

(1993) 10 KAR CK 0010
In the Karnataka High Court
Case No : W.A. No. 1778 of 1993

Sadanandaiah

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-10-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Urban Development Authorities Act, 1987 — Section 2, 3 (3), 3 (4), 5

Citation : (1993) ILR (Kar) 3119

Hon'ble Judges : S.B. Majmudar, C.J.; R.V. Raveendran, J

Bench : Division Bench

Advocate : K. Channabasappa, for B.M. Siddappa, for the Appellant; A.M. Farooq, Government Advocate for R-1 and T.R. Subbanna, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majmudar, C.J.—This Writ Appeal is moved by the original Writ petitioner whose Writ Petition came to be dismissed by the learned single Judge.

2. A few relevant facts leading to this Writ Appeal which require to be noted at the out-set to appreciate the grievance of the Writ appellant, are:-

The Appellant is a City Municipal Councillor of Chitradurga City Municipality. The State of Karnataka acting u/s 2 of the Karnataka Urban Development Authority Act, 1987, [hereinafter referred to as the Act] appointed the Appellant as a Member of Chitradurga Urban Development Authority, by its Order dated 28.2.1992, That Order stated that the appointment of the Appellant was till further orders. The contention of the Appellant was that as per Section 3 of the Act, the Urban Development Authority has to be constituted for development of the Urban Area as per Section 3(3) of the Act and the Authority shall consist amongst others of an elected Member of the Local Authority, concerned who also becomes a Member of the Authority. Local Authority is defined by Section 2(n) to mean a Municipal Corporation or a Municipal Council constituted or continued

under any law for the time being in force. Then there is a Proviso to Sub-section (4) of Section 3 of the Act, wherein it is laid down that the persons referred to in Clauses (a) to (d) and Clause (k) of Sub-section (3) shall be appointed by the Government and the persons referred to in Clauses (e), (f) and (i) shall be nominated by the respective bodies: Provided that all the first members of the Authority shall be appointed by the Government. It is the case of the appellant that he was not nominated by the local authority, namely, the Chitradurga Municipality but he was appointed to the Chitradurga Urban Development Authority by the State Government in exercise of its powers under the Proviso to Sub-section (4) of Section 3 of the Act, referred to above. It is obvious that the Appellant was appointed by the Government being the First Member of the Authority to represent the local Authority concerned namely Chitradurga Municipality, though an attempt was tried to be made by the learned Counsel for Respondent that Appellant can be said to be appointed for the second time as the Authority was constituted earlier in 1988. Ultimately, it emerged from the record that prior to the Appellant no one else was occupying the post of representative, as an elected Member of the Chitradurga Municipality, in the Urban Development Authority. Therefore it can be seen that the State of Karnataka in exercise of its powers under Sub-section (4) of Section 3 of the Act, appointed the Appellant as a First Member to represent the Local Authority concerned in the Chitradurga Urban Development Authority.

3. Now it appears that the Chitradurga City Municipality by its Resolution decided to send the name of Respondent No. 2, T.H. Hanumanthappa, as a Member of the Urban Development Authority in place of the Appellant. Thus, Respondent No. 2 was put-forward as an elected Member of the Chitradurga City Municipality who was expected to displace the Appellant, who was the first nominated incumbent, for occupying the Membership u/s 3(3)(i) of the Act. This prompted the State of Karnataka to pass the impugned Order ANNEXURE-F by which it was stated that in place of Appellant, 2nd Respondent was being nominated u/s 3(3)(i) of the Act. The Appellant naturally felt aggrieved by that order and landed in this Court by way of Writ Petition. His contention was that once he was nominated by the State Government in exercise of its powers u/s 3(4) Proviso, power of the Government to appoint any one else got exhausted and after the appointment once he assumed the charge of the office, in the light of Section 5 Proviso, he became entitled to continue for three years and therefore his term could not expire prior to 20th February, 1995. The Order ANNEXURE-F seeking to displace him earlier, therefore, according to him, was incompetent and ultra vires. This contention of him was examined by the learned single Judge after hearing all concerned. But learned single Judge placing reliance on Section 5 Sub-section (1) of the Act, took the view that when the appellant's very appointment was by way of nomination by the State Government, his tenure and term of his Office were subject to the pleasure of the Government and once the Government decided to withdraw the Appellant from the Board of Chitradurga Urban Development Authority, he had to make room for the duly elected Member of the

Chitradurga City Municipality, who could take his place as a Representative of the Municipality on the Board of Chitradurga Urban Development Authority and therefore the Appellant could not make any grievance about the Order ANNEXURE-F. Consequently, the Writ Petition was dismissed and that is how the Appellant is before us, as noted earlier.

4. The Learned Counsel for Appellant vehemently contended that on a conjoint reading of Sub-section (4) of Section 3 and its Proviso and Section 5(1) read with the Proviso it becomes clear that once the Appellant was nominated to fill-up the vacancy of an elected Member of the Local Authority concerned, his term of Office would be three years and the pleasure doctrine would not come in the way, as in the present case. The State Government of its own has not modified his earlier appointment order but was moved on account of the fact namely that the Municipality has now chosen another elected Member to represent the Municipality in the Urban Development Authority vis a vis the appellant. Such a cause could not give rise to any order based on the pleasure or displeasure of the Government as the case may be and the Appellant could not be displaced before he completes his full term of three years. Section 6 of the Act although permits removal of the Appellant from office of the Membership of the Board of the Urban Development Authority, the Appellant could not have been removed since none of the provisions of Section 4 which spells out the disqualification that may be incurred by a member would get attracted on the facts of the present case and therefore the order of removal ANNEXURE-F is patently illegal. The learned Counsel for Respondents who appeared at the admission stage in this. Appeal, has vehemently opposed this submission and contended that Section 5 Sub-section (1) of the Act, clearly, operates and it is at the pleasure of the Government, the Appellant was appointed and at the pleasure of the Government the Appellant can be displaced to make room for duly elected Member of the local Authority to occupy his place on the Board of the Urban Development Authority.

5. Our attention was invited by the learned Counsel appearing on both the sides to various Decisions of this Court and one Decision of the Supreme Court. We will make reference to those Decisions later. Even before going to those Decisions, in our view, on the Statutory Scheme with which we are concerned, it becomes obvious that a nominated member as a First Member of the Authority by the Government could be validly displaced by the Government u/s 5(1) of the Act. Sections 5 and 6 of the Act are required to be extracted in extensive at this stage, which read as under:-

"5. Term of office and conditions of service of members-(1) Subject to the pleasure of the Government and the provisions of Section 6, the Chairman and other members of the Authority shall hold office for a period of three years from the date on which they assume office and shall be eligible for reappointment under such conditions as may be prescribed:

Provided that the term of office of the representative of the local authority shall

come to an end when he ceases to be a councillor or when the local authority is superseded."

"6. Removal of member. - The Government shall remove.

(a) he becomes subject to any of the disqualifications mentioned in Section 4:

Provided that no member shall be removed on the ground that he has become subject to the disqualification mentioned in Clause (e) of that Section, unless he has been given an opportunity of submitting his representation; or

(b) he refused to act or becomes incapable of acting; or

(c) he, without obtaining leave of absence from the Authority, absents from three consecutive meetings of the Authority.

(d) in the opinion of the Government he has so abused his position as to render his continuance in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given an opportunity of submitting his representation."

6. A mere look at the Sections show that only on certain contingency a Member can be removed by the Government. None of such contingencies is even alleged to have existed in the case of Appellant Therefore Section 6 is out of question. When Section 5 is read with Sub-sections (3) and (4) of Section 3 it becomes clear that it is the Local Authority's privilege to appoint an elected Member from amongst its Members to represent it on the Board of Urban Development Authority, as per Sub-section (1) of Section 3 of the Act. But that has never happened so far as the Appellant is concerned. It is his own case that he was not elected from amongst the Members of the Local Authority by the Local Authority itself to represent it on the Board. But as a First Member of the Authority he was appointed by the Government in exercise of its powers under Sub-section (4) of Section 3 of the Act. Once that happened it becomes obvious that the Government was the nominating Authority so far as the Appellant was concerned and not the local body. Once this conclusion is reached Section 5(1) squarely gets attracted as it in turn provides the Chairman and other Members of the Authority shall hold office for a period of three years from the date on which they assume office subject to the pleasure of the Government. If the Government is the Appointing Authority for the Appellant, the pleasure doctrine will apply fully qua him and if the Government at any stage withdraws that pleasure he has to make room for his successor. It is of course true that the pleasure of the Government cannot be exercised mala fide. From the facts of the present case, it is impossible to hold that the withdrawal of the pleasure for continuation of the Appellant as the nominated member of the Board, is an arbitrary exercise of power on the part of the Government. The reason is obvious. As a First Member the Appellant was nominated by the Government under Proviso to Sub-section (4) of Section 3 of the Act, as elected member of the local Authority, at that stage was not available.

7. Now a stage is reached during the tenure of the Appellant as a Member of the Board, that an elected Member of Chitradurga Local Authority is available. Unfortunately for the Appellant he was not selected by the Local Authority to represent it on the Board. Therefore, the Membership which he was holding as representing the Local Authority because of the nomination had to be vacated by him to make available the said vacancy to be filled in by a duly elected Member of the Local Authority as its representative on the Board. This was because of the Government withdrawing its pleasure for continuance of the Appellant as a nominated Member which nomination was made earlier by the Government in the absence of any representative of the Local Authority duly selected by it for that purpose.

8. The learned Counsel for appellant was not right when he contended that it is the pleasure of the Municipality and not the Government which has resulted in the order ANNEXURE-F. Order ANNEXURE-F is passed by the Government, which had appointed the Appellant and it is that Appointing Authority which has modified the appointment order made earlier and has withdrawn it. If the earlier order was based on the pleasure of the Government as the Appointing Authority and the same Authority can subsequently on a rationale and reasonable ground withdraw that pleasure and ask the appellant to vacate his seat. It is to be kept in view that for exercise of pleasure by the Government, no reasons are necessary but of course the action should not be mala fide one. On the facts of the present case, it cannot be said that the action was arbitrary or mala fide. The Proviso to Section 5 of the Act, on which learned Counsel for appellant placed reliance also cannot be of any assistance to him. From a reading of Proviso to Section 5, it becomes clear that once a person holds an office as a Member of Urban Development Authority u/s 3, normally the tenure of office would be three years from the date he assumes office as a Member but that tenure can get curtailed in the following contingencies: -

- 1) When the Government in exercise of its powers u/s 5(1) of the Act validly terminates the membership;
- 2) When the concerned member is removed u/s 6 of the Act;
- 3) When the concerned representative of the local Authority who has become a Member of the Board u/s 3(3)(i) ceases to be a Councillor of that Local Authority, and
- 4) When Local Authority whose representative is in the Board is superseded.

Therefore, it cannot be said that once the Proviso operates the pleasure doctrine as engrafted by Section 5(1) of the Act would be out of picture.

9. As we have observed earlier the right of the Government to cut-short the tenure of the office of the Chairman or Member of any Authority under the Act, is subject only to the rider that its action should not be shown to be either arbitrary mala fide or capricious. Subject to this sole limitation, Government can cut-short

the tenure of Office of the Member of the Board at its pleasure. Consequently, on the facts of this case, it cannot be said that the Appellant had any Statutory guarantee to continue to hold office for three years and that it could not be cut-short by the Government by passing ANNEXURE-F when there was a valid cause available for displacing him and replacing him by another duly elected Member of the Local Authority in whom the Local Authority had the faith that he would represent them better than the appellant.

10. Now turning to the Authorities to which our attention was invited: in the case of B.S. SIDDAPPA v. STATE OF KARNATAKA AND ORS. 1979 (2) KARLJ 2388 a Division Bench of this Court consisting of Jagannatha Shetty J, as he then was and Chandrakantaraj Urs, J., had to consider the termination of the office of a Member of Karnataka Improvement Board, constituted under the Karnataka Improvement Boards Act, 1976, when that appointment was cancelled in exercise of the pleasure doctrine u/s 5 of the Karnataka Improvement Boards Act. This Section is almost *pari materia* with Section 5 of the present Act, and it clearly provided that subject to the pleasure of the Government the Chairman shall hold office for a period of three years. Placing reliance on the aforesaid concept of pleasure of the Government as embodied in Section 5(1) of the Karnataka Improvement Boards Act, it was held that the period prescribed u/s 5 is not a security for the holder of the Office and that a limitation was imposed by the Legislation by making it at pleasure. The petitioner, therefore, could not contend that he had a right for fixed period of three years. The learned Counsel for appellant however submitted that in the case before the Division Bench the question was of cutting short the tenure of a Chairman of a Statutory Board; while in the present case once the appellant was so appointed, Proviso to Section 5 guaranteed a term of three years for him subject to the two contingencies as provided u/s 5(1) that (i) the term of office of the representative of the local authority shall come to an end when he ceases to be a Councillor or (ii) when the local authority is superseded; that none of these contingencies has occurred in the present case and such a contingency was not relevant for Decision of Siddappa's case, because the Division Bench was concerned with the appointment of the Chairman and not Member representing the Local body. It is difficult to appreciate this distinction, as the Division Bench has in clear terms held that when a Chairman was appointed by the Government, his appointment was subject to the pleasure of the Government and subject to the exercise of that pleasure he can hold the office for three years. Section 5(1) of the Act in the present case also indicates the same Statutory Scheme. As we have already discussed earlier the Proviso to Section 5(1) of the Act contemplates two different contingencies viz., (1) when the Member ceases to be a Councillor and (2) when the local council is superseded, on the happening of which nominated Member shall cease to be a Councillor. There are additional contingencies where the term of three years otherwise available to the Member would get cut off prematurely. But the Proviso in no way whittles down the pleasure available to the Government u/s 5(1) for continuance or discontinuance of a Government

nominee who is appointed by it earlier.

11. In the Case of Anjuman-e-Islam Vs. Karnataka Board of Wakfs, another Division Bench of this Court consisting of S. Mohan, CJ as he then was and S.A. Hakeem.J., considered the doctrine of pleasure as engrafted in an appointment order given under the Wakf Act, 1954 to a person who was appointed to the Managing Committee of the Wakfs Board, under the Act. His appointment order dated 6.1.1986 issued under the Wakfs Act, showed that the term of that person was at the pleasure of the Board. It was therefore held that this doctrine of pleasure is an uncontrolled one unless it is subject to any other statutory provisions. That by the impugned order dated: 29.4.1989 that pleasure was withdrawn as a result of which the entire Committee was dissolved and that dissolution was upheld by the Division Bench. The learned Counsel for Appellant submitted that even in that case there was no provision like the Proviso to Section 5(1) of the Act. As, we have discussed earlier the said Proviso would not make any difference so far as the pleasure doctrine engrafted in Section 5(1) of the Act is concerned.

12. We may now refer to a Decision in the case of S. GOVINDAPPA v. CHIEF SECRETARY TO GOVERNMENT OF KARNATAKA AND ANR. 1992 (2) KarLJ 296 in that case another Division Bench of this Court consisting of M. Rama Jois, and B.N. Krishnan, JJ., had to consider the scope and ambit of a Notification dated 16.7.1989 appointing the Appellant before the Court as a Member (Technical) of Electricity Board for a period of 3 years subject to the pleasure of the State Government. The question was whether the appointment could be cut short by an order passed on 15.3.1991. Rejecting the contention of the Appellant before the Division Bench that the impugned order of his termination is premature, it was held that as his appointment itself was subject to the pleasure of the Government, it could be terminated also at the pleasure of the Government. As we have discussed earlier the scheme of the present Act, emanating as it does from the Proviso to Sub-section (4) of Section 3 read with Section 5(1) of the Act, represents an almost parallel scheme necessarily indicates that a nominated First Member by the Government on the Urban Development Authority can be recalled by the Government at its pleasure even prior to 3 years of his assumption of office.

13. We may lastly refer to the Decision of the Supreme Court in the case Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, . In that case the Supreme Court was concerned with the nomination of two women members on the Municipal Board functioning under the U.P. Municipalities Act 1960. As per Section 9 Sub-section (b) of the said Act, the elected members of a Municipality shall not be less than 10 and not more than 40 as the State Government may by notification in the Official Gazette specify. There were various Provisos and second Proviso reads as under:-

"Provided that if none or only one of the members elected under Clause (b), is a woman, the State Government may, by notification, nominate two women

members or one more woman member, as the case may be, so that the number of women members in the Board is not less than two and thereupon the normal composition of the Board shall stand varied to that extent."

and then followed 4th Proviso, which reads as under:-

"Provided also that a member nominated under this section, whether before or after February 15,1990 shall hold office during the pleasure of the State Government, but not beyond the term of the Board."

Two women Members nominated by the State Government namely Smt Abida and Hazra Khaton were nominated as Members of the Board on 19.4.1990. Subsequently, the State Government on 2.8.1991 in exercise of its powers under the fourth proviso to Section 9 of the Act issued notification cancelling the nominations of Smt. Adiba and Hazra Khatoon and in their place nominated two other women Members. That triggered off the litigation. Ultimately the matter went up to the Supreme Court. The Supreme Court in the aforesaid Decision upheld the cancellation of the appointment of the aforesaid two women Members relying upon the Proviso which in terms provide that the Members so nominated were to hold office during the pleasure of the State Government and that exercise of such power was held to be not arbitrary or violative of Article 14 of the Constitution.

14. In the said case repelling the argument that such arbitrary and naked power to remove a Member from the Membership of a Board if uncanalised, uncontrolled, would run contrary to the well established principles of democracy and public policy and would certainly hamper the independent functioning of the local bodies and in order to enable such bodies to function without any hindrance from the State Governments, the Government should not be allowed to vest itself with this unlimited power to remove a Member at his pleasure, the Supreme Court held that such a provision neither offends the Articles of Constitution nor is against any public policy or democratic norms enshrined in the Constitution. Clearly the aforesaid Decision of the Supreme Court clinches the issue against the Appellant.

15. For the aforesaid reasons, therefore, we do not find any flaw in the Decision rendered by the learned single Judge, upholding the order of the Government ANNEXURE-F and in dismissing the Writ Petition of the Appellant.

16. In the result, the Appeal fails and is dismissed.