

(2000) 02 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No's. 40480 to 40483, 43245, 43246, 41080 to 41083, 43128, 43249 to 43252, 39747 and 44217 of 1999

H. Rajaiah and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 21-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 165, 310
Karnataka Improvement Boards Act, 1976 — Section 5
Karnataka Urban Development Authorities Act, 1987 — Section 5, 6

Citation : (2000) ILR (Kar) 4989 : (2000) 6 KarLJ 401

Hon'ble Judges : Tirath Singh Thakur, J

Bench : Single Bench

Advocate : Sri S.S. Ravi, Sri Chandrashekar, Sri Subash B. Adi, Sri V.P. Kulkarni and Sri B.R. Vishwanath, for the Appellant; Sri K.N. Putte Gowda, Government Advocate, Sri Basavaprabhu S. Patil and Sri Srinivasan for Sri B.B. Bajentri, for the Respondent

Judgement

1. Common questions arise for consideration in all these writ petitions, which shall stand disposed of by this common order. The answer to the questions turns on the true import of the "Doctrine of Pleasure" and the scope of judicial review in cases where the same is invoked. The facts lie in a narrow compass and may be stated at the outset.

2. Petitioner in W.P. No. 39747 of 1999 was by an order of the State Government appointed as Chairman of the Urban Development Authority, Hubli whereas petitioners in W.P. Nos. 43249 to 43252 of 1999, 41080 to 41083 of 1999 and 40480 to 40483 of 1999 were similarly nominated as members of the Urban Development Authorities of Haveri, Davangere and Shimoga. Petitioners in W.P. Nos. 43245 and 43246 of 1999 were nominated as members of City Municipal Council, Shimoga, while petitioners in W.P. Nos. 43128 and 44217 of 1999 were appointed as Chairman of the Town Planning Authorities of Ranebennur and Chintamani. The appointment/nomination of each one of the petitioners as also

their continuance was at the pleasure of the Government. Their grievance now is against orders issued by the Government by which they have been either removed or asked to tender their resignations. The validity of these orders has been assailed on two distinct grounds. It was firstly argued by learned Counsel for the petitioners that removal of a nominated member was under the Karnataka Urban Development Authorities Act, 1987 permissible only in situations and on the grounds stipulated in Section 6 of the said Act. The Doctrine of Pleasure incorporated in Section 5 of the Act was, according to the learned Counsel, controlled by the provisions of Section 6 thereof, so that the Government cannot direct the removal of a member except on one of the grounds set out in the latter provision. Alternatively it was contended that the removal of the petitioners and/or the direction that they should tender their resignations was mala fide and vitiated by extraneous considerations. Relying upon the decision of this Court in Janab Shastri Khaja Hussain Vs. The Karnataka Board of Wakfs and Another, , it was argued that the validity of an order made on the basis of the pleasure theory could also be examined on the touchstone of Article 14 of the Constitution.

3. Judicial review of administrative decisions is broadly speaking available on the grounds of "Illegality", "Irrationality" and "Procedural impropriety". A fourth ground viz., Proportionality is also fast gaining judicial acceptance as a possible ground on which an administrative or a quasi-judicial action may be questioned. Lord Diplock's oft quoted observations in Council of Civil Service Unions v Minister for the Civil Service, that have met the approval of the Supreme Court elaborate the grounds thus:

"By illegality....I mean that the decision-maker must understand correctly the law that regulates his decision-making power and give effect to it....By "irrationality" I mean what can now be succinctly, referred to as "Wednesbury unreasonableness"....It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...I have described the third head as "procedural impropriety" rather than the failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice".

4. The challenge in these cases is limited to the twin grounds of the impugned orders being illegal in that the same exceed the term of the power which authorises the making of the decision and irrationality in that the exercise of the power was improper. While the first will involve an appreciation of the Doctrine of Pleasure and its application to cases where the enactment provides for removal of nominated members on proof of a disqualification, the latter will bring into

focus the scope of judicial review of decisions of the kind impugned in these petitions. I shall deal with the ground ad seriatim.

5. The doctrine of pleasure and its Latin equivalent "durante bene placito" ("during pleasure") was explained by the Supreme Court in *The State of Bihar Vs. Abdul Majid*, . The Court held that the doctrine that a civil servant holds office at the pleasure of the Crown had its origin in the Latin phrase "durante bene placito" which implies that the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. A priori, civil servants are liable to be dismissed without any notice and without giving them a right of action for wrongful dismissal by way of damages. In *Dunn v Queen*, the Court of Appeal in England held that it was an implied term of every contract of service that servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law hold their offices only during the pleasure of the Crown. The following observations of Lord Herschell are in this regard apposite.-

"It seems to me that it is the public interest which has led to the term which I have mentioned being imported into contracts for employment in the service of the Crown. The cases cited show that, such employment being for the good of the public, it is essential for the public good that it should be capable of being determined at the pleasure of the Crown, except in certain exceptional cases where it has been deemed to be more for the public good that some restrictions should be imposed on the power of the Crown to dismiss its servants".

6. In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, , and Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., ,* their Lordships declared that the Doctrine of Pleasure was not based upon any special prerogative of the Crown but upon public policy. In *Union of India and Another Vs. Tulsiram Patel and Others, ,* the Court rejected the argument that the doctrine of pleasure was a relic of the feudal age and a part of the special prerogative of the Crown imposed upon India by an Imperial power and thus an anachronism in a modern democracy. The Court reiterated that the doctrine was founded upon the principle of public good and had received constitutional sanction by its incorporation in Article 310(1).

7. Three Division Bench decisions of this Court, which have a bearing on the questions raised here may also be noticed at this stage. In *B.S. Siddappa v State of Karnataka and Others*, the validity of an order removing the Chairman of the Improvement Board, Shimoga was called in question among others on the ground that Section 5 of the Karnataka Improvement Boards Act, 1976, which provided that the Chairman and members shall hold office for a period of three years subject to the pleasure of the Government was arbitrary and offensive to Article 14 of the Constitution. Rejecting the argument, a Division Bench of this Court held that an appointment made at pleasure is not an arbitrary appointment, as indeed appointment of Governors under Article 156(1) of the Constitution, Attorney General under Article 76(4) and the Advocate General

under Article 165(3) were during the pleasure of the President and the Governor respectively. The Doctrine of Pleasure was not, declared the Court, a relic of the arbitrary power of absolute monarchs of the past and that the power vested thereby had to be exercised reasonably so as to achieve the purpose for which it is conferred. More importantly the Court held that the power to remove for cause did not affect or control the power to remove at pleasure. The latter could be invoked even when no case was made out for a removal under the former.

8. The correctness of the view taken in Siddappa's case, *supra*, was examined by another Division Bench in Sangappa Vs. State of Karnataka, . That was also a case of removal of the petitioner from the Chairmanship of Davangere Improvement Board on cessation of the pleasure of the Government. Reiterating the view taken in Siddappa's case, *supra*, the Division Bench held that there was a distinction between removal for cause and removal at pleasure. In the case of removal for cause, it was necessary to issue a notice and give reasons whereas no such obligation existed in the case of removal at pleasure. Then came S. Govindappa v Chief Secretary to Government of Karnataka and Another, in which removal of petitioner from the membership of the Karnataka Electricity Board at the pleasure of the Government was assailed inter alia on the ground that the termination was arbitrary, hence liable to be quashed as violative of Article 14 of the Constitution. Relying upon the Division Bench decisions in Anjuman-e-Islam Vs. Karnataka Board of Wakfs, , and B.S. Siddappa v State of Karnataka, the Court rejected the challenge and held that the removal did not suffer from any illegality to warrant interference.

9. The Doctrine of Pleasure is, as seen above, neither a relic of a feudal age nor a special prerogative of the Crown. It has found acceptability even in modern Democratic set ups on the ground of public good. In India, it has received recognition by incorporation in the provisions of Articles 76(4), 156(1), 165(3) and 311 of the Constitution. It thus remains a dynamic concept that transcends the vicissitudes of time and the changes that have come about since its birth. The doctrine and the amplitude of the power available under the same is not therefore ipso facto arbitrary, irrational or violative of the provisions of Article 14 of the Court.

10. That leaves me with the question whether the power to remove for cause in any way whittles down the power to remove on pleasure. Section 5 of the Karnataka Urban Development Authorities Act, 1987 is in pari materia with Section 5 of the Karnataka Improvement Boards Act, 1976 and specifically provides that appointments of Chairman and members of the authority shall be subject to the pleasure of the Government. It therefore envisages a removal at pleasure even in cases, where the person appointed has not incurred any one of the disqualifications stipulated in Section 6 of the Act. The difference between a removal at pleasure and one for cause in terms of Section 6 essentially lies in the fact that once a disqualification prescribed in the latter provision is incurred by the member concerned, the Government have no option but to direct his removal

from the membership. The word "shall" used in Section 6 clearly signifies that the Government has no discretion in the matter of removing a person, who has incurred a disqualification to continue. The two provisions operate in independent fields. While u/s 5, a removal would be permissible even without any cause being proved or shown, in the case of a removal u/s 6, the person concerned may be entitled not only to a notice, but the reasons underlying his removal. The first limb of the petitioners' challenge to the orders of their removal or those asking them to submit their resignations must therefore fail.

11. What remains to be considered is whether the decision is irrational in the sense the same is understood by the Courts while examining the validity of actions brought up for review. Irrationality as a ground of judicial review is very often understood or described as unreasonableness. Lord Greene's famous formulation in *Associated Provincial Picture House v Wednesbury Corporation*, which has come to be known in the legal world as the *Wednesbury*'s unreasonableness interdicts interference with a decision unless the same is so unreasonable that no reasonable person could have ever come to it. A decision which is so absurd or perverse that the decision-maker could be said to have taken leave of his senses would be open to review on the ground of the same being irrational or unreasonable. Decisions taken in bad faith would also fall in this category. Suffice it to say that the Court exercising the power of judicial review can review a decision that is perverse, absurd, vitiated by bad faith or so very unreasonable that no reasonable person could possibly countenance the same.

12. Coming to the cases at hand the petitioners have not assailed the decision relating to their removal on the ground that the same is perverse, absurd or otherwise unreasonable. The challenge is based on the plea that the decision is taken in bad faith having been motivated by political considerations. Before I examine that argument on its merits it is necessary to examine the scope of judicial review in the context of the nature of the decision under challenge. Smith Woolf and Jowell have in their book on *Judicial Review of Administrative Action*, Fifth edition dealt with the intensity of review in the following words.-

"The willingness of the Courts to strike down a decision on the ground that it is unreasonable or an abuse of discretion will be influenced in part by the administrative scheme under review; for example, by the existence of internal administrative review or of alternative appeal structures or the extent of the expertise of the initial decision-maker. The threshold of intervention or margin of appreciation afforded the decision-maker is, however, particularly influenced by the subject-matter of the decision. At one extreme are managerial and policy decisions, and on the other are cases involving infringements of fundamental human rights".

13. Decided cases show that although a finding of unreasonableness is not entirely ruled out yet in decisions that are in the general areas of social and economic policy the intensity of review is very low. Except in the extreme cases

of bad faith, improper motive or manifest absurdity, decisions involving policy matters especially those touching developmental and/or fiscal areas cannot be judged by any objective criterion. Courts therefore tend to leave such decisions to the elected representatives of the people.

14. In *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, the nominations made to the Municipal Board, Shahjahanpur were revoked. The order when challenged was quashed by a Division Bench of the Allahabad High Court. In an appeal before the Supreme Court, their Lordships held that a removal under "Pleasure Doctrine" did not cast any stigma on the performance or character of the nominated members and that such orders were passed purely on political considerations. The following passage from the decision is noteworthy.-

"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".

XXX XXX XXX XXX XXX XXX XXX "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 removal at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralise 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".

(emphasis supplied)

15. Such then is the nature of the nominations. They are made without following any transparent or objective process of selection of those vying for such nominations. They hold good during the pleasure of the Government and are therefore tenuous lacking certainty or security of tenure. The intensity of review of any decision relating to the making or unmaking of a nomination has thus to be low and broadly speaking limited to finding out whether the impugned decision is vitiated by bad faith, manifest absurdity or improper motive.

16. Allegations made by the petitioners do not however make out a case for interference on any one of the grounds indicated above. All that is stated by the petitioners is that the decision is politically motivated, which does not in my opinion even lay a proper foundation for any further enquiry by this Court. If nominations are made for political considerations the same can be revoked with equal ease for similar considerations. There are no averments alleging any corrupt motive against any one instrumental in or contributory to the Government's decision to revoke the nominations. The decision appears to be a general policy decision taken to revamp the statutory authorities by induction of new blood into the same. It is therefore difficult to dub the decision as one taken

in bad faith or for an improper motive.

17. In the result, these petitions fail and are hereby dismissed, but in the circumstances without any order as costs.