
(2010) 12 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7061 of 2009

Rajendra Singh Rajpurohit

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Rajasthan Go-Seva Ayog Act, 1995 — Section 14(1)(A)

Citation : (2011) 6 RCR(Civil) 592 : (2011) 2 RLW 1742

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Judgement

M.N. Bhandari, J.—By this writ petition, a challenge has been made to the order dated 29.5.2009 (Annexure 5). Petitioner's nomination as Chairman of Go-Seva Ayog, has been withdrawn on the ground that meeting of the Ayog has not been held as per the provisions of Section 14(1)(A) of Rajasthan Go-Seva Ayog Act, 1995 (for short, "the Act of 1995"), as a result of which appointment/nomination is treated as ineffective as per Section 5 of the Act of 1995.

2. Learned Counsel for the Petitioner submits that meeting of the Ayog took place in the month of April 2008 itself, which is clearly coming out from Annexure 7-A, yet ignoring the aforesaid and other meetings held from time to time, the impugned order has been passed that too, without following principles of natural justice.

3. Learned Counsel has placed reliance on the judgment of this Court in the case of Manik Chand Surana v. State of Rajasthan and Ors. reported in 1993 (2) WLC (Raj.) 49, wherein it was held that State Govt, is not having unfettered authority to remove Chairman. Therein, the order of removal was held to be illegal. It was after considering the fact that the nomination as Chairman was at the pleasure of Governor.

4. He further placed reliance on United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera and Others, and Sahara India (Firm), Lucknow

Vs. Commissioner of Income Tax, Central-I and Another, wherein similar view has been taken.

5. It is further stated that no order of removal can be passed without giving an opportunity of hearing as provided u/s 11(3) of the Act of 1994.

6. Learned Additional Advocate General, appearing for the State Govt., submits that it is not a case of removal of the Chairman but a case of the withdrawal of the order as this not taken effect to. The Petitioner was under an obligation to call meeting of the Board within a period of three months as per Section 14 of the Act of 1995. Since he failed to call for the meeting of the Ayog within the stipulated time, the order nominating him as a Chairman is taken as not given effect to, thus, rightly been withdrawn by the impugned, order. It is further submitted that if the order of nomination is looked into, it is till the pleasure of the Governor. In view of the aforesaid, the order of appointment can be withdrawn at any time even without assigning any reason because as per the General Clauses Act, power to appoint includes power of removal. He has made reference to the judgment of the Hon''ble Apex Court in the case of B.P. Singhal v. Union of India and Anr. (2010) 6 SCC 331, wherein the issue was regarding removal of Governor.

7. I have considered the submissions made by the parties.

8. Undisputed facts of the case are that the Petitioner was nominated as Chairman of Go - Seva Ayog vide order dated 31.12.2007. The nomination was by the competent authority u/s 4 of the Act of 1995. The tenure therein is for a period of three years from the first date of the meeting after constitution of the Commission within three months as per Section 5 of the Act of 1995. The allegation against the Petitioner is for not holding the meeting of the Commission after 11.10.2008 i.e. the date when the Commission was fully constituted.

9. For appreciation of arguments of rival parties, it would be gainful to quote Sections 4 and 5 of the Act of 1995:

4. Constitution of the Commission.--

(1) The Commission shall consist of fifteen members including the chairman and the vice chairman as follows:

(a) a chairman who shall be a non-official to be nominated by the State Government.

(b) A vice chairman who shall be a non-official to be nominated by the State Government.

(c) Thirteen other members, out of which seven members shall be official and six shall be non-official.

(2) The official members shall be as follows:

(i) Secretaries to the State Government in the following Department or their

representatives not below the rank of Deputy Secretary:

- (a) Revenue,
- (b) Forest,
- (c) Animal Husbandry/Dairy,
- (d) Finance,
- (e) Special Schemes and integrated Rural Development Department,
- (f) Relief.

(ii) Director General of Police, Rajasthan or his representative not below the rank of an Inspector General of Police.

(3) the non-official members shall be nominated by the State Government from amongst the individuals or non-governmental organizations engaged in the welfare activities of the bovine animals, as follows:

- (a) one representative chosen by the Rajasthan Gaushala Federation governed by the Rajasthan Gaushala Act, 1960 (Rajasthan Act No. 24 of 1960);
- (b) two representative of Bhartiya Govansha Sanrakshan Samvardhan Parishad chosen by the Rajasthan State unit of the said Parishad;
- (c) one representative of Rajasthan Co-operative Diary Federation;
- (d) vice-chancellor the Rajasthan Agriculture University Bikaner or his representative not below the rank of a Dean, and
- (e) three individuals working selflessly for the welfare of all species of bovine animals and committed to the cause of preservation of the said animals;

Provided that out of the individuals to be nominated under Clause (e), two shall be nominated out of the voluntary organizations engaged in the task of welfare, preservation and protecting of all species of bovine animals in the State.

5. Term of office.--(1) The members including chairman and vice chairman of the commission shall hold office for a period of three years from the date of first meeting of the commission and shall vacate office on the expiry of the term of three years and the retiring members shall be eligible for fresh nomination if it is so desired by the State Government.

(2) On every reconstitution of the commission, the term of office of members including chairman and vice chairman shall be three years from the date of first meeting after reconstitution.

(3) The term of office of members including chairman and vice chairman who are nominated owing to any casual vacancy or replacement during the currency of the term of office specified in Sub-section (1) or Sub-section (2), as the case may be, shall also expire at the close of the term.

10. Perusal of Section 5(1) shows that one can hold office for a period of three years from the date of first meeting of the commission and vacate the office on the expiry of the period aforesaid. There appears no provision that if the meeting is not taken place immediately or as per Section 14, the nomination can be withdrawn or be made as non-existent.

11. It would be further gainful to quote Section 11 of the Act, which is quoted thus:

11. Removal of chairman, vice chairman or members.--(1) The State Government may remove from the commission the chairman, vice chairman or any member, who in its opinion,-

(a) refuses to act; or

(b) has become incapable of acting; or

(c) has abused his position as a chairman, vice chairman or as a member as to render his continuance in the commission detrimental to the interest of the public; or

(d) in the case of a non-official member, if he remains absent without previous permission of the chairman from three consecutive meetings of commission: or

(e) is otherwise suitable to continue as chairman, vice chairman or member of the commission.

(2) the State Government may suspend the chairman, vice chairman or any member of the commission pending an enquiry against him in connection with his proposed removal.

(3) No order of removal under Sub-section (1) shall be made unless the chairman, vice chairman or member concerned has been given an opportunity to submit his explanation to the State Government with reference to the grounds of his proposal removal.

(4) A chairman, vice chairman or a member who has been removed under Sub-section (1) shall not be eligible for further nomination as chairman, vice chairman or a member of the commission.

12. Perusal of the aforesaid provision shows manner in which a chairman, vice chairman or member can be removed.

13. The Additional Advocate General has admitted that they have not invoked the aforesaid provisions, which, in my opinion, is the only provision by which the chairman, vice chairman or the member can be removed. There is no provision of withdrawal of the order already passed either u/s 5 or u/s 14 of the Act. Section 14 is quoted as under:

14. Meetings of the commission.--(1) The Commission shall from time to time make such arrangements with respect to date, time, place notice and

management of its meetings as may be determined by regulations made by the commission with the prior approval of the State government subject to the following provisions, namely:

- (a) normally meetings shall be held once at least in every three months;-
 - (b) the chairman may, whenever he thinks fit, call at meeting;
 - (c) the proceedings of the meetings of the commission shall be forwarded to the State Government in the Administrative Department concerned.
- (2) The attendance and presence of at-least nine members shall be necessary to constitute quorum of the meeting.

14. Section 14, no doubt, provides for holding of meeting of the commission but it does not provide withdrawal of nomination in absence of it.

15. In view of the aforesaid, in what manner, date, place and time of meeting is not determined as per Section 14 of the Act of 1995. In any case, meeting is required to be held in every three months but absence of it can not result in withdrawal of the order of nomination because neither Section 14 nor the order at Annexure 1 provides so. The order of nomination does not show that if meeting is not held within a period of three months, the order of nomination would be liable to be withdrawn. It is also a fact that before passing of the order, principles of natural justice have not been observed, though it cast stigma on the Petitioner in view of allegation for not calling the meeting. Once the Respondents cast stigma against the Petitioner, it was obligatory on their part to at least give an opportunity of hearing to him before passing the impugned order. The substance of discussion above is that the impugned order has been passed not only in violation of principles of natural justice but it is not otherwise coming out from any statutory provisions of the Act of 1959 that such an order can be passed. The General Clauses Act, no doubt, provides powers to appoint and to remove but this is only regarding the competence of the authority. In the present case, when specific provision for removal of chairman, vice chairman etc. has been given then the appointment can not be withdrawn for the reasons given in the impugned order. This is more so when the Petitioner has come out with the case that meeting was in fact held from time to time starting from the month of April, 2008 till passing of impugned order.

16. The only argument raised by the Respondents in that regard is that there is no official record for holding of the meeting, whereas, the documents produced by the Petitioner are signed documents of the members, who attended the meeting. In any case, I am of the opinion that the impugned order has been passed without authority of law and in violation of principles of natural justice, thus, can not be allowed to stand. This is more so when Section 14 does not provide that if meeting is not held, the constitution of the Board can be withdrawn.

17. So far as the judgments cited by learned Counsel for the Petitioner are

concerned, the issue therein was regarding withdrawal of the nomination by the State Authorities and after detailed discussion, action was held to be illegal. This case is supported by the judgment referred to above. Accordingly, the issue involved in the present matter is well supported by the judgments cited by the learned Counsel for the Petitioner.

18. So far as the judgment cited by learned Additional Advocate General is concerned, that has no application to the matter because that was a case regarding removal of the Governor, for which constitutional provisions have been considered by the Hon'ble Apex Court. The issue involved in the present matter does not rest on those provisions. Hence judgment in the case of B.P. Singh (supra) has no application to the facts of the present matter.

19. The outcome of the discussion made above is that the impugned order can not be said to be valid and, accordingly, same is set aside qua the Petitioner. Since the Petitioner himself has stated that the first meeting of the Board took place in the month of April, 2008, he can not go against his own statement. Therefore, period of three years would be determined from the date of first meeting i.e. 11.4.2008. The Petitioner would, accordingly be liable to vacate the office with expiry of three years period from the aforesaid date. This is more so when Section 14 of the Act does not make reference of meeting of full board.

20. The writ petition stands disposed of with the aforesaid direction.

21. At this stage, learned Additional Advocate General prayed that independent of the impugned order, if the State Govt, wants to take action against the Petitioner u/s 11 of the Act of 1995, they may be given liberty. It goes without saying that such liberty exists with the State Govt.