

(2014) 09 KAR CK 0270

In the Karnataka High Court

Case No : Writ Petition No. 49857 of 2013 (GM-RES)

S.M. Basavaraju

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Bangalore Water Supply and Sewerage Act, 1964 — Section 3, 3(3)(b), 5, 6, 89
Bangalore Water Supply and Sewerage and Certain Other Laws (Amendment) Act, 2009 — Section 6, 6(1)(e)(iv)
Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2014) 4 AKR 441 : (2014) ILR 6166 : (2014) 6 KarLJ 239

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Sandeep S. Patil, Advocate for the Appellant; T.L. Kiran Kumar, Additional Government Advocate, Advocate for the Respondent

Judgement

A.N. Venugopal Gowda, J.—Challenge in this writ petition is to a notification dated 5-11-2013, as at Annexure-A, withdrawing the nomination of the petitioner as a Member of the Bangalore Water Supply and Sewerage Board (for short, "the Board"). Petitioner joined the services of the Board, on 1-2-1980, as Assistant Engineer and ultimately, he rose to the rank of Chief Engineer. Petitioner attained the age of superannuation on 29-3-2014. While he was working as Chief Engineer, by issue of Notification No. UDD 155 MNI 2008, dated 28-6-2012, he was nominated as Member of the Board, as per Section 3(3)(b) of the Bangalore Water Supply and Sewerage Act, 1964 (for short, "the Act"). The said notification (Annexure-B) reads as follows.--

2. The appointment of the petitioner to the Board came to be withdrawn by a notification dated 5-11-2013 (Annexure-A). The said notification reads as follows.--

The notification no doubt uses phraseology appropriate to a withdrawal. But, it is the substance that matters and not the form, for otherwise, clever drafting can

camouflage the real intension which can be found out by lifting of veil and from the surrounding circumstances.

3. Sri Sandeep Patil, learned Advocate, firstly contended that the termination of the appointment as Member of the Board before the petitioner completed his tenure of three years is violative of Rule 3 of the Bangalore Water Supply and Sewerage Rules, 1964 and secondly, the action of the respondent terminating the appointment of the petitioner is arbitrary and violative of sub-section (3) of Section 6 of the Act and hence, Annexure-A is liable to be quashed.

4. Sri T.L. Kiran Kumar, learned Additional Government Advocate, on the other hand contended that as per the notification issued vide Annexure-B, the petitioner was nominated as Member of the Board, until further orders, in exercise of the "pleasure doctrine" and there being no specified period, the withdrawal vide notification as at Annexure-A, is unassailable. He submitted that principles of natural justice has no role, since the petitioner having been appointed at the pleasure of the Government, enabled the Government to remove him, as such a power is implicit in the power to appoint.

5. In order to appreciate the rival contentions, it is necessary to notice the relevant provisions of the Act and the Rules, which read as under:

"3. Constitution and composition of the Bangalore Water Supply and Sewerage Board.--(1) The State Government shall as soon as may be after the commencement of this Chapter, constitute by notification in the Official Gazette a Board by the name of "The Bangalore Water Supply and Sewerage Board".

(2) The Board shall consist of not less than three and not more than nine members appointed by the State Government.

(3) Of the members.--

(a) one shall be a person who has experience of, and has shown capacity in commercial matters and administration;

(b) two shall be a person with wide experience of civil engineering works preferably in the field of public health engineering with reference to water supply, sewerage and sewage disposal and industrial wastes; and

(c) one shall be a person who has experience of accounting and financial matters in a public utility undertaking, preferably a water supply or sewage disposal undertaking.

(4) One of the members possessing any of the qualifications specified in sub-section (3) shall be appointed by the State Government to be the Chairman of the Board.

(5) A person shall be disqualified for being appointed or being a member of the Board if he is a member of the Parliament or of any State Legislature or any local authority.

(6) No act done by the Board shall be called in question on the ground only of the existence of any vacancy in, or defect in the constitution of, the Board.

4. Term of office and conditions for reappointment of members of Board. -- The Chairman and other member of the Board shall hold office for such period, and shall be eligible for reappointment under such conditions, as may be prescribed by the rules.

.....

6. Removal or suspension of members.--(1) The State Government may suspend from office for such period as it thinks fit or remove from office any member of the Board who. --

(a) is of unsound mind and stands so declared by a Competent Court; or

(b) is an undischarged insolvent; or

(c) becomes subject to any disqualification specified in sub-section (1) of Section 5.

(d) becomes or seeks to become a member of Parliament or any State Legislature or any local authority; or

(e) in the opinion of the State Government. -

(i) has refused to act; or

(ii) has become incapable of acting; or

(iii) has so abused his position as a member as to render his continuance on the Board detrimental to the interests of the general public; or

(iv) is otherwise unfit to continue as a member; or

(f) is convicted of an offence involving moral turpitude.

(2) The State Government may suspend any member pending an inquiry against him.

(3) No order or removal shall be made under this section unless the member concerned has been given an opportunity to submit his explanation to the State Government and when such order is passed, the seat of the member removed shall become vacant and another member may be appointed under Section 3 to fill up the vacancy.

(4) A member who has been removed shall not be eligible for reappointment as member or in any other capacity to the Board.

(5) If the Board fails to carry out its functions, or refuses or fails to follow the directions issued by the State Government under Section 89, the State Government may remove the Chairman and the members of the Board and appoint a Chairman and members in their places.

.....

Rule 3:

3. Term of office and conditions of appointment of the Chairman and other Members.--The Chairman and other members shall hold office for a period of three years and shall, on the expiration of their term of office, be eligible for reappointment for not more than one further term".

(emphasis supplied)

6. From the counter filed to the writ petition, it is clear that a proposal having been received from the Additional Director General of Police, Karnataka Lokayukta vide Letter No. BWSSB/CAO-S/EST-2 (Sigu-2)/67/2013-14, dated 5-4-2013, requesting to suspend the petitioner, on account of a case registered under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988, the continuance of the petitioner as a Member of the Board having been found to be inappropriate by the respondent, in exercise of the power under Section 6(1)(e)(iv) of the Act, notification vide Annexure-A, withdrawing the nomination of the petitioner to the Board was issued.

7. It is clear from reading of the provision under Section 6, the removal contemplated under sub-clause (iv) of clause (e) of sub-section (1) is with reference to "unfit to continue as a member" and hence, is a punitive measure. That being so, natural justice demand that the person complained of should be informed of the accusation against him and he should be given reasonable opportunity to put forth his case, which becomes evident from sub-section (3) of Section 6.

8. Undisputedly, the respondent has not given an opportunity to the petitioner to submit explanation before the order of withdrawal vide Annexure-A was made. The power to appoint includes the power to remove or vice versa. "Removal at pleasure" is distinct from "Removal for cause". In the latter, there is an obligation to give reasons, which is not the case in the former.

9. From the counter filed to the writ petition, briefly noticed in para 7 supra, it is clear that the petitioner's nomination was withdrawn, based on a proposal dated 5-4-2013 of the Additional Director General of Police, Karnataka Lokayukta, that during a raid conducted on the premises of the petitioner, documents were found in respect of movable and immovable properties, showing possession of disproportionate wealth than to the known source of income of the petitioner and an offence having been committed under Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988.

10. Sub-section (4) of Section 6 of the Act, extracted in para 6 supra, makes clear that a member who has been removed shall not be eligible for reappointment as member or in any other capacity to the Board. The nomination of the petitioner having been withdrawn "for a cause", he is entitled to a notice under the rules of natural justice, though he was not nominated for any specified

period.

11. Rule 3 makes clear that the Chairman and other Members of the Board shall hold office for a period of three years and shall, on the expiration of their term of office, be eligible for reappointment for not more than one further term. The petitioner, in view of sub-section (4) of Section 6, suffers ineligibility for reappointment as a Member or in any other capacity to the Board. The impugned notification is punitive, in the background of the facts disclosed in the counter filed, though the notification is seemingly innocuous.

12. In the instant case, the exercise of power by the respondent falls in the category of arbitrary exercise of power as it has acted in disregard of sub-section (3) of Section 6 of the Act, more particularly, on account of it having acted and issued the notification, based on the proposal dated 5-4-2013 of the Additional Director General of Police, Karnataka Lokayukta. Though the said authority proposed "suspension", only, the respondent took the extreme step of withdrawal, by believing the accusation as the truth, without providing an opportunity to the petitioner to submit his explanation. Therefore, in that background, the exercise of power to withdraw the nomination of the petitioner, made to the Board, is illegal. If there was any urgency to act against the petitioner, on account of the facts stated in the counter filed, sub-section (1) of Section 6 of the Act, enables the State Government to suspend a member from the office for such period as it thinks fit. If there was any need to take action against the petitioner, in view of receipt of the proposal dated 5-4-2013 of the Additional Director General of Police, Karnataka Lokayukta, the petitioner ought to have been suspended from office and thereafter, proceeded in accordance with law. Instead, the nomination of the petitioner was withdrawn, though in effect it is removal from office, on the ground that "he is otherwise unfit to continue as a member". Such a notification could not have been issued without following the mandate of sub-section (3) of Section 6. There is flaw in the decision making process. Thus, the impugned notification is arbitrary and illegal.

In the result, writ petition is allowed and Annexure-A is quashed. However, liberty is reserved to the respondent to order suspension of the petitioner, if necessary and then take further action, by keeping in view the observations made supra and in accordance with law.

No costs.