

(2007) 04 JH CK 0028

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1294 of 2007

Mrs. Lakshmi Singh and Another

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Jharkhand State Women Commission Act, 2005 — Section 3, 3(1), 4, 4(1)

Citation : (2007) 2 BLJR 2036 : (2007) 3 JCR 340

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : A.K. Sinha, for the Appellant; S.B. Gadodia, A.G., for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The petitioners are aggrieved by and have prayed for quashing the notification dated 27th February, 2007 issued by the Department of Social Welfare, Women and Child Development, Government of Jharkhand, contained in Annexure-4 to the writ petition, whereby the earlier notification of the said department dated 16th September, 2006 is sought to be cancelled.

2. By the said notification dated 16th September, 2006, Jharkhand State Women Commission (hereinafter to be referred as "the Commission") was constituted and the petitioners were appointed as Chairman and Member of the Commission, respectively, under the provisions of Section 4 of the Jharkhand State Women Commission Act, 2005 (hereinafter to be referred as "the Act").

3. The impugned notification, contained in Annexure-4, is a precise and one sentence notification, runs as under:

Adhisuchna

Sankhya-S.K./S.M.Aa.-212/2006-253 Ranchi, Dinank: 27/2/2007

Jharkhand Rajya Mahila Aayog Adhiniyam, 2005 Ke Adhyay-2 Kandika-3 Ke Aalok

Me Gathit Rajya Mahila Aayog Se Sambandhit Adhisuchna San.-1221 Dinank 16/09/2006 Ko Tatkāl Prabhav Se Radd Kiya Jata Hai.

Jharkhand Rajyapal Ke Aadesh Se Sd/- (U.K. Sangma) Principal Secretary

4. The petitioners have challenged the said notification on the ground that the same is arbitrary, illegal and without jurisdiction and the same has been issued maliciously after the change of the Government due to political reason and is intended to remove the petitioners from their posts before expiry of their term, without giving them any notice or any opportunity of hearing. It has been contended that the impugned notification also violates the provision of Section 4 of the Act.

5. Petitioner No. 1, who was once the Chief Secretary of this State, was appointed as the Chairman and Petitioner No. 2 was appointed as a Member of the said Commission.

6. The petitioners' case is that after the re-organisation of the State, Jharkhand State Women Commission Act, 2005 (hereinafter to be referred as the "said Act") was enacted by its legislature. Section 3 of the said Act provides for constituting State Women Commission, comprising of Chairman, five Non-government Women Members, one Government Member as representative of Welfare Department, one Government Member of Special Home Department and one Secretary (Woman) nominated by the State Government. Section 4 of the Act prescribes the duration and terms of services of the chairperson as well as members of the Commission. Sub-section (1) of Section 4 of the Act provides for the duration of the office, upto three years, as may be prescribed by the Government by notification. There is provision for resignation of the Chairman as well as Member by expressing his/her intention in writing to the Government. The Chairman or the Member may be removed, if he/she is declared as insolvent or found guilty of committing criminal offence or any offence coming within the moral turpitude, or is declared insane by a Court of competent jurisdiction, who is incapable of discharging his duty or refuses to discharge the duty and absents himself in three continuous meeting of the commission.

7. It has been contended on behalf of the petitioners that Petitioner No. 1 was appointed as Chairman without prescribing any duration and as such, she is entitled to hold the office for the period of three years from the date of her joining i.e. from 18th September, 2006 and that she cannot be removed except in accordance with the provisions of Section 4 of the Act. Petitioner No. 1, who is the chairperson, cannot, thus, be removed before expiry of the prescribed period of three years save and except under the circumstances enumerated in Section 4 of the said Act. It has been further stated that the impugned order of their removal does not come within any of the provisions of Section 4 of the Act and as such, their removal is arbitrary, illegal and in violation of the said provisions of law. It has also been contended that since the petitioners' appointment was not for any specified period, they can only be removed from their office only on

completion of the term of three years or in accordance with provisions of Section 4 of the Act. The petitioners having been sought to be removed in violation of the said provisions of law and without giving any notice or opportunity of hearing by the impugned notification (Annexure-4), which is wholly arbitrary and nonest.

8. Mr. A.K. Sinha, learned senior counsel, appearing on behalf of the petitioners, submitted that the impugned notification is cryptic, mechanical and is not supported by any reason. In absence of any reason, the petitioners are not in a position to know as to why they are sought to be removed within less than a year from the date of their appointment(s). It has been submitted that recording of reason is one of the requirements of natural justice and absence thereof is violation of the same. Learned Counsel referred to and relied upon a decision of the Supreme Court in *State of Punjab Vs. Bhag Singh*, wherein the Supreme Court has quoted the observation of Lord Denning, M.R. in *Breen v. Amalgamated Engineering Union* (1971) 1 All ER 1148 with approval that giving of reasons is one of the fundamentals of good administration. It was observed in *Alexander Machinery (Dudley) Ltd. v. Crabtree* 1974 ICR 120 (NIRC) that "failure to give reasons amounts to denial of justice". Learned Counsel contended that the impugned notification, being non-speaking, is violative of principle of natural justice and is vitiated in law. Mr. Sinha further submitted that by the said notification, the office bearers of the Commission have been removed en bloc, which shows the arbitrary attitude of the Government and the same violates Article 14 of the Constitution of India. Learned Counsel submitted that in absence of duration of the tenure of appointment, the petitioners are entitled to continue for the full term and they cannot be unceremoniously removed at any time at the whim of the respondents, without assigning any reason. The presence of public element attached to the office is sufficient to attract Article 14 of the Constitution, which prohibits arbitrariness and unfair treatment. Learned Counsel referred to and relied upon a decision of the Supreme Court in the case of *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*. Learned Counsel submitted that in view of the public nature of the office, it comes within the sweep of Article 14 of the Constitution and is subject to judicial review and test of the validity of the order by this Court. In the said premises, learned Counsel submitted that the impugned notification is liable to be quashed by this Hon'ble Court.

9. Mr. S.B. Gadodia, learned Advocate General, appearing on behalf of the respondents, on the other hand, vehemently questioned the jurisdiction of this Court to review the impugned notification. He strenuously argued that since no reason was given in appointment of the petitioners, reason is not required to be given for their removal. It has been further submitted that Section 3(1) of the Act, which provides power to constitute the Commission, it inheres the power to dissolve the Commission or to cancel the notification, constituting the Commission. The power to constitute in the said provision includes power to dissolve. It has been contended that the petitioners' appointment was not for any specific period and as such, they can be removed at any time and the

petitioners have got no right to the post nor they have any authority to challenge the said notification of the State Government. He further submitted that in a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may also bring about change in the policy and that change may result into affecting some persons adversely. However, unless there is any illegality in the execution of the policy or the same is contrary to law or is mala fide, a change cannot be interfered with by the Court and the same does not come within the scope of judicial review to enter into the enquiry as to whether a particular public policy is wiser or better public policy can be evolved. The Court cannot also struck down the policy at the behest of the petitioners, if it is not illegal or unconstitutional. Learned Advocate General referred to and relied upon a decision of the Supreme Court in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, . He submitted that by the impugned notification, constitution of the Commission has been cancelled and the same is not the order of removal of the petitioners, so as to give them right to challenge the said notification.

10. On perusal of the impugned notification (Annexure-4), it is evident that by the said notification, earlier notification dated 16th September, 2006 (Annexure-2) has been cancelled with immediate effect. By the said notification dated 16th September, 2006 (Annexure-2), the Commission was constituted by appointing Petitioner No. 1 as Chairman and Petitioner No. 2 as one of the Members. The petitioners" were, thus, appointed as public authority to hold a public office under the provisions of the statute, namely, Jharkhand State Women Commission Act, 2005. It is now well settled that a person holding a public office cannot be removed arbitrarily, illegally or at the sweet will of the Government and any such order removing a person from the public office comes within the purview of judicial review. Once there is an existence of public element attached to the office or post i.e. it is suffice to attract Article 14 of the Constitution. Any arbitrariness, irrationality, illegality or unreasonableness affecting the rights of the persons holding public office or their removal in violation of the principle of natural justice brings the impugned order within the ambit of judicial review. Objection and contention of the learned Advocate General that the impugned notification (Annexure-4) is a policy decision of the Government and that the same cannot be brought within the scope of judicial review, as hardly any relevance and substance in the facts and circumstances of the instant case. The decision of the Supreme Court in the case of BALCO Employees" Union (Supra) referred to and relied upon by the learned Advocate General was rendered on different factual background. That was a case in which disinvestments of the Government in BALCO was in question. The Government had taken a policy decision to disinvest and transfer 51% share of M/s. Bharat Aluminum Company Ltd. (BALCO), which was an economic policy of the Government, and it was held that wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In this context, it was observed that in a

democracy, it is the prerogative of each elected Government to follow its own policy and change in Government may result in the shift of focus in economic policy. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law, is mala fide or decision bringing about change cannot per se be interfered with by the Court. It was further held that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

11. On careful reading of the said decision, it would be evident that even in the matter of economic policy, the scope of judicial review has not been eliminated, rather the same is conditioned and made permissible only in case where there is violation of statutory provision of the Constitution.

12. In a democratic set up of Government, the State or public office is accountable to the people, who command sovereignty. The powers vested in the Government or public office has to be exercised only in public interest and for public good. Even in the policy matter, application of Article 14 of the Constitution cannot be entirely excluded. Every action of the State or any instrumentality of the State must be informed by reason. Actions uninformed by reason come within the scrutiny of the writ jurisdiction under Articles 226 or Article 32 of the Constitution. The basic requirement of Article 14 is non-arbitrariness and fairness in action by the state, which means fair play in action.

13. In the case of *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, the Supreme Court observed as follows:

Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14.

The said observation of the Supreme Court has been quoted with approval in the case of *Kumari Shrilekha Vidyarthi (Supra)*.

14. In the case of *Kumari Shrilekha Vidyarthi (Supra)*, a circular, terminating the appointments of all Government Counsel (Civil, Criminal & Revenue), issued by the Government of Uttar Pradesh was questioned in writ jurisdiction of the Supreme Court under Article 32 of the Constitution of India. After examining catena of decisions, on the subject for and against, it was held that en bloc removal of Government Counsel was arbitrary and the action is not reasonable under Article 14 of the Constitution. The Apex Court reviewed the impugned circular and decided the validity and quashed the same, restoring status quo.

15. Converging to consideration of the validity of the impugned notification,

contained in Annexure-4, in the light of the aforementioned discussions, it is held that the impugned notification does not disclose any reason for cancellation of the constitution of the Commission, which resulted into the termination of the petitioners from their respective posts. The said notification is also not supported by any express statutory provision, nor any provision of the Act has been brought to my notice to justify such removal even without informing any reason and giving any opportunity of hearing to the petitioners to whom the said notification has adversely affected and visited with civil consequences. The said notification, does not stand to the test of reasonableness and fair play to exclude arbitrariness and to exclude the scope of judicial review. The impugned notification, thus, does not meet the test of Article 14 of the Constitution of India; being uninformed by reason and unsupported by any statutory provision. The impugned notification dated 27th February, 2007, contained in Annexure-4, thus, can not sustain and is, hereby, quashed. This writ petition is allowed.

16. However, there shall be no order as to costs.