

(2012) 04 KAR CK 0090

In the Karnataka High Court

Case No : Writ Petition No. 20011-12 of 2011 (GM-RES)

Dr. M.D. Sampath

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Nagpur Improvement Trust Act, 1936 — Section 10, 4 (1) (e), 6

Citation : AIR 2012 Kar 111

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : Sukrutha, for Sri C.M. Poonacha, for Lexplexus, in both Appeals, for the Appellant; H.T. Nearendra Prasad, HCGP for R 1 in both Appeals, for the Respondent

Final Decision : Allowed

Judgement

The Hon"ble Mr. Justice B.S. Patil

I. In these writ petitions, common questions arise for consideration. Hence, they are clubbed, heard together and are disposed of by this common order. Petitioners are aggrieved by the notification dated 23.02.2011 issued by the Government; of Karnataka, whereby the nomination of the petitioners as Members of the Managing Committee of the Academy of Sanskrit Research, Melkote, has been withdrawn and respondents 3 to 5 are nominated as Members of the Committee. A corrigendum is issued on 03.03 2011 vide Annexure-B to correct the notification Annexure-A, so as to substitute the expression "Founder members of the Academy of Sanskrit Research. Melkote under Rule 7b" for the words appearing as "Members to the Managing Committee of the Academy of Sanskrit Research, Melkote under Rule 6. Hence, the petitioners have also challenged the said corrigendum also.

2. The Academy of Sanskrit Research-respondent No. 2 herein is a Society registered under the Karnataka Societies Registration Act, 1960. The object of

the society is in encourage, promote and undertake research on Vedas. Agamas and Philosophy. The society is administered by a Managing Committee. It has its own Memorandum of Association and Rules & Regulations. Rule 4 deals with Membership. The membership is open to persons and organizations interested in the objectives of the academy subject to the approval of the Managing Committee and it provides for the following categories of membership:

- (i) Founder Members:
- (ii) Patrons;
- (iii) Donors;
- (iv) Life Members;
- (v) Members:
- (vi) Honorary Members
- (vii) Fellow Members
- (viii) Institutional Members.

3. The rules and regulations framed in Rule 4(i) (a) to (n) lists out the names of 14 persons/authorities as Founder Members. They have been nominated as such by issuing Government Orders during the period ranging from 1976 till 2008. This is clear from the particulars of the Government Orders under which each one of the nominated member is so nominated as shown immediately below the names of the Members under Rule 4(i) of the Rules. Petitioner in W.P. No. 2001 1-12/2011 - Dr. M.D. Sampath has been nominated in the place of the vacancy that had arisen on account of the resignation of Dr. N.S. Ananthrangachar as a Founder Member. The Managing Committee in its 152nd meeting held on 03.03.2007 had recommended for petitioner's nomination. As per the said recommendation and the proposal submitted to the Government, by a Government Order dated 23.05.2007, petitioner was nominated as a Founder Member. As already noticed above, his nomination has been withdrawn by the notification dated 23.02.2011.

4. Similarly. Prof. M.H. Dhananjaya - petitioner in W.P. 17314-15/2011 has been nominated as Founder Member in the place of the vacancy caused on account of the resignation of Sri N.S. Ramanujathathacharya as a Founder Member. This nomination is made vide Government Order dated 17.07.2008 pursuant to the recommendation made by the Managing Committee which had taken a decision in this regard in its 155th meeting held on dated 02.01.2008.

5. The contention of the petitioners is that the impugned notification issued is highly illegal, arbitrary and contrary to the Memorandum of Association and the Rules and Regulations of the respondent No. 2-Society. Counsel for the petitioners has very strongly urged that the respondent No. 1 is not entitled to nominate the Founder Members in the absence of any vacancy which could only

arise on account of death or resignation. It is the contention of the learned Counsel that a Founder Member cannot be nominated by displacing an existing Founder Member. It is further urged by her that as per the Memorandum of Association and Rules & Regulations of the Society, if any vacancy arises in respect of a Founder Member of the Academy, the same shall have to be filled up by nomination only after taking into consideration the recommendations of the Managing Committee of the Academy, whereas, in the instant case, the State Government has nominated respondent Nos. 3 to 5 as Founder Members without any recommendation made by the Managing Committee of the Academy. It is further urged that as no reasons are assigned for withdrawing the nomination of the petitioners, the impugned notification is arbitrary. In support of her case, she has placed reliance on the following judgments.

(i) Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others,

(ii) The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others,

(iii) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

6. Learned Government Pleader Mr. Narendra Prasad has countered the contentions of the petitioners by placing reliance on the following judgments:

(i) Om Narain Agarwal & Others - Nagar Palika, Shahjahanpur & Others - AIR 1973 SC 1440;

(ii) B.P. Singhal Vs. Union of India (UOI) and Another,

(iii) Krishna Borate Vs. State of Maharashtra and Others,

7. Having considered the respective contentions, the question that falls for consideration is

whether the impugned notification issued withdrawing the nominations of the petitioners is bad in law?

8. For the purpose of examining this question, it is necessary to refer to Rule 7(a), 7(b) & 7(c) of the Rules & Regulations governing the Academy. They are as under:

7a. Notwithstanding anything contained in these Rules and Regulations of the Academy, the first Managing Committee shall consist of the Founder Members and they shall continue to hold office for a period of 3 years from the date of Registration of the Academy.

7b. Where any person is appointed as Founder Member of the Academy by virtue of an office held by him, his membership shall terminate when he ceases to hold that office and in his vacancy his successor in that office shall automatically become the Founder Member of the Academy. Any vacancy in respect of the

other Founder Members of the Academy shall be filled up by nomination by Government after taking into consideration the recommendations of the Managing Committee of the Academy.

7c. In case of any vacancy arising out of sudden death or resignation of a member, the Managing Committee shall have powers to co-opt any other member from the General Body till the vacancy is filled up by regular election.

9. It is clear from the Rules extracted above, particularly Rule 7(b) that if a person is appointed as Founder Member by virtue of the office held by him, his membership gets terminated when he ceases to hold that office and in his place, his successor will automatically become the Founder Member of the Academy. For example, as can be seen from Rule 4(i)(b)(c)(d) & (e), the Commissioner for Endowments in Karnataka, the Deputy Commissioner, Mandya, the Commissioner for Public Instructions, Bangalore, and the Chief Executive Officer, Zilla Panchayath, Mandya, are the Founder Members and their membership gets terminated when they ceased to hold their respective office as such and in their vacancy, the incumbents will automatically become the Founder Members. In respect of any other vacancy of the other Founder Members of the Academy, the same shall be filled up by nomination by the Government after taking into consideration the recommendation of the Managing Committee of the Academy. It is thus clear that any vacancy that may arise in respect of other Founder Members of the Academy, the Government can fill it up by nomination, but only after taking into consideration, the recommendation of the Managing Committee. In case of any vacancy arising due to death or resignation of a member, the Managing Committee has powers to co-opt any other member from the General Body till the vacancy is filled up by regular election.

10. The constitution of the Managing Committee of the Academy is provided for in Rule 6. It consists of not less than nine members and not more than twelve members with a tenure of three years. Out of them, six members have to be elected by the General Body from Founder Members other than those who hold their office by virtue of their official capacity and three members to be elected by the General Body, one each from the other class of members, viz., Patrons, Donors and Life Members. It is thus clear that the Managing Committee of the Academy represents members who are elected by the General Body. No tenure is fixed for the members. When the mode of filling up the vacancy in respect of Founder Members is provided in the Rule, making it clear that it shall be filled up by nomination by the Government after taking into consideration the recommendations of the Managing Committee of the Academy, the Government cannot resort unilaterally to create vacancy by withdrawing the nomination of the existing Founder Members and fill them up by nominating other persons without reference to the Managing Committee of the Academy. In the absence of any provision made in the Rules for withdrawing the nomination of a Founder Member, even assuming that the State Government can resort to such withdrawal of the nomination in a given case, the same cannot be done

whimsically without referring the same to the Managing Committee and considering the views of the Committee. It is implicit in Rule 7(b) that when the Government is enjoined with a duty to take into consideration the recommendations of the Managing Committee of the Academy before filling up, by nomination any vacancy in respect of Founder Members other than official members, it cannot be conceded that wherever action is initiated for removing the nominated members and for filling up the vacancy arising on account of such removal or withdrawal, no recommendations of the Managing Committee is needed. By the impugned notifications at one stroke the nomination of the petitioners has been withdrawn and in their place, respondent Nos. 3 to 5 have been nominated without any recommendation of or consultation with the Managing Committee. This is contrary to Rule 7(b) of the Rules.

11. The contention of the learned Counsel for the petitioners that once a member is nominated as a Founder Member, he cannot at all be removed except for allegations of misconduct and for such other related reasons after following the required procedure cannot be accepted as it is very well established that power to nominate in the context of the present rules inheres in it, the power to remove. As the Rule itself gives an indication regarding the mode of filling a vacancy and provides for considering the recommendation of the committee while nominating the member to the vacancy, the withdrawal of nomination will also have to be done after taking into consideration the recommendations of the Managing Committee. This process reduces the unfettered discretion or unaccountable action, which may result on account of the withdrawal of the nomination at the sweet will, whim and fancy of the Government.

12. Though learned Counsel for the petitioners has placed reliance on several judgments to contend that the withdrawal of nomination in the instant case is done arbitrarily without assigning any reason as per the whims of the Government, the decisions relied upon have arisen in different contexts and do not have direct bearing on the question involved in this case.

13. In the case of *Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others*, the question that fell for consideration was whether the rejection of highest offer in response to an invitation by public tender without assigning any reason for the same was arbitrary, unconstitutional and contrary to rule of law. In that background, while holding that as there was no allegation of mala fides against the Corporation-respondent No. 1 therein in refusing to accept the highest offer, it must be held that the Corporation acted bona fide, the Apex Court observed that in the light of expansion of the scope of judicial review of administrative action and expanded State activity, there was need for recording reasons for executive actions including the case of rejection of highest offers. The ratio laid down there cannot be made applicable to the case of withdrawal of nomination made to a post.

14. Similarly, the decision in the case of *The Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Others*, is of no

assistance to the controversy raised in the present case as the Apex Court was emphasizing the need for reasoned order for administrative, quasi-judicial and judicial bodies. In the facts of the said case, the High Court did not accept the recommendation made by the expert committee at the initial stage and while rejecting the application for modification did not assign any reasons for rejecting the recommendation. In that background, referring to the Constitution Bench judgment in the case of *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, the Apex Court held that the courts should be slow to interfere with the opinions expressed by the experts and that it is a settled legal position that not only an administrative but also a judicial order must be supported by reasons, recorded in it. In paragraphs 40 & 41, the Apex Court has underscored the need for reasons for conclusion by stating that "it is the duty and obligation on the part of the court to record reasons while disposing the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice delivery system, to make known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. In the instant case, the issue being withdrawal of nomination, the ratio laid down in the above decision cannot be made applicable.

15. Learned Government Pleader has relied on the decision in the case of *Krishna Borate Vs. State of Maharashtra and Others*, In the said case, while considering the provisions of Nagapur Improvement Trust Act. 1936. particularly Sections 4(1)(e) & 10 in connection with removal of nominated trustee by the State Government, the Apex Court has held that in view of the action of removal resorted to as per Section 6 without any stigma, in the wake of the language used u/s 6 that the Chairman or any Trustee may be removed, "at any time", before the completion of the term of five years the doctrine of pleasure was implicit in the provision. The observations made in paragraph 8 of the said judgment may be usefully extracted.

.....Rights of trustees falling under the aforesaid clause (e) are rights created under a statute and hence that very creator can always limit or curtail such right. In such cases, if a trustee is removed, he cannot project any grievance that no opportunity was given to him. If any right which is creature of statute, is limited or curtailed by that very statute, in the absence of any other right under that very statute or the Constitution of India, such trustee cannot claim any right based on the principle of natural justice.

16. This decision also does not have any application to the facts of the present case as there is no provision made in the rules for withdrawal of the nomination or removal of the Founder Member at the pleasure of the State Government.

17. However, one thing is clear from Rule 7(b) that the Government does not have any absolute power to remove a nominated member by withdrawing his nomination. On the other hand, the Rule makes it clear that even while filling up

the vacancy by way of nomination the Government is required to consider the recommendations of the Managing Committee of the Academy. Therefore, the safeguard is implicit and inbuilt against the exercise of absolute discretion by resorting to the doctrine of pleasure. Therefore, it is clear that the power exercised by the Government in issuing the impugned notifications withdrawing the nomination of the petitioners and tilling up vacancy by nominating the contesting respondents in their place is not in conformity with Rule 7(b) and is vitiated as it is exercised at the sweet will of the Government without any basis and without referring the matter to the Managing Committee of the Academy for recommendations. Hence the impugned notifications are bad in law and are therefore set aside. Writ petitions are accordingly allowed.