

(2008) 06 PAT CK 0042

In the Patna High Court

Dr. Binod Kumar Choudhary

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Citation : (2008) 06 PAT CK 0042

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioner, for the State and for respondents 3 and 4.

2. The petitioner seeks quashing of the notification dated 20-12-2005 bearing No. 1140(17), cancelling the nomination dated 26-2-2005 of the petitioner made by the State Government to the Dental Council of India in exercise of powers u/s 6(1) of the Indian Dentist Act, 1948 (hereinafter called "the Act").

3. To appreciate the controversy it is necessary to set out the relevant extract of Sections 3 and 6 of the Act.

4. Section 3. Constitution and composition of Council. The Central Government shall, as soon as may be constitute a Council consisting of the following members.

(e) One member to represent such State or a Union Territory nominated by the Government of each such State from amongst persons registered either in a Medical Register or a Dental Register of the State.

Section 6. Term of Office and Casual vacancies.

(1) Subject to the provisions of this Section an elected or nominated member shall hold office from the date of his election or nomination or until his successor has been duly elected or nominated whichever is longer.

Provided that a member nominated under Clause (e) or Clause (f) of Section 3 shall hold office during the pleasure of the authority nominating him.

5. Learned Senior Council Shri Umesh Prasad Singh appearing for the petitioner

urged that the nomination of the petitioner was statutory in nature. Therefore, the right to set aside this nomination carried a corresponding duty to act fairly and reasonably. A nominee had a right to continue for five years. Any removal during the period had to be for valid and cogent reasons after grant of due and adequate opportunity to the person to be affected. The impugned order though couched innocuously in fact is explained in the counter affidavit, which explanation read with the file notings made available to the petitioner on his application under the Right to Information Act demonstrates that the order was mala fide and was made at the behest of a political functionary consequent to the change of Government. In absence of prior notice and opportunity and availability of valid and cogent reasons order dated 20-12-2005 was bad and fit to be set aside. Respondent No. 4 was not fit to be appointed and had managed the appointment due to his political affiliations with the party in Government. Mala fide is further evident that the order of removal was never actually served on the petitioner. He relied upon the following judgments.

6. AIR 1952 SC 16 (Commissioner of Police, Bombay v. Gordhan Das Dhanji) A.K. Kraipak and Others Vs. Union of India (UOI) and Others, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Suman Gupta and Others Vs. State of Jammu & Kashmir and Others, and Bhikhubhai Vithlabhai Patel and Others Vs. State of Gujarat and Another, .

7. Mr. R.N. Mukhopadhyay appearing on behalf of respondent No. 4 urged that the notification dated 26-2-2005 of nomination of the petitioner was itself an ad hoc arrangement lacking cabinet approval. He further contended that if reasons are available in the file that is sufficient and that there was no need for specific communication. He relied on the judgment reported in (2007) 10 SCC 635 : 2007 AIR SCW 2376 (Raj Kumar Soni and Anr. v. State of U.P. and Anr.)

8. Similar arguments were made by learned Counsel appearing for respondents 1 to 3.

9. On considerations of the submissions, this Court finds it difficult to agree with the contentions of behalf of the petitioner. The period of five years referred to in the nomination does not create indefeasible rights. It only signifies the outer limit up till which a nominated member can hold office. The contention of a statutory right to continue thereunder is negated by the statute itself when it waters down the period of nomination of a person u/s 3(e) of the Act to the pleasure of the authority nominating him. The dictionary meaning of "Pleasure" is a state of feeling or being happy or satisfied. The nominee can therefore hold office only till the satisfaction of the person nominating him. The moment the satisfaction changes by a decision for removal, the nomination comes to an end. The applicability of natural justice has been specifically excluded and to read the same into the statute shall create a contradiction with the theory of pleasure. The duty of the Court is to read the statute in accordance with the will of the legislature. Natural justice has aptly been described as not being an unruly horse but that its applicability shall depend on the facts of each case. The judgments

relied upon by the petitioner arise in a different background unconcerned with the Issues of nomination and the doctrine of pleasure therein. In light of the aforesaid discussions the contentions of statutory duties, statutory rights, grant of opportunity and recording of reasons referred to in the Judgments relied upon by the petitioner in different context has no relevance to the present controversy.

10. The Apex Court in *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, was considering an order of removal of a person nominated by the State Government as a member of the Municipal Board at its pleasure. The Apex Court in the relevant extract at Paragraphs 10, 11 and 12 of the judgment held as follows

10. ...The right to seek an election or to be elected or nominated to statutory body depend and arises under a statute. 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 at 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 as may be present in a case of an elected member....

11. ...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 not 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 member. It is done purely on political considerations....

12. ...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 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....

11. This has been reiterated by the Apex Court in *Krishna Borate Vs. State of Maharashtra and Others*, wherein the Judgment in *Om Narayan Agrawal (supra)* has been relied upon. The order dated 20-12-2005 removing the petitioner only exercises the powers given to the authority making the nomination under the doctrine of pleasure. It involves no stigma and does not caste any aspersion. The order impugned is simpliciter in exercise of powers under the doctrine of pleasure and does not reflect any mala fides or caste stigma. If the order is in consonance with law, can statements made in the counter affidavit to explain the order render it bad. This aspect of the matter was considered by the Supreme Court in (2002)1 LLJ 690 SC (*Pawanendra Narayan Verma v. Sanjay Gandhi PGI*

Medical Sciences and Anr.) at paragraph 35 quoted below:

35. Equally an order which is otherwise valid cannot be invalidated by reasons of any statement in any affidavit seeking to justify the order. This is also what was held in *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, .

12. On facts the allegations of mala fide from the file notings procured under the Right to Information Act to allege having been done on political consideration does not impress this Court in light of the discussions on this aspect in the case of *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, . In any case it makes out no case of mala fide but only discloses the reasons for the exercise of the pleasure doctrine. Additionally it has been held that file noting per se creates no right unless communicated.

This Court in light of the discussion as above finds no merit in this writ application. It is accordingly dismissed.