

(1979) 04 KAR CK 0014
In the Karnataka High Court
Case No : WP. No. 2005/78

B.S. Siddappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-04-1979

Acts Referred:

Karnataka Improvement Boards Act, 1976 — Section 5

Citation : (1979) 2 KarLJ 238

Hon'ble Judges : Chandrakantharaj Urs, J; Jagannatha Shetty, J

Judgement

Jagannatha Shetty, J.-The petitioner was appointed as a Chairman of a statutory board at pleasure of the Government and he was removed also at pleasure. The validity of removal has been assailed in this writ petition.

2. By order dated 27th January, 1976, the State Government appointed the petitioner as Chairman of the Improvement Board of Shimoga which is a Board constituted under the Karnataka Improvement Boards Act, 1976 (Karnataka Act 11 of 1976) (called shortly "the Act"). While he was continuing in the office, the President of India by a proclamation dated first January 1978 assumed the functions of the State Government and immediately thereafter the Governor terminated the appointment of the petitioner by order dated 19th January 1978. The said order reads as follows:

"Government of Karnataka.

No. HUD 12 MIB 78-VII Karnataka Government, Secretariat, Vidhana Soudha, Bangalore, dt. 19th Jan. 1978

NOTIFICATION

In exercise of the powers conferred by sections 4 and 5 of the Karnataka Improvement Boards Act, 1976, (Karnataka Act No. 11 of 1976) the Government of Karnataka hereby terminates with immediate effect the appointment of Shri B.S. Siddappa, as Chairman of the Improvement Board, Shimoga, made in Government Notification No. HMA 207 MNX 75, dt. 27th January. 1976 and

appoints the Deputy Commissioner, Shimoga District, Shimoga as the Chairman of the said Board.

By Order and in the name of the President of India.

(Sd.)

K.K. Dasappa Setty.

Under Secretary to Government, Housing & Urban Development Dept." It is seen from the above order that in the place of the petitioner, the Deputy Commissioner of Shimoga District was appointed as the Chairman of the said Board Pursuant thereto, the petitioner handed over the charge to the Deputy Commissioner, and thereafter approached this Court for relief under Art. 226.

The petitioner states that his appointment was for a term of three years and his premature termination was illegal and contrary to S. 8 of the Act, It was arbitrary and smacks of political overtones. It is also stated that the removal without affording him any opportunity was illegal and contrary to the principles of natural justice.

By amendment to the petition, one additional contention has been raised. It is stated that the power conferred by S. 5 of the Act is arbitrary and the words

"subject to the pleasure of the Government" in the said section are illegal and void.

2. The State while resisting the petition. inter alia contended that the Board was constituted with the appointment of the petitioner as Chairman under Ss. 4 & 5 of the Act. The petitioner's removal was not for cause and therefore sec. 8 is not attracted to his case. His removal was as a result of withdrawal of pleasure under S. 5, and therefore, not a justiciable issue The petitioner, in any event, is not entitled to any opportunity and the principles of natural justice cannot be invoked at an action taken under S. 5 of the Act.

In regard to the last contention raised by the petitioner, it has been stated that the power to discharge or remove the petitioner is implicit in the power of appointment and that power cannot be fettered by any conditions, and therefore is not arbitrary.

4. The case of the petitioner is two-fold. First, he says that he is entitled to a notice under the rules of natural justice: secondly, he says that he has a right to be heard under the Act before he was removed. In order to appreciate these contentions, it is necessary to refer to the relevant provisions of the Act. The Act is to provide for the establishment of Improvement Boards for the development of urban areas in the State of Karnataka and for matters connected therewith. The Board constituted under the Act is a body corporate under sec. 3. The Board shall consist of the following members as provided under S. 4;

(a) a Chairman who shall be appointed by the Government;

(b) an officer of the Town and Country Planning Department not below the rank of an Assistant Director of Town and Country Planning appointed by the Government:

(c) the Executive Engineer of the Division;

(d) two persons who are ordinarily resident in the urban area for which the Board is constituted, appointed by the Government; and (e) two elected representatives of the local authority concerned.

The Board thus consists of members appointed by the Government, one ex-officio member and two elected representatives of the concerned local authority. The Chairman of the Board is one among the members appointed. The power to appoint him is located under S. 5 which reads:

"5. Term of office.-(1) Subject to the pleasure of the Government, the Chairman and other members appointed by the Government shall hold office for a period of three years.

S. 7 provides for disqualification for office of membership and sets out the grounds upon which a member could be disqualified for being appointed as and also for being a member of the Board. S. 8 provides for removal of member. A member could be removed if he becomes subject to any disqualifications mentioned under S. 7 in addition to the other disqualifications provided under S. 8. Such a member before his removal is entitled for an opportunity to make his representation against the proposal.

5. We will first consider the second contention urged for the petitioner. It is said that the Chairman by reason of his appointment becomes a member of the Board and a member could be removed only in accordance with the provisions of S. 8 after affording an opportunity of making his representation. This contention would have been accepted if the petitioner had been removed for disqualifications set out under Ss. 7 or 8. But admittedly, he was not removed on any such ground. He was apparently removed at the pleasure of the Government. S. 5 provides that the Chairman and other members appointed shall hold office for a period of three years subject to the pleasure of the Government. Lord Reid in *Malloch v. Aberdeen Corporation*, (1971) 2 All. ER. 1278 at 1282, said "acting at pleasure means that there is no obligation to formulate reasons". The power to appoint includes the power to remove; or the power to remove is implicit in the power to appoint. Further, "removal at pleasure" is quite distinct from removal "for cause". In the latter there is an obligation to give reasons, but there is no such obligation in the former. That is why the Court insists that a party removed "for cause" should be afforded an opportunity against the proposal. The petitioner cannot demand that opportunity as he was not removed for cause set out under Ss. 7 or 8 of the Act.

6. The next question is whether the petitioner was entitled to a notice under the rules of natural justice. This contention proceeded on several assumptions. It is

said that under S. 5 the petitioner had a right to continue in office for a period of three years and his removal affected his civil rights. This assumption appears to be not correct, The order appointing him did not specify any fixed term. If that order had prescribed a definite term, then we could have said that it expressly excluded the power to remove at pleasure. S. 5 no doubt provides that the Chairman and other members appointed by the Government shall hold office for a period of three years. But then, the period prescribed thereunder is not a security for the holder of the office. According to us, it appears to be a limitation imposed by the Legislature on the Executive for appointing a person at pleasure. The petitioner, therefore, cannot contend that he had a right to hold the office for a fixed period of three years.

7. It was next urged that the removal visits the petitioner with civil consequences and therefore he ought to have been heard under the rules of natural justice. In support of the contention, reliance was placed on the following passage in the majority view of this Court in *Puttappa v. State of Karnataka*, 1978 (1) Kar.LJ. 302 at 350, para 27:

"Whatever might have been the medieval concept of natural justice it must be admitted, that in recent years it has a wide ranging application in many Governmental actions. Although the precise content of it was doubted from time to time, its general applicability to Government action was never doubted by the Judges. One vital principle, that is, the right of a person to be given a fair hearing before he suffers in some way under the official rod, has been consistently applied by the Courts, and today, it has become one of the most essential elements in the rule of law."

There cannot be any dispute over the proposition. But to attract the above principle, the petitioner must show that he has suffered in some way under the official rod It is urged that the petitioner has been deprived of his emoluments, and perquisites pertaining to the office. That is undoubtedly the result consequent on his removal. But that by itself is not a proof that he has suffered. He must further show that he has had that right to receive it. If he is held to have no right to the office, it would be futile to contend that he has a right to receive the remuneration attached thereto.

We do not see how the petitioner has been prejudiced in any other manner. We have already held that his removal was not for cause, and we must also state that it does not cast any stigma and so he cannot rely upon the rules of natural justice.

8. It was next urged whether a removal for cause or at pleasure should in principle make no difference for the application of the principles of natural justice and in support thereof, the following passage from Wade: Administrative Law was cited, See H.W.R. Wade: Administrative law, Fourth Edition, page 478:

"The key to the problem, it is submitted, is to be found not in the terms on which the office is held, but in the specific protection of the office. It is this which

distinguishes offices on the one hand from mere contractual employment on the other. In a perfect world even a mere employee would doubtless have a right to be heard before dismissal for misconduct, and to some extent he now has one by statute. But since the law lacks any mechanism for restoring his employment specifically, it cannot supply an effective remedy. In the case of offices, membership, status, and so forth it is able to do so; and it would seem right therefore to protect the officer or member against wrongful deprivation of every kind and to accord him the procedural rights without which deprivation is not fair and lawful. Whether he is removable for cause or at pleasure should in principle make no difference."

No doubt, the above passage supports the contention urged. But we cannot import that principle to this case having regard to the scheme of the Act and the clear distinction made thereunder between removal for cause and removal at pleasure. The Act expressly attracts the principles of natural justice in the first case and excludes it in the other. It hardly needs reiteration that the principle of natural justice has no part to play in a case where the appointment confers no right and removal results in no civil consequences. The case of the petitioner cannot be an exception to this well settled principle.

9. This takes us to the last contention. It is urged that the Act does not provide any principle for the exercise of the pleasure conferred upon the Government and the person appointed may be made a victim of the pleasure by the Government for political or personal reasons. The power is said to be capable of being exercised arbitrarily before the expiry of the tenure and contrary to Art. 14 of the Constitution. It may be noticed that the petitioner does not complain about the entire section 5 of the Act. He is aggrieved only by the words "subject to the pleasure of the Government" in that section. We fail to understand the merit of this contention. The appointment at pleasure is not an arbitrary appointment. Art. 156(1) of the Constitution provides that the Governor shall hold office during the pleasure of the President. Art. 165(3) provides that the Advocate General shall hold office during the pleasure of the Governor. Under Art. 76(4), the Attorney General shall hold office during the pleasure of the President. These familiar patterns are not the relics of the arbitrary power of absolute monarchs of the past. The power, however, is required to be exercised reasonably so as to achieve the purpose for which it is conferred. There is, therefore, nothing wrong in the conferment of that power, and that too, on a high authority like the Government.

10. In the result, the rule is discharged and the petition is dismissed. But we make no order as to costs.