
(2014) 10 RAJ CK 0057

In the Rajasthan High Court

Case No : SB Civil Writ Petition Nos. 1597 and 1598/2014

Brahammanand Meena and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Constitution of India, 1950 — Article 310(1), 311, 311(2) — General Clauses Act, 1897 - Section 16 — Government of India Act, 1935 - Section 240 — Rajasthan Municipalities Act, 2009 - Section 9 — Uttar Pradesh Municipalities Act, 1916 - Section 47-A, 87-A

Citation : (2014) 10 RAJ CK 0057

Hon'ble Judges : M.N. Bhandari, J.

Bench : Single Bench

Advocate : K.K. Sharma, Sr. Advocate and Alankrita Sharma, for the Appellant; S.K. Gupta, Additional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

M.N. Bhandari, J.?Aggrieved by the orders dated 17.1.2014 and 31.1.2014, writ petitions have been filed. By the aforesaid orders, nomination of the petitioners as member of Agricultural Market Committee has been withdrawn and in their place, private respondent No. 3 (in both the writ petitions) has been nominated.

2. It is stated that the petitioners were nominated as a member of Agricultural Market Committee pursuant to notification dated 19.9.2011. The nomination was made in exercise of powers under Section 27-A of the Rajasthan Agriculture Produce Markets Act, 1961 (hereinafter to be referred to as "the Act of 1961"). After the nomination, petitioners continued as a member of the Market Committee. In the year 2014, there was a change of the Government, accordingly, impugned orders were passed on 17.1.2014 withdrawing their nomination.

3. Counsel for the petitioners, referring to Section 7(3) of the Act of 1961, submits that once a member is nominated, he is given tenure of five years. He

can be removed only as per the provisions of Section 23 of the Act of 1961. The procedure for removal is provided under Rajasthan Agriculture Produce Markets Rules of 1963 (In short Rules of 1963). There is no provision for withdrawal of nomination. The impugned order has not been passed by invoking Section 23 of the Act of 1961 and after undergoing the procedure provided under Rules of 1963. Thus action of respondents becomes illegal. Doctrine of pleasure does not apply in this case as neither order of nomination nor provisions of the Act of 1961 provides so, rather, the Act of 1961 gives specific tenure to the member, which is of 5 years.

4. It is submitted that similar controversy came up for consideration before this court in the case of *Manik Chand Surana v. State of Rajasthan & Ors.* reported in RLR 1993 (1) 105, wherein, this court extensively considered the issue involved in this case. The ratio propounded therein is applicable in the facts of the present case also. The court therein considered application of Rajasthan General Clauses Act so as other provisions to give dictum on the issue of doctrine of pleasure. The exercise of power for withdrawal of nomination was held to be illegal.

5. A further reference has been made to the judgment of the Hon''ble Apex Court in the case of *Union of India (UOI) and Another Vs. Shardinu*, , wherein issue regarding termination of Chairman of National Council for Teacher Education was considered. The Hon''ble Apex Court held that doctrine of pleasure cannot be invoked in such cases. In reference to the aforesaid judgments, prayer has been made to set aside the orders impugned herein.

6. Learned Additional Advocate General appearing on behalf of the State, on the other hand, supported the order passed by the Government. It is submitted that petitioner was nominated being a member of Co-operative Central Financing Agency, as even indicated in the order Annex. 1. As per the provisions of Section 7 of the Act of 1961, election and nomination of the members for Market Committee take place from different spheres. As per Section 7(1)(a)(vi), the Market Committee consists of two representatives of Co-operative Market Committee and Central Cooperative Financing Agency. Petitioner was firstly nominated as a member of Central Co-operative Financing Agency, from where he was removed. Once petitioner is removed from there, cannot continue as a member of the Market Committee. The petitioners have not challenged the order of removal from Central Co-operative Financing Agency, hence consequential order passed is challenged half way only. Accordingly the order passed at Annex-2 is nothing but a consequence of petitioners removal from primary units i.e. Central Co-operative Financing Agency.

7. The further argument is that nomination of the petitioners remain till the pleasure of the Government/Governor. Reference of the judgment in the case of *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, has been given. Arguments are further supported by the judgment of *Pu Myllai Hlychho and Others Vs. State of Mizoram and Others*, and of *Krishna Borate Vs. State of Maharashtra and Others*, . Petitioner was nominated by the State

Government thus can be continued till the pleasure of the Governor/Government. Since the doctrine of pleasure applies, discontinuance of the petitioner is legal.

8. I have considered rival submissions made by the parties and scanned the matter carefully.

9. A perusal of the order of nomination vide gazette notification dated 19.9.2011 shows it to be pursuant to the provisions of Section 7(1) of the Act of 1961. Section 7(1) provides about constitution of market committees. The provision of Section 7(1) is quoted thus:--

"7. Constitution of market committees.-(1)(a) Every super class and A class market committee shall be constituted as prescribed and shall consist of the following seventeen members, namely:--

(i) Eight shall be agriculturists elected in the prescribed manner by such agriculturists or institutions of the market area as the State Government may prescribe;

(ii) Two shall be traders or brokers elected in the prescribed manner by traders and brokers licenced by the market committee;

(iii) One shall be the person elected in the prescribed manner by weighmen, measures, surveyors, warehouseman and other persons licensed by the market committee;

(iv) One shall be the member of Legislative Assembly, as nominated by the State Government;

(v) One shall be the representative of Cooperative Marketing Societies in the market area for which it is established as the State Government may prescribe;

(vi) One shall be the representative of Central Co-operative Financing Agency in the market area for which it is established as the State Government may prescribe;

(vii) One shall be the person elected from amongst its own members by the Municipal Board or Municipal Council or Municipal Corporation or Gram Panchayat in which the principle market yard is situated;

(viii) Two shall be the persons nominated by the State Government.

(b) Every B, C and D Class market committee shall be constituted as prescribed and shall consist of the following eleven members, namely:--

(i) Six shall be agriculturists elected in the prescribed manner by such agriculturists or institutions of the market area as the State Government may prescribes;

(ii) One shall be a trader or a broker elected in the prescribed manner by traders and brokers licensed by the market committee;

(iii) One shall be the representative of Co-operative Marketing Societies in the market area for which it is established as the State Government may prescribe;

(iv) One shall be the person elected from amongst its own members by the Municipal Board or Municipal Council or Municipal Corporation or Gram Panchayat in which the principal market yard is situated;

(v) One shall be the person nominated by the State Government;

(vi) One shall be the member of Legislative Assembly, as nominated by the State Government:

Provided that a person to whom a licence has been granted under sub-section (2) of section 4 or under section 14 shall not be eligible to become a member of the market committee under sub-clause (i) or sub-clause (v) or sub-clause (vi) or sub-clause (vii) of clause (a) and sub-clause (i) or sub-clause (iii) or sub-clause (iv) of clause (b):

Provided further that the State Government may, at any time, reduce the number of nominated members for any market committee and in their place may increase the number of members to be elected under sub-section (i) and sub-clause (ii) of clause (a) or, as the case may be, under sub-clause (i) and sub-clause (ii) of clause (b) as it thinks fit."

10. Perusal of the provision shows that apart from elected members, there would be nominated members. This is apart from the representatives of the Cooperative Market Committees and representative of Central Cooperative Financing Agency. The question now comes that after the nomination of the petitioners under the provisions of Section 7(1)(a)(vi) of the Act of 1961, can it be withdrawn by applying the doctrine of pleasure. Before addressing the aforesaid issue it would be gainful to quote Section 7(3) and Section 23 of the Act of 1961:--

"7(3) Every member of a market committee, nominated when it is first constituted, shall hold office for a term of two years from the date of the first general meeting of the market committee and every such member elected or nominated thereafter shall hold office for a term of five years:

Provided that in case of a committee constituted under sub-section (2)(b), it shall be competent for the State Government at any time to terminate the term of office of all the members of such committee and appoint an Administrator under section 27-A.

23. Liability of Chairman, Vice-Chairman and members for removal from office.-

(1) Every Chairman and Vice-Chairman shall, after an opportunity of being heard is afforded to him, be removable from his office as such Chairman or Vice-Chairman by the Government for misconduct in the discharge of his duties or for neglect of or incapacity to perform his duties or for making persistent defaults in the discharge of his duties and the Chairman or Vice-Chairman so removed who

does not cease to be a member under clause (b) of sub-section (2) shall not be eligible for re-election as Chairman or Vice-Chairman during the remainder of his term of office as member of the market committee.

(2)(a) The Government may, if it thinks fit, on the recommendation of the market committee or on any complaint or for other sufficient reason and after giving him an opportunity of being heard and after such enquiry as it deems necessary, remove a member of the market committee, if such member, in the opinion of the Government has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct, or has become incapable of performing his duties as a member or does any thing against the interest of the market committee.

(b) When under sub-section (1) any person is removed from office of the Chairman or Vice-Chairman for misconduct in the discharge of his duties, he shall, from the date of such removal cease to be a member and shall be deemed to have been removed from the membership of the market committee also."

11. Perusal of the aforesaid provisions shows tenure and as to how a member of the Cooperative Market Committee can be removed from his office. Section 7(3) of the Act provides tenure of five years. It is admitted by the respondents that discontinuance of the petitioners is not under Section 23 of the Act of 1961. Other than the aforesaid, there is no provision for removal or discontinuance of the member of the Market Committee. In the aforesaid background, doctrine of pleasure cannot be applied. In fact, it can be applied if nomination or appointment is not for a tenure post but at the pleasure of the Governor or the State. In the case of Om Narain Agrawal (supra), the Hon'ble Apex Court considered the provisions of U.P. Municipalities Act, 1916 and came to the conclusion that as per Section 47-A and 87-A of the Act of 1916, nominated members hold office at the pleasure of the State Government but not beyond the term of the Board. Considering the provisions applicable there, court came to the conclusion that a nominated member cannot be continued beyond the term and against the pleasure of the Government. The judgment aforesaid was given considering the provisions of U.P. Municipalities Act. Similar provisions does not exist under the Act of 1961.

12. So far as the case of Krishna S/o. Bulaji Borate (supra) is concerned, again the provisions of Section 6, 4(1)(e) and Section 10 of the Nagpur Improvement Trust Act, 1936 were taken into consideration. Section 6 of the aforesaid Act provides for removal of nominated trustee "at any time". Considering the aforesaid provision, it was held to be case of doctrine of pleasure, accordingly, removal of trustees pursuant to Section 6 was held to be valid. Hon'ble the Apex Court was cautious about the fact that the doctrine of pleasure will apply in absence of some other competing right under the statute or under the Constitution of India. If the case in hand is looked into, provisions of Section 7(3) provides five years" tenure. None of the provisions provides for removal of member at the pleasure of the Government or at any time.

13. So far as the case of PU Myllai Hlychho (supra) is concerned, the controversy therein was quite different.

14. If the case of Manik Chand Surana (supra) is looked into, the issue referred herein is similar. This Court, after considering the judgment of Om Narain Agrawal (supra), came to the conclusion that doctrine of pleasure does not apply in a case where tenure is given under the statute and, at the same time, Article 310(1) and 311(2) of the Constitution of India has no application. Relevant paras of the aforesaid judgment are quoted hereunder for ready reference:--

"6. A perusal of the provisions of the Act would make it clear that the Board is a creation of a Statute and is an autonomous body. It is a well settled that if a post is created by a Statute, the tenure of the post is also governed by the Statute, if any provision is made in it. It shall be seen later on whether the tenure of the Chairman of the Board is governed or not by the provisions made in the Act and the Rules governing service conditions of non-official members of the Board, as this is one of the vital questions which was extensively debated before me and a decision on this question shall have an important bearing on the decision of the writ petition. Suffice it to say at this stage that the Board has been given an important social function which relates to the village upliftment. Its functions include to encourage, assist and run Khadi and Village industries and to help the people by providing them with work in their homes and to give them monetary accommodation. It also conducts training centres to train people in Khadi and Village industries. The establishment of the Board and its functions are a step towards Directive Principles of the State Policy, which contain one main objective, namely; the building of a welfare state and an egalitarian social order, to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution the Constitution seeks to fulfill the basic need of a common man and to change the structure of the society without which political democracy has no meaning.

10. It may also be stated that S. 18 of the Rajasthan General Clauses Act does not confer a new right. It only furnishes a rule of interpretation and enacts that a power of appointment includes and implies within itself the power of removal and wherever an authority is empowered to make certain appointment, automatically it gets authority to exercise the power of removal in respect of the person so appointed. In other words, S. 18 of the Rajasthan General Clauses Act only enunciates the well-established rule of general law that an authority with power to appoint a person can also suspend or dismiss him, but in each case, we have to look to the Act or the rules under which an appointment has been made or conditions prescribed for an appointment, suspension or dismissal. Therefore, where a person holds an office under the provisions of a statute which fix certain modes and methods for appointment, dismissal or removal, such provisions must be complied with in regard to all these matters. The power of removal in the appointing authority is, therefore, subject to conditions of service prescribed in the Act or rules or guidelines and other constitutional protections available to the

employee.

19. It is true that the scheme of the Act shows that it is on the basis of the subjective satisfaction on the part of the State Government that nomination of the Chairman of the Board is to be made. Neither any qualification nor any norms have been laid down in the Act to provide an objective criteria for the nomination of the Chairman. It is clear from clause (a) of S.4 that the entire matter has been left by the legislature on the discretion of the State Government to nominate a person of its choice to be the Chairman. Whether these powers of the State Government are constitutionally valid or not, is not a subject matter before me and I am not required to examine this aspect of the matter. But this unfettered and absolute discretion of the State Government to nominate a person of its choice does not mean that it can remove the Chairman after his nomination at its sweet will or pleasure. After nomination a vested right is created in the person so appointed and he can be removed from his office in the manner provided in the Act and the Rules like other non-official members, who are also appointed by the State Government on its discretion. The provisions of the Act and Rules fix certain modes and methods for removal as discussed earlier, hence those provisions have to be complied with for the removal. The absolute and unfettered right of the State Government to nominate the Chairman does not ipso facto provide unfettered authority in the State to remove the Chairman at its discretion.

20. In *Kanta Devi v. State of Rajasthan* the question before a Division Bench of this Court was : Whether the State Government having exercised its power to nomination under S.9 of the Rajasthan Municipalities Act could pass a second order nominating some other person after canceling the earlier order of nomination. The application of S.16 of the General Clauses Act, 1897, which is *pari materia* to the present S.18 of the Rajasthan General Clauses Act, 1955, was considered and it was held-

"We are, therefore, of opinion that the Government having exercised its power under Sec. 8 to make a nomination once exhausts that power and cannot nominate another person to the same seat. A second order nominating some other person and canceling an earlier order of nomination would, therefore, be beyond the jurisdiction of the Government and the first order must take effect unless it is shown that the first order was issued under mistake of fact, as for example, where the Government nominates A and B as members and somebody in the office issues an order in favour of C and D. Barring such a case, where the first order would amount to no order at all, it is not open to the Government to change the order of nomination once made under Sec. 9. This is so because the person nominated immediately on the passing of such order becomes "a member nominated under this Act" and, thereafter, he cannot be prevented from taking his seat after subscribing to the oath and can only be removed under Sec. 14. This section clearly provides a different intention and, therefore, it is not open to the Government to exercise the power of removal implied in the power of

appointment under Sec. 16 of the General Clauses Act without recourse to procedure under Sec. 14 of the Act."

The aforesaid view was followed by a Division Bench of Patna High Court in Syed Shaukat Imam and others v. State of Bihar and others:

26. I would like to say few words on the doctrine of pleasure which was argued at length before me. The rule that a servant holds office at the pleasure of the master has its origin in the Latin phrase "durante bene placito" meaning that the tenure of office of a civil servant except where it is provided by the Statute, can be terminated at any time without cause assigned. In England, except where otherwise provided by a Statute, all public officers and servants of the Crown holds their appointments at the pleasure of the Crown or "durante bene placito" ("during good pleasure" or "during the pleasure of the appointer"). In English Law, Lord Diplock in Chelliah Kodeeswaran v. Attorney General of Ceylon: has stated the position as under--

"It is now well established in British Constitutional theory, at any rate as it has developed since Eighteenth Century, that any appointment as Crown servant, however, subordinate, is terminable at will unless it is expressly otherwise provided by Legislation."

The Rule of English Common Law that an officer holds office during the pleasure of the Crown has not been fully adopted either by Sec. 240 of the Government of India Act, 1935 or by Article 310(1) of the Constitution. The pleasure of the President is clearly controlled by the provisions of Article 311, and so, the field that is covered by Art. 311, on a fair and reasonable construction of the relevant words used in that Article, would be excluded from the operation of the obsolete doctrine of pleasure, but it has to be exercised in accordance with the requirements of Art. 311. Therefore, the true scope and effect of Art. 311 is determined, the scope and effect of Art. 310(1) must be limited in the sense that in regard to cases falling under Art. 311(2), the pleasure mentioned in Art. 310(1) must be exercised in accordance with the requirements of Art. 311.

27. However, as stated earlier, the petitioner was not a member of defence service or a civil service and was not holding any civil post under the Union or the State, the provisions contained in Article 310(1) or 311(2) of the Constitution of India have no application to his service conditions. He was holding an officer under the provisions of the Act and his tenure is subject to the conditions of service prescribed in the Act and Rules of 1961. The provisions have not incorporated the doctrine of pleasure in removing the service of the Chairman of the Board. On the other hand, I have held that the petitioner was holding a tenure post and the term of his office was two years from the date of his appointment as prescribed by rule 3 of the Rules of 1961. I have also held that the provisions contained in S.13, which prescribe the procedure and grounds for removal of a non-official member of the Board, is applicable to the Chairman of the Board, as such, the doctrine of pleasure or S.18 of the Rajasthan General

Clauses Act cannot be resorted to remove the petitioner."

15. This court even considered the provisions of Rajasthan General Clauses Act, 1955 and came to the conclusion that removal of the Chairman can be in the manner provided under Section 13 of the Act of 1955. It was a case having tenure of the post as in the case here. The power of the Governor/State to nominate the chairman does not ipso facto provide unfettered authority to remove him. The aforesaid judgment is applicable to the facts of this case. This is more so when the main arguments made by the learned Additional Advocate General is not coming out either from the pleadings or any document. The main argument raised by learned Additional Advocate General is regarding removal of petitioner from Central Co-operative Financing Agency. If the reply to the writ petition is looked into, there is no whisper about such facts. No document has been placed to show that the petitioner's nomination was withdrawn from Central Cooperative Financing Agency. The oral arguments thus remains without substance. Even perusal of the impugned order Annex-2 dated 17.1.2014 does not show withdrawal of nomination from Central Co-operative Financing Agency. Looking to the aforesaid, even the oral arguments are not found to be in conformity to the impugned order.

16. In view of the discussion made above, I do not find any substance in the arguments raised by the learned Additional Advocate General. The impugned order has been passed without exhausting the procedure provided for removal of the members pursuant to Section 23 of the Act of 1961 and Rules of 1963. Since the withdrawal is before completion of the tenure provided under Section 7(3) of the Act of 1961 and as doctrine of pleasure does not apply in this case, the impugned order dated 17.1.2014 at annexure-2 (in both the writ petitions) cannot be allowed to stand qua petitioners and, accordingly, same is set aside. By virtue of this order, petitioners will continue as the members of the Market Committee subject to the completion of the tenure i.e. their continuance would not be beyond the period of 5 years from the date of nomination. The State Government would, however, be at liberty to take action, if so wishes, pursuant to the provisions of Section 23 of the Act of 1961 and if the petitioners are no more members of the Central Co-operative Financing Agency. Hence, order dated 31.1.2014 at annexure-3 quo respondent No. 3 is set aside.

17. The writ petitions are accordingly allowed with no order as to costs.