

(2006) 05 OHC CK 0068
In the Orissa High Court
Case No : Writ Petition (C) No. 4610 of 2006

Shri Ainthu Sahoo

APPELLANT

Vs

The Government of Orissa

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Western Orissa Development (Amendment) Act, 1995 — Section 15
Western Orissa Development (Amendment) Act, 2001 — Section 23(1A), 30(1)
Western Orissa Development Act, 2000 — Section 10, 13(4), 21, 3(1), 4

Citation : (2006) 05 OHC CK 0068

Hon'ble Judges : Sujit Barman Roy, C.J; I. Mahanty, J

Bench : Division Bench

Advocate : R.K. Rath, Gopinath Padhi, S.K. Mishra, N.R. Rout, A.R. Mohanty and N.R. Mohanty, for the Appellant; Pradipta Ku. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

I. Mahanty, J.—In this writ application, the Petitioner Mr. Ainthu Sahu has challenged the validity of the State Government's Order communicated vide letter No. 4422 dated 25.3.2006 by the Planning and Co-ordination Department (Annexure-4) whereby the Petitioner was informed that his term of appointment as the Chairman of the Western Orissa Development Council (WODC) would expire on 26.3.2006 whereas the claim of the Petitioner was that his present tenure would have lasted till 18.6.2008 and seeks a declaration to such effect.

2. The relevant uncontroverted facts of the present case are narrated hereunder:

A. 05.12.2000 The State of Orissa enacted Orissa Act 10 of 2000 known as the Western Orissa Development Act, 2000 (hereinafter referred to as the "WODC Act 2000") published in the Orissa Gazette on 5th December, 2000 (Annexure-A) with the following objectives:

An Act to provide for the establishment of a council for the accelerated

development and advancement of certain districts of western parts of Orissa and for matters incidental thereto or connected therewith.

By the aforesaid enactment the earlier enactment known as the Western Orissa Development Council Act, 1998 was repealed.

B. Dt. 26.3.2001 In purported exercise of the powers u/s 3(1) vested in the State of Orissa by the W.O.D.C. Act, 2000, the State issued a notification No. 6684 dated 26.3.2001, "establishing and constituting" the W.O.D.C. consisting of 17 members with 8 vacancies (Experts) (Annexure-1), and appointed Sri Ainthu Sahu (the Petitioner) as an "Expert Member" and "Chairman" of the W.O.D.C.

C. Pursuant to the aforesaid notification u/s 3(1) of the W.O.D.C. Act 2000 dated 26.3.2001, the present Petitioner assumed charge of the office of Chairman on and from 26.3.2001 A.N. vide Annexure-C.

D. 19.06.2001 The State of Orissa amended various provision of W.O.D.C. Act 2000 by enactment of Orissa Act 8 of 2001 termed as the Western Orissa Development Council (Amendment) Act, 2001 published in Orissa Gazette dated 19th of July 2001 (hereinafter referred to as "Amendment Act, 2001") amending various provisions of the W.O.D.C. Act 2000 (Annexure-B), the relevant parts of which will be dealt in hereinafter.

E. 17.03.2003 The State of Orissa in exercise of powers conferred u/s 21 of W.O.D.C. Act, 2000 framed the Western Orissa Development Council Rules, 2003 for giving effect to the provisions of the Act (hereinafter referred to as the "WODC Rules, 2003") and the same was notified vide notification dated 17th March, 2003 and published in the Orissa Gazette dated 25th March, 2003.

F. 18.6.2003 Thereafter by the notification No. 10711 dated 18th June 2003, the Govt. Orissa in the Planning and Co-ordination Department issued a further notification purportedly u/s 4 of the Western Orissa Development Act, 2000 "reconstituting" the Western Orissa Development Council established and constituted by the Government's earlier notification dated 26th March 2001 (Annexure-2) wherein Sl. No. 1, the name of the Petitioner Sri Ainthu Sahu (expert member) is indicated as Chairman.

3. The Petitioner in the writ application has averred that on learning that there was a move to cut short the tenure of the Petitioner on an alleged misinterpretation of fact and law, addressed a letter dated 23.3.2006 to the Hon"ble Chief Minister of the State of Orissa, inter alia, contending therein that the W.O.D.C. having been "reconstituted" on 18th June 2003, since u/s 5(1)(b) the term of office of Chairman was for a period of 5 years, the Petitioner claimed that his term of five years would commence from the date of reconstitution of WODC i.e., from 18th June 2003 and therefore, he will continue till 18th June 2008 (Annexure-3).

The aforesaid representation of the Petitioner was responded by the State of Orissa through letter No. 4422 dated 25th March, 2006 of the Development

Commissioner-Cum-Additional Chief Secretary, intimating him, that his term of office as an "Expert Member" and "Chairman" of the Western Orissa Development Council expires on 26th March 2006 (F.N.) i.e., on completion of five years" term from the "date of his assumption of office" i.e., on 26th March 2001 (A.N.) (Annexure-4).

4. In the light of the aforesaid rival contentions the present writ application has come to be filed with the following prayer:

(i) Issue a writ or direction or order in the nature of certiorari quashing Annexure-4.

(ii) Issue an interim direction in the nature of Mandamus directing immediate stay of operation of Annexure-4.

(iii) Issue an order/direction in the nature of Mandamus allowing the Petitioner to continue as Chairman of the Council till expiry of the term on 18.6.2008.

(iv) And pass any such order/orders, which Your Lordships may deem fit in the interest of justice and to allow the writ petition with costs.

5. The Opposite Party has filed a counter affidavit raising various contentions, supporting its view as contained in the impugned letter vide Annexure-4. Relying upon Section 5(1)(b), the State has strongly refuted the contention of the Petitioner in view of the stipulation that the term of the Chairman shall be "5 years ... from the date they respectively assume their office." It is further contended by the State that it is an uncontroverted fact that the Petitioner, assumed office of Chairman of the WODC on 26.3.2001 A.N. vide his letter dated 26.3.2001 A.N. (Annexure-C). Therefore, the Petitioner having assumed office from the aforesaid date, in terms of Section 5(1)(b), the tenure of office of the Petitioner for 5 years comes to an end on 26.3.2006 F.N. and there is absolutely no illegality whatsoever in the clarification given by the State in response to the Petitioner's representation vide Annexure-4 to the writ-application.

6. The Petitioner has filed a rejoinder affidavit to counter the contention raised by the State in its counter affidavit and in the said rejoinder affidavit, the Petitioner essentially, contends that while it is a fact that he had been first nominated as the Chairman of the WODC vide notification dated 26th March 2001 (Annexure-1) and had himself issued the letter of acceptance of office vide Annexure-C dated 26.3.2001, yet, this fact, is legally of no consequence due to the following reasons:

i. The council "established and constituted" vide notification dt. 26.3.2001 (Annexure-1) was not an effective council since it was constituted with 17 members and there were 8 vacancies of expert members:

ii. Though the rules required to be framed u/s 21 of the WODC Act, 2000, the same had not been promulgated by the date of the notification vide Annexure-1.

iii. An amendment was made to the WODC Act, 2000 vide Amendment Act,

2001, notification dated 19th July 2001 (Annexure-B) which brought about substantial change both in the constitution of the Council as well as the eligibility criteria for the post of the Chairman and members of the Council, thereby in effect, rendering any appointment made prior thereto non-est/inconsequential in the eye of law for computing the period/term of office of the Petitioner as Chairman of the W.O.D.C.

iv. Post 2001 Amendment Act dated 19th July 2001, necessary rules were promulgated for the first time vide notification dated 17th March, 2003 (Annexure-G). It was further averred that vide notification dated 18th June, 2003, a full fledged Council of 25 members was constituted for the first time and therefore, the Petitioner submits that it is only from this notification, i.e., 18th June 2003, that on tenure of 5 years, office of the Chairman ought to be computed, ignoring and/or without taking into account any period served by the Petitioner prior thereto.

7. The State has filed a note in reply to the averments made by the Petitioner in the rejoinder affidavit, in which the State has raised the following contentions:

(i) The WODC was "reconstituted" on 18.6.2003. Since the term of the M.P./M.L.A.s who were taken as the members, had expired after two years from the notification dated 26.3.2001 and since the term of the Petitioner (Expert Member) was for five years from 26.3.2001 and the said term had not been expired by the date of reconstitution notification dated 18.6.2003, to give continuity to the Petitioner as "Chairman", his name was once again reflected in the "reconstitution" notification dated 18.6.2003.

(ii) The Petitioner having assumed charge as "Chairman" on 26.3.2001 as per Annexure-C, and as a fresh letter of "assumption of charge" as Chairman was never issued by the Petitioner, post the reconstitution notification, dated 18.6.2003, amounts to a conclusive inference that the Petitioner has always accepted 26.3.2001 as the date from which his term of office as "Chairman" of the WODC commenced, and hence he is estopped from claiming that his term of office began anytime later. Therefore, the Petitioner having served the term of five years as stipulated u/s 5(1)(b) of the Act, he has no legitimate grievance and it was no more available to the Petitioner to seek extension of his said term by seeking to misinterpret the law and the facts.

(iii) The legal status of the Chairman and structure of the Council under the pre-amendment Act and the post amendment Act as indicated by the Petitioner in the rejoinder were quite irrelevant, because the amendment which was brought by the Amendment Act, 2001, does not affect the status of the members and the Chairman who had already been appointed and continuing the same till the expiry of their term. Even though by the Amendment Act, 2001, it has been provided for appointment of a Chairman other than the "Members", and "Expert Members" same is prospective in nature and does not provide for disturbing the term of Chairman, who was continuing by the time the Amendment Act was

brought into force. Since the Petitioner's term commenced from 26.3.2001 for a period of five years, he could not have been ousted until the term of the Petitioner expired on 26.3.2006. Thereafter, the Government will nominate a person from the council area to be the Chairman, in terms of the Amendment Act, 2001.

(iv) In reply to paragraph 2-C and D of the rejoinder-affidavit, it was submitted on behalf of the State that even though Amendment Act, 2001 provided for appointment of a person from the council area as Chairman other than the M.L.A., M.P. members, Expert Members and Official Members but the Petitioner who being nominated as the Expert Member and Chairman under the pre-amended Act since he was enjoying his term, on reconstitution while taking M.L. As. and M. Ps. of two years term after expiry of the term of such members, the Petitioner was shown as an Expert Member and Chairman. He neither resigned as per Section 5(2) of the Act nor he was removed by the Government as per Sub-section (3) of Section 5 of the Act for being appointed separately as the Chairman as per the Amended Act, 2001 or as an Expert Member as a person from the council area. The Petitioner is not entitled to claim for the both while admittedly he was shown as an Expert Member and Chairman. The Petitioner also did not once again assume the charge of Chairman after the reconstitution of the WODC under the notification vide Annexure-2.

(vi) The State further relies upon Section 10 of the Act which stipulates that any vacancy will not invalidate the functioning of the Council as well as Section 13(4) of the Act provide that the quorum of the Council meeting shall be ten members and, therefore, since 18 members have been appointed under notification dated 26.3.2001 vide Annexure-1, the said Council so nominated could not have been an ineffective council. The State also drew attention of this Court to the said note in which the reasons for bringing the amendment of the WODC Act, 2000 in the year 2001 are stipulated. The Statement of Objects and Reasons of the Amendment Bill, 2001 are quoted as follows:

After the enactment of the new Western Orissa Department Council Act there were demands from the people of certain under-developed districts of western part of Orissa and legislatures for effecting certain amendments to constitute an effective Council by redefining certain provisions and improvement of the Western Orissa Development Council with specific defined powers and functional efficiency. The State Government, keeping the above objective of making the Council an effective apparatus of development in the underdeveloped portions of the districts in western parts of the State have been converted as an effective instrument for development in the rural areas of this region.

With a view to making the Council more representative in Character and enabling it to discharge its functions more efficiently as detailed above by giving it more administrative powers by simplifying procedures, it has been found expedient in the interests of the people and their popular demand to amend certain provisions of the Western Orissa Development Act, 2000.

8. On the face of the aforesaid rival contentions it would be imperative to first of all analyze the position of law as it stood under the WODC Act, 2000, as well as the Amendment Act of 2001. For the purpose of brevity and for comparison the same is stated hereunder in a tabular form. 2000 Act 2001 Amendment

9. On a comparison and scrutiny of the aforesaid two enactments, i.e. the WODC Act, 2000 and the Amendment Act, 2001, the following distinct changes in legislation come to notice:

(i) Whereas in 2000 Act, the Council consisted of 25 members including Chairman, post 2001 amendment, the Council consists of 25 members plus one Chairman, therefore 26 members.

(ii) Under the 2000 Act, any member i.e, a member having either a two year tenure or a five year tenure could be nominated by the Govt. as "Chairman", whereas, after the 2001 amendment, by introducing Section 5(A) to the enactment, the only criteria for nomination of the Chairman was "shall be a person from the local area". In other words, post amendment, the Chairman to be nominated, was no longer required to be a member of the Lok Sabha nor the Legislative Assembly nor an expert member, whereas prior to the amendment, it was from the category of the members alone, that the Govt. could nominate a "Member" as "Chairman". Further, if a "Member" was not a "person from the local area", he could still have been nominated by the State as the "Chairman".

(iii) Under the 2000 Act, the term of office of a "member" nominated as the "Chairman" was co-terminus with the term of membership (Section 5), post 2001 amendment, a specific term of 5 years of the Chairman was introduced into the Act, as distinct from being co-terminus with the period of membership of the Council.

(iv) Whereas under 2000 Act, the post of "Chairman" had not been given an independent and separate office, post amendment, the office of Chairman, was stipulated as an independent and separate office.

10. The next contention of the Petitioner was to the effect that the amendment made to the WODC act 2000 vide WODC Amendment Act 2001, notified on 19th July, 2001 (Annexure-B), brought about substantial change both in the Constitution of the Council as well as the eligibility criteria for the post of Chairman and Members of the Council, thereby, in effect rendering any appointment made prior thereto non-est/inconsequential in the eye of law for the purpose of computing the period/term of office of the Petitioner as Chairman of the WODC, requires more careful consideration.

The State in its reply to the Petitioner's rejoinder affidavit has averred as follows:

(i) The Amendment Act 2001 does not affect the status of the Members and the Chairman who were already appointed and enjoying their status and term on being appointed as per notification dated 26.3.2001 (Annexure-1).

(ii) The Amendment Act 2001 is prospective in nature and does not provide for disturbing term of Chairman which was continuing at the time the Amendment Act was brought into force and hence Petitioner was allowed to continue for his full term of 5 years from the date of his assuming office.

(iii) The Amendment Act does not provide for disturbing the term and rights already conferred by the pre-amended Act and therefore, Petitioner's name has been renotified in Annexure-2, while "reconstituting the Council" as "Chairman/Expert Member".

11. The first issue that arises for consideration is whether the Amendment Act of 2001 can be constructed as prospective or retrospective in operation, and if held to be prospective, whether the tenure and rights already conferred by the pre-amended Act were to be disturbed or changed in any manner in the coming into force of the Amendment Act, 2001.

In this regard, it is apt to take note of a cardinal principle of construction, that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only "*nova Constitutio futuris formam imponere debet non praeteritis*". (A new law ought to regulate what is to follow, not the past) Osborn consie Law dictionary page-224.

Every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect.

12. The words used in the amending statute do not show nor indicate in any manner the intention of the Legislature to affect existing rights. It is the cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by a necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing substantive rights, it is deemed to be prospective only. It has been held by Lord Justice Popes in the case of *BOURKE and Ors. v. NUTT*, (1894) 1 Q.B. 725 as follows:

Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect.

13. The aforesaid principles of interpretation of statute has been reiterated by the Supreme Court of India in the case of *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, as follows:

The principles that have to be applied for interpretation of statutory provisions of this nature are well established. The first of these is that statutory provisions

creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective; and the retrospective operation will be limited only to the extent to which it has been so made by express words, or necessary implication. The second rule is that the intention of the Legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning. The third rule is that if any legislation, the general object of which is to benefit a particular class of persons, any provision is ambiguous so that it is capable of two meanings, one which would preserve the benefit and another which would take it away, the meaning which preserves it should be adopted.

In the case of *Shyam Sunder and Another Vs. Ram Kumar and Another*, a constitutional Bench of the Supreme Court held as follows:

We, are, therefore, of the view, that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act such legislation is prospective in operation and does not effect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act, which affects the procedure, is presumed to be retrospective, unless amending Act provides otherwise. We have carefully looked into new substituted Section 15 brought in the parent Act by Amendment Act, 1995 but do not find it either expressly or by necessary implication retrospective in operation which may effect the right of the parties on the date of adjudication of suit and the same is required to be taken into consideration by the appellate Court.

In the case of *K.S. Paripoornan Vs. State of Kerala and Others*, the constitutional Bench of the Apex Court held as follows:

These principles are equally applicable to a mandatory statutes. According to Crawford:

Amendatory statutes are subject to the general principles relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transaction, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed there is presumption that an amendment shall operate prospectively. (See Crawford's Statutory Construction pp. 622. (23).

In the words of S.R. Das, C.J., "The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. See

Garikapatti Veeraya Vs. N. Subbiah Choudhury, . In order that the provisions of a statute dealing with substantive right may apply to pending proceedings the Court has insisted that the law must speak in language which expressly or by clear intendment, takes in even pending matters. (See Smt. Dayawati and Another Vs. Inderjit and Others, , and Lakshmi Narayan Guin and Others Vs. Niranjan Modak, .

The provisions of Section 23(1-A) have to be construed in the light of the aforementioned principles. If thus construed, it would be evident that u/s 23(1-A) an obligation to pay an additional amount by way of compensation has been imposed. Such an obligation did not exist prior to the enactment of the said provision by the amending Act. If the said provision is applied to the acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition the effect would be that the said provision would be operating retrospectively in respect of transactions already past. We are, therefore, unable to agree with the view expressed in Union of India (UOI) and Another Vs. Zora Singh and Others, that Section 23(1-A) would only operate prospectively and will not have retrospective operation if it is construed as applying to proceedings which were pending before the Reference Court on the date of the commencement of the amending Act and in which the Reference Court makes the award after the commencement the amending Act.

14. The next question, which arises for our consideration, is to ascertain as to whether "the term of office" of the Chairman of the Council can be said to be a "substantive right".

In terms of the WODC Act 2000, it is the prerogative of the State to nominate the Chairman of the Council. Such prerogative once exercised in favour of a person it vests in such a person a right to continue for the term stipulated in the statute unless he is removed in the manner provided under the statute. Therefore, while it is definitely not a substantive right to seek nomination as either a member or a Chairman of the Council, and in fact, it is the sole prerogative of the State, yet, once such a prerogative is exercised and a person is nominated as a Member or Chairman upon such nomination a Member or Chairman is vested with a statutory right to continue in such a position for the term stipulated under the statute. Therefore, we are of the view that the term of the Chairman being a statutory right of a person nominated, as such the right to continue for the duration of the term, is a "substantive right".

Therefore, having come to a conclusion that the Petitioner has a substantive right to the term of office associated with the office of the Chairman as stipulated in the statute, we are of the view that such substantive right not having been specifically taken away or impaired by the Amendment Act of 2001, the same cannot have a retrospective operation.

15. The Apex Court in the case of K.S. Paripoornan Vs. State of Kerala and

Others, held as follows:

A statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the Legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of the presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reason of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings. (See Halsbury's Laws of England, 4th Edn., Vol.44 paras 921, 922, 925 and 926).

The next question which needs to be considered is whether any indication has been given by Parliament that Section 23(1-A) will have retrospective operation so as to be applicable to acquisition proceedings which were commenced prior to the date of enactment of the said provision. The learned Counsel for the claimants have urged that such an indication has been given by the words "in every case" used in Section 23(1-A). We are, however, of the view that Parliament has given a clear indication of its intention in this regard in Section 30(1) of the amending Act. Since express provision is contained in Section 30(1) of the amending Act indicating the intention of Parliament as to the extent to which the provision of Section 23(1-A) would apply to pending proceedings there is no scope for speculating about the said intention of Parliament by reading Section 23(1-A) in isolation without reference to Section 30(1) of the amending Act.

16. It is to be seen whether the Amendment Act of 2001 could operate retrospectively or prospectively and further, whether the Amendment Act, 2001 sought to take away the rights and privileges vested in certain person prior to the amendment. A detailed analysis of the Amendment Act, 2001 (Annexure-B) does not contain any specific stipulation regarding retrospective operation of the said amendment. The State in its reply to the rejoinder available at page-8 of the note dated 25.4.2006 narrated therein, the reasons for bringing about the amendment of WODC Act 2000 in the year 2001. The statements of general

objectives of the Amendment Bill 2001 state that it was in response to the demands of the people of certain underdeveloped districts of Western parts of Orissa for having an effective Council by redefining certain provisions and improving the functional efficacy of the Council as well as with the view to make the Council more representative in character.

Therefore, neither in the Amendment Act 2001 nor in the Statement of Objects and Reasons for the Amendment Bill 2001, there exists any conscious objective to either curb the rights and the term of office of the Chairman or remove the existing nominated members of the Council created by the earlier notification dated 26.3.2001. In other words, it clearly manifests the Amendment Bill as well as Amendment Act, that the Legislature in its wisdom did not intend that the tenure of the members, earlier appointed, would in any manner to be impacted upon by the amendment to the WODC Act 2000.

We are of the view that the Amendment Act 2000 does not contain any words sufficient to show the intention of the Legislature to affect existing rights and, therefore, it must be deemed that the Amendment Act 2001 was only prospective.

Although the amending Act changed the eligibility criteria for being nominated as a Chairman, yet, the Amending Act did not make any stipulation/declaration regarding the tenure of Chairman and members who have already been appointed and whose tenure has not ended by the date of the amendment. Therefore, if the Amendment Act 2001 is to be interpreted in a manner, which takes away any vested rights acquired under existing laws (pre-amendment law), it must be presumed to be intended not to have retrospective effect. Therefore, since the intention to have retrospective effect of the Amending Act is not manifested by express words or necessary implication, it cannot be concluded that the Legislature intended the Amendment Act to be retrospective in its operation and hence shall only have prospective operation and would come into operation when a new Chairman is required to be appointed after the term of the existing Chairman expires or is terminated.

In the light of the aforesaid ruling, citations and principles, we are of the view that the Petitioner had admittedly assumed office on 26.3.2001 in pursuance of notification No. 6684 dated 26.3.2001 (FN) and in terms of Section 5 of the Act, the term of office of the Expert Members (the category under which the Petitioner was nominated was five years from the date of assumption of office), which expired on 26.3.2006 (FN). Even though during the aforesaid period, the further notification reconstituting the council was made on 18.6.2003, the name of the present Petitioner as Chairman (Expert Member) was once again indicated therein, and even though the WODC Amendment Act was passed during the interregnum on 19.6.2001, the amendment Act cannot be said to have retrospective operation nor impair or limit the term or rights of members continuing at the said point of time and, therefore, we are of the view that the Petitioner cannot be allowed to take advantage of the said amendment to seek

extension of his term. The State honoured the nomination of the Petitioner as Chairman for a period of five years from the date of assuming office and although the amendments to the WODC, Act had been carried out during the said tenure, yet, the said amendment has not been given retrospective effect by the Legislature and nor rights/term of office vested in the Petitioner was curtailed. Therefore, the Petitioner having served a period of five years as "Chairman" of the WODC can have no grievance of the same nor claim any extension of the said tenure.

17. It is pertinent to mention here that the Petitioner was appointed on 26.3.2001 i.e., prior to amendment of the Act in 2001. He being an appointee prior to amendment of the Act and the term of his office being a substantive right was duly treated as such by the State and although the amendment came post of his appointment, yet, he was permitted to complete his tenure as applicable to him under the pre-amendment statute. Therefore, the Petitioner being a pre-amendment appointee does not possess any right to claim of the status of a post amendment appointee. Therefore, his term having expired on 26.3.2006, we are of the view that he has no right to continue thereafter.

18. The contention of the Petitioner that the Council constituted vide notification dated 26.3.2001 was not an effective Council since it was constituted with 17 members only and that there were eight vacancies of Expert Member, has been responded by the State by placing reliance on Section 10 of the 2000 Act, which clearly stipulates that any vacancy will not invalidate the functioning of the Council. We are of the view that this contention of the Petitioner deserves to be rejected since the provision of statute is clear and unambiguous. Further Section 10 itself, makes it abundantly clear that no Act or proceeding of the Council shall be invalid by reason only on existence of any vacancy amongst the members or any defect in Constitution thereof. Therefore, we are of the view that even though there were 8 vacancies of Expert Members in the notification dated 26.3.2001 "constituting" the WODC Council, the Council, formed by the said notification, cannot be termed as non-effective Council.

19. The next contention raised by the Petitioner was to the effect that the Rules that were required to be promulgated u/s 21 of WODC Act 2000 were notified only on the 17th of March 2003 (published in Orissa Gazette on 25th March, 2003) and the non-promulgation of the Rules (Annexure-1) on or before 26.3.2001, i.e., the date of notification of the "Constitution of the WODC" vide Annexure-1, renders the operation of the Council prior thereto inconsequential or non-est in the eye of law. Non-promulgation of Rules does not and cannot have any impact on the validity of the constitution of the Council itself. In other words, even though the Rules were promulgated by notification published in the Orissa Gazette on 25th March, 2003 only, this fact by itself, cannot support nor assist the Petitioner's argument that the term of office of the Petitioner as Chairman could at best be stated to commence only after notification of the Rules. Accordingly, we also reject this contention on behalf of the Petitioner.

20. In view of the aforesaid conclusion reached by us, the writ petition is dismissed, but in the circumstances without cost.

Sujit Barman Roy, C.J.

21. I agree.