Petitioners are not appointed, but they are only nominated. He submits that the greater degree of protection to the tenure of the Governor given by the Constitution is because the Governor has to discharge his Constitutional functions.

31. He submits that Section 38 of the said Act virtually prescribes the outer limit of three years. There is no conflict between Section 38(1) & 39(1). Section 39(1) limits the period by stating that the nominated members shall hold the office during the pleasure of the Nominating Authority. He submits that the entire Section 39 is virtually in the nature of proviso to Section 38. He submits that Section 38 cannot be given the meaning so as to render the provisions in Section 39 otiose. He relies on the Apex Court's judgment in the case of Commissioner of Income Tax Vs. Hindustan Bulk Carriers, for advancing the submission that the Courts will have to reject that construction, which will defeat the plain intention of the legislature, even though there may be some inexactitude in the language used. He read out the following paragraphs of the said judgment:

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See *Nokes v. Doncaster Amalgamated Collieries* referred to in *Pye v. Minister for Lands for NSW.*) The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania v. Union of India*.

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See *R.S. Raghunath v. State of Karnataka.*) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a Section or between two different Sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two Sections of the same Act. (See *Sultana Begum v. Prem Chand Jain.*)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one Section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonized construction. To harmonise is not to destroy.

32. Relying on the Apex Court's judgment in the case of *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, the learned Advocate General would contend that the right of equality enshrined in Article 14 of the Constitution applies to equals and not to unequals. The nominated members of a municipal board fall in a different class and cannot claim equality with the elected

members. The relevant portions of the said judgment relied upon by the learned Advocate General are extracted herein below:

10. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature authorized the State Government to terminate such appointment as its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the Respondents that the Legislature had no such power to legislate the Fourth Proviso. The attack is based on Articles 14 & 15 of the Constitution.

11. In our view, such provision neither offends any Article of the Constitution nor is the same against any public Policy or democratic norms enshrined in the Constitution. There is also no question of any violation of Principles of Natural Justice in not affording any opportunity to the nominated members before their removal nor the removal under the Pleasure Doctrine contained in the Fourth Proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations. In Dr. Rama Mishra's case, 1992 All LJ 199, the High Court wrongly held that the pleasure doctrine incorporated under the fourth proviso to Section 9 of the Act was violative of the fundamental right of equality as enshrined in Article 14 & Article 15(3) of the Constitution....

12....We are not impressed with the reasoning given by the High Court that the Fourth Proviso to Section 9 of the Act in any manner deprived the fundamental right of equality as enshrined in Article 14 of the Constitution. It is well established that the right of equality enshrined under Article 14 of the Constitution applies to equals and not to unequals. The nominated members of the Board fall in a different class and cannot claim equality with the elected members. We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralize the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionary in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the Competent Authority under the law, and it cannot be said that they are bound to

demoralize or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office.

33. He submits that a law made by the legislature can be struck down by Courts on two grounds and two grounds alone, viz., (i) lack of legislative competence, and (ii) violation of the fundamental rights guaranteed in Part-III of the Constitution or of any other Constitutional provision. There is no third ground. In support of this submission, he read out Paragraph No. 82 of the Apex Court's judgment in the case of Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others,

82. The Constitutional validity of an Act can be challenged only on two grounds viz. (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. In State of A.P. v. McDowell & Co., this Court has opined that except the above two grounds, there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds.

34. The submissions of the learned Counsel have received my thoughtful consideration. The following two questions arise for my consideration:

(i) Whether Section 39(1) of the said Act is liable to be struck down?

(ii) Whether the impugned Orders withdrawing the nominations of the Petitioners to the Syndicates are liable to be quashed?

35. In Re. Q. N. (i): As held by the Hon'ble Supreme Court in the case of State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., no enactment can be struck down by just saying that it is arbitrary or unreasonable. One or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that the Court thinks it unjustified. The legislature consists of the representatives of the people and that is why there is a presumption that legislature knows what is good and what is bad for the people. The Court cannot sit in judgment over the wisdom of the legislators. The Apex Court further held that a law made by the legislature can be struck down only on two grounds: (a) lack of legislative competence, and (b) violation of the fundamental rights guaranteed in Part-III of the Constitution or of any other Constitutional provision. There is no third ground. The ground of invalidating must necessarily fall within the four corners of those two grounds. This position is reiterated by the Apex Court in its decision in the case of Public Services Tribunal Bar Association Vs. State of U.P. and Another,

36. In its decision in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , the Apex Court has held that the presumption is always in favour of the Constitutionality of an enactment. It must be presumed that a

legislature understands and correctly appreciates the need of its own people. It is also helpful to refer to the Hon''ble Supreme Court's decision in the case of People's Union for Civil Liberties and Another Vs. Union of India (UOI) and Others, wherein it is held that a statute carries with it a presumption of Constitutionality. Such a presumption extends also in relation to a law, which has been enacted for imposing reasonable restrictions on the fundamental rights.

37. Just because Section 39(1) of the said Act is said to be inconsistent with Section 38(1) of the said Act, the striking down of the former is not permissible. The catena of decisions, to which the references are made hereinabove, clearly restrict the scope for invalidation of the statutory provisions only to the two above grounds.

38. That apart, while interpreting the statute, judicial care has to be taken to ensure that a statute does not become unworkable. The construction of the various provisions of a statute has to be such that the inconsistency or repugnancy or conflict between the two Sections of the same Act does not render one Section nugatory. The statutes must be read as a whole and its provisions must be construed with reference to the other provisions of the same Act. It is the bounden duty of the courts to avoid the head-on clash between the two Sections of the same Act. The foremost duty of the Court is to give effect to the whole expression of legislative intention. No provision of a statute can be reduced to a lumber or superfluity.

39. In the case of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, the Apex Court has observed as follows in Paragraph No. 64:

64. Where two alternative constructions are possible, the Court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions or undermines or tends to defeat or destroy the basic scheme and the purpose of the enactment.

40. While constructing the general provision contained in Section 38(1) of the said Act, Section 39(1) of the said Act cannot be disregarded. In interpreting the statutory provision contained in Sections 38 & 39, it can be safely said that the term of the office of the nominated members of the Syndicate is for three years. But they can be removed before the expiry of their term, if the nominating authority withdraws its pleasure. If Section 38 is given all pervasive primacy to such an extent that it totally excludes Section 39, then the Syndicate Members cannot be removed even on the ground of misbehaviour, mis-conduct, etc.

41. Not finding any of the only two permissible grounds for invalidating Section 39(1) of the said Act, I answer question No. (i) in the negative.

42. In Re.Q. No. (ii): In the case of Premalatha (supra) falling for consideration under the K.C.S., Act, it is held that the pleasure appointments can always be

cancelled without Notice to the nominees. There is no question of observing the Principles of Natural Justice while cancelling the pleasure appointments. In the case of Vishnu (supra) also, this Court has held that the state Government has the power to cancel the nominations of all the members, who are appointed u/s 29(1) of the KCS Act.

43. The provisions contained in Section 29(3) of the Karnataka Cooperative Societies Act, 1959 and the 42 provisions contained in Section 39(1) of the Karnataka State Universities Act, 2000 are almost similar:

44. The Division Bench's judgment in the case of Ramanagouda (supra) is also in agreement with the views of the two learned Single Judges.

45. The Apex Court's judgment in the case of B.P. Singhal (supra) does not come to the rescue of the Petitioners in any way. The said judgment was rendered in the context of the removal of the Governor of a State. The Apex Court has held that the reasons have to exist for the removal of the Governor, because he acts as the connecting link between the Union Government and a State Government. There may be occasions when he may have to be impartial or a neutral umpire where the views of the Union Government and the State Government are in conflict. His peculiar position arises from the fact that the Indian Constitution is quasi-federal in character.

46. Similarly, Kumari Shrilekha Vidyarthi's case (supra) has also no Application for the facts of this case. In the said reported case, the District Government Counsel were appointed following the issuance of the Notification, prescription of the qualifications and experience, preparation of the panel, etc. The procedure prescribed by Legal Remembrancer's Manual was scrupulously followed while making appointments to the offices of the District Government Counsel. In the instant case, it is not even the case of the Petitions that the Applications were called for from the desirous educationists for being nominated to the Syndicates. Nor any Search Committee consisting of experts was constituted for proposing the persons for nomination to the Syndicates.

47. The four Petitioners in W.P. Nos. 25964-25967/2013 and two others were nominated to the Syndicate of Mysore University based on the letter, dated 2.2.2012 issued by the Vice President of the Bharatiya Janatha Party-Karnataka. On the said letter, the then Hon"ble Chief Minister has directed that they be nominated. The said Letter and the endorsement thereon read as follows:

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48. Consequent to the direction of the State Government, the Mysore University has issued the Notification, dated 23.4.2012 nominating the Petitioners in W.P. Nos. 25964-25967/2013 and two others as the members of the Syndicate, Mysore University. The obviousness of the matter is such that I cannot accept the submissions urged on behalf of the Petitioners that they are not nominated for political considerations.

49. The situation cannot be described with more candid objectivity than what the Apex Court has said in the case of State of U.P. (supra) that those who come by the back door have to go by the same door. The Apex Court has held that the persons appointed by arbitrary procedure cannot challenge the termination of their services on the ground of the same being arbitrary. Their induction itself being the product of the operation of the spoils system, no public interest is involved in saving their appointments.

50. Similarly, the Division Bench's judgment in the case of Khusro Quraishi (supra) can also be of no assistance for the Petitioners. In Paragraph No. 14 of its judgment, the need for the existence of reasons is made a pre-requirement for the removal of the nominated person, only if the challenge to the removal is based on the mala fide exercise of power. No foundation is laid in the Memorandums of two Petitions to show that the impugned Orders are passed as a result of maliciousness or hostility to the Petitioners.

51. The impugned Orders do not state any reasons for withdrawing their nominations. Therefore, the arguments of the Petitioners that on the withdrawal of their nominations, they are being depicted in bad light cannot be accepted.

52. The Petitioners have no legally vested right to demand that they be continued as the Members of the Syndicate for fixed period of three years. The Petitioners are neither elected nor appointed. They are nominated and they would hold the office so long as the Government does not withdraw its pleasure. The Apex Court in the case of Om Narain Agarwal (supra) has held that the nominated Members of a Municipal Board fall in a different class and that therefore, they cannot claim equality with the elected Members. The Apex Court has negated the submission that there would be a constant fear of removal at the will of the State Government and that it would demoralize the nominated Members in the discharge of their duties.

53. For all the aforesaid reasons, I answer question No. (ii) in the negative. The impugned Orders cannot be assailed with any rate of success on the ground that no reasons exist for the removal of the Petitioners.

54. W.P. Nos. 25964-25967/2013 are liable to be dismissed for an additional reason too. The said Petitioners have accepted the Mysore University's Notification, dated 23.4.2012 (Annexure-B1), which states that they are nominated for a period of three years or until further orders, whichever is earlier. Having accepted such an order or Notification with their eyes wide open, they cannot turn around and say that they have a fixed term of office for three years. In the result, both the Petitions are dismissed. No order as to costs.