

(1993) 07 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 17260 of 1992

S.M. Sadanandaiah

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 14-07-1993

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 3(3)(I)

Citation : (1993) 3 KarLJ 52

Hon'ble Judges : G. P. Shivaprakash, J

Judgement

1. The petitioner is a member of the City Municipal Council, Chitradurga. The first respondent under Clause (i) of sub-section (3) of Section 3 of the Karnataka Urban Development Authorities Act, 1987 (hereinafter referred to as "the Act") "appointed" the petitioner as a member of the Chitradurga Urban Development Authority under its notification dated 22-2-1992, copy of which is marked as Annexure-A. The copy of the Gazette Notification issued in this behalf is marked as Annexure-B.

2. The City Municipality, Chitradurga at its meeting held on 24-3-1992 has passed a resolution on Item No. 105(3) to nominate the second respondent, as could be seen from Annexure-D, as member of the Chitradurga Urban Development Authority in place of the petitioner. In view of the resolution of the City Municipality, Chitradurga, the first respondent under the impugned notification dated 2-6-1992, marked as Annexure-F, in modification of its previous notification dated 22-2-1992 and in exercise of its power under clause (i) of sub-section (3) of Section 3 read with sub-section (4) of Section 3 of the Act has notified the nomination of the second respondent in place of the petitioner.

3. Sri K. Channabasappa, learned counsel appearing for the petitioner submitted that when once the Government has appointed the petitioner in terms of clause (i) of sub-section (3) of Section 3 of the Act, the City Municipality, Chitradurga has no authority or jurisdiction to pass the impugned resolution to forward any

other name for appointment as a member of the Chitradurga Urban Development Authority.

4. The learned counsel contended that when once the appointment is made to the membership of the Urban Development Authority, the term of the members being three years, as provided in Section 5, until and unless in terms of Section 6 of the Act an order is passed neither the State Government nor the Municipality has power to remove a member from the membership of the Urban Development Authority.

5. The relevant sections in the Act which bear on the questions raised in this petition are reproduced below:

"3. Constitution and incorporation of the authority.-(1) As soon as may be, after the date of commencement of this Act, the Government may by notification constitute for any urban area, an authority for the development of such area to be called.....Development Authority.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property both movable and immovable and to contract and shall by the said name sue or be sued.

(3) The Authority shall consist of the following members, namely:

(a) the Chairman;

(b) a town planner who shall be an officer of the Department of Town Planning not below the rank of an Assistant Director of Town Planning;

(c) an engineer who shall be an officer of the Karnataka Engineering Service not below the rank of an Executive Engineer;

(d) members of the Karnataka Legislative Assembly representing a part or whole of the urban area;

(e) a representative of the Karnataka Urban Water Supply and Drainage Board;

(f) a representative of the Karnataka Electricity Board;

(g) Commissioner of the Corporation or Municipal Commissioner or Chief Officer or Chief Officer of the Municipal Council, Ex-officio;

(h) Deputy Commissioner of the District, Ex-officio;

(i) an elected member of the local authority concerned;

(j) the Superintendent of the Police of the District, Ex-officio;

(k) an officer from the Karnataka Health and Family Welfare Department not below the rank of a District Health Officer;

(l) The Commissioner, Ex-officio;

(4) 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.

(5) xxx xxx xxx xxx.

(6) xxx xxx xxx xxx."

"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.

(2) The other conditions of service of members shall be such as may be prescribed.

(3) Any member other than an ex-officio member may resign his office by writing under his hand addressed to the Government but shall continue in office till his resignation is accepted by the Government;

(4) A casual vacancy by resignation of member or otherwise may be filled by fresh appointment or nomination and the person so appointed or nominated shall hold office for the remaining period for which the member in whose place he was appointed or nominated would have held office.

(5) No act or proceeding of the Authority shall be invalid merely by reason of any vacancy in or defect in the constitution or reconstitution of the Authority."

"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 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, absent, from three consecutive meetings of the Authority; or (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. From the above provisions, it is evident that under Section 3(3)(i), only an

elected member of the local authority concerned could be nominated by the local authority. By definition, under Section 2(n), local authority means a municipal corporation or a municipal council constituted or continued under any law for the time being in force. Therefore, in the instant case, the Municipal Council, Chitradurga alone could nominate one of its elected members to the Urban Development Authority, Chitradurga.

7. The third respondent Municipal Council who got impleaded subsequently, in its application I.A. II for vacating stay, has given full particulars regarding the "appointment" of the petitioner under notification dated 22-2-1992 issued by the first respondent, Annexure-A, as a member of the Urban Development Authority, Chitradurga. It is stated in the application that the petitioner had in the first instance filed W.P. No. 15599 of 1992 challenging the resolution dated 24-3-1992 of the third respondent which has been dismissed on 2-7-1992 as withdrawn, after the presentation of this petition on 8-6-1992. It is stated that the petitioner who was the President of the third respondent Municipal Council at that time got himself nominated. Annexure-R. 1, dated 9-11-1990 is a copy of the letter addressed to the Under Secretary, Housing and Urban Development Department of the State Government by the Municipal Commissioner, City Municipality, Chitradurga recommending the name of the petitioner for appointment to the Chitradurga Urban Development Authority. Annexure-R. 2, dated 31-7-1990 is a copy of the letter from the said Municipal Commissioner to the Deputy Commissioner, Chitradurga District suggesting the name of the petitioner and others for appointment to the said Urban Development Authority.

8. From the above, it is clear that the petitioner was not nominated by the Municipal Council in terms of sub-section (4) of Section 3 of the Act when he was appointed under notification dated 22-2-1992, Annexure-A.

9. The learned counsel for the petitioner submitted that the appointment of the petitioner could be in terms of the proviso to sub-section (4) of Section 3 of the Act, which provides that all the first members of the Authority shall be appointed by the Government. Even so, the term of office and conditions of service of members, under Section 5 of the Act, is subject to the pleasure of the Government and the provisions of Section 6. Therefore, the question that arises for consideration is whether the term of office of members of the authority could be curtailed by the Government based on its pleasure, despite the specific period of three years prescribed under Section 5 of the Act.

10. Sri T.R. Subbanna and Sri A. Keshava Bhat, learned counsel for respondents 3 and 2 respectively, submitted that the petitioner not having been nominated by the Municipal Council as provided in sub-section (4) of Section 3 of the Act, he cannot claim to be the representative of the Municipal Council in the Urban Development Authority. They urged that the appointment of the petitioner in the first instance under notification dated 22-2-1992, assuming that it was in terms of the proviso to sub-section (4) of Section 3 of the Act, though as a matter of fact the notification dated 22-2-1992 says otherwise, is subject to the pleasure of

the Government and therefore the petitioner cannot claim that he is entitled to continue as a member for a fixed period of three years.

11. A Division Bench of this Court in *B.S. Siddappa v. State of Karnataka and Others*, 1979(2) Kar. L.J. 238, while considering identical provisions in the Karnataka Improvement Boards Act, 1976, has held as follows:

"5. We will first consider the second contention urged for the petitioner. It is said that the Chairman by reason of his appointment becomes a member of the Board and a member could be removed only in accordance with the provisions of Section 8 after affording an opportunity of making his representation. This contention would have been accepted if the petitioner had been removed for disqualifications set out under Section 7 or 8. But admittedly, he was not removed on any such ground. He was apparently removed at the pleasure of the Government. Section 5 provides that the Chairman and other members appointed shall hold office for a period of three years subject to the pleasure of the Government. Lord Reid in *Malloch v. Aberdeen Corporation*, 1971(2) All E.R. 1278 at 1282, said "acting at pleasure means that there is no obligation to formulate reasons". The power to appoint includes the power to remove; or the power to remove is implicit in the power to appoint. Further, "removal at pleasure" is quite distinct from removal "for cause". In the latter there is an obligation to give reasons, but there is no such obligation in the former. That is why the Court insists that a party removed "for cause" should be afforded an opportunity against the proposal. The petitioner cannot demand that opportunity as he was not removed for cause set out under Section 7 or 8 of the Act.

6. The next question is whether the petitioner was entitled to a notice under the rules of natural justice. This contention proceeded on several assumptions. It is said that under Section 5 the petitioner had a right to continue in office for a period of three years and his removal affected his civil rights. This assumption appears to be not correct. The order appointing him did not specify any fixed term. If that order had prescribed a definite term, then we could have said that it expressly excluded the power to remove at pleasure. Section 5 no doubt provides that the Chairman and other members appointed by the Government shall hold office for a period of three years. But then, the period prescribed thereunder is not a security for the holder of the office. According to us, it appears to be a limitation imposed by the Legislature on the Executive for appointing a person at pleasure. The petitioner, therefore, cannot contend that he had a right to hold the office for a fixed period of three years.

7. It was next urged that the removal visits the petitioner with civil consequences and therefore he ought to have been heard under the rules of natural justice. In support of the contention, reliance was placed on the following passage in the majority view of this Court in *Puttappa v. State of Karnataka*, 1978(1) Kar. L.J. 302 at 350, para 27.

Whatever might have been the medieval concept of natural justice it must be

admitted, that in recent years it has a wide ranging application in many Governmental actions. Although the precise content of it was doubted from time to time, its general applicability to Government action was never doubted by the Judges. One vital principle, that is, the right of a person to be given a fair hearing before he suffers in some way under the official rod, has been consistently applied by the Courts, and today, it has become one of the most essential elements in the rule of law.

There cannot be any dispute over the proposition. But to attract the above principle, the petitioner must show that he has suffered in some way under the official rod. It is urged that the petitioner has been deprived of his emoluments, and perquisites pertaining to the office. That is undoubtedly the result consequent on his removal. But that by itself is not a proof that he has suffered. He must further show that he has had that right to receive it. If he is held to have no right to the office, it would be futile to contend that he has a right to receive the remuneration attached thereto.

We do not see how the petitioner has been prejudiced in any other manner. We have already held that his removal was not for cause, and we must also state that it does not cast any stigma and so he cannot rely upon the rules of natural justice."

12. Another Division Bench of this court in *Sangappa D. v. State of Karnataka and Others*, 1986(2) Kar. L.J. 379: ILR 1987 Kar. 1555 has reiterated the correctness of the view expressed in *Siddappa's* case.

13. *S. Govindappa v. Chief Secretary to Government of Karnataka and Another*, 1992(2) Kar. L.J. 296, another Division Bench of this Court while considering certain provisions relating to appointment of a Member (Technical) of Electricity Board for a period of 3 years subject to the pleasure of the State Government under the provisions of Electricity (Supply) Act, 1948 and Karnataka State Electricity (Supply) Rules, 1957 has concurred with the view expressed in *Siddappa's* case.

14. In the instant case, it is clearly stated in the notification dated 22-2-1992, under which the petitioner was appointed as a member of Urban Development Authority, Chitradurga, that the appointment of the petitioner as a member was till further orders.

15. For the foregoing reasons, the petitioner cannot have any legal and valid grievance against his removal from the membership of the Urban Development Authority to make room for the appointment of the second respondent.

16. Writ petition dismissed.

No costs.