

(2009) 05 UK CK 0043
In the Uttarakhand High Court

Smt. (Dr.) Dhaneshwari Ghildiyal

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (2009) 05 UK CK 0043

Hon'ble Judges : Vinod Kumar Gupta, C.J.;V.K. Bist, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Gupta, C.J.—In this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks the following reliefs:

2. To issue the Writ, Order or Direction quashing the impugned order i.e. order dated 30.09.2008 contained in Annexure 22 to the instant writ petition.
 3. To issue the Writ, Order or Director quashing the notification dated 25.7.2008 contained in Annexure 21 to the instant writ petition and consequently removing respondent No. 5 from the office of Chairperson of Uttarakhand State Social Welfare Board.
 4. Writ, Order or Direction in the nature of Mandamus directing respondent No. 2 to reinstate the petitioner as Chairperson of Uttarakhand State Social Welfare Board.
 5. To issue any other suitable Order or Direction as this Hon'ble Court may deem fit & proper under the facts & circumstances of the case.
2. Brief facts leading to the filing of this Writ Petition are as under:
3. Vide a Memorandum dated 9th October, 2003, the Government of Uttarakhand constituted State Social Welfare Advisory Board and appointed the petitioner as its Chairperson for a period of three years from the date of publication of the said

Office Memorandum. In this Office Memorandum, the State Government had also appointed Members of the Board. Central Social Welfare Board ("Central Board" for short) had framed Rules of the State Social Welfare Boards ("Rules" for short), whereby and wherein it was provided that the Notification for the constitution of a State Board shall be issued by the concerned State Government in consultation with the Central Board.

4. Vide Communication dated 16th October, 2006, the Central Board had intimated to the Secretary, Social Welfare Department, Government of Uttarakhand, its concurrence for the extension of the term of the petitioner (second consecutive term) for a period of three years as Chairperson of Uttarakhand State Social Welfare Board ("State Board" for short). The Central Board, vide an Administrative Order dated 14th November, 2007, by referring to Rule 3(v)(b) of the Rules, took a decision on its own for the extension in the term of appointment of the petitioner as Chairperson of the State Board for a second term of three years starting from 9th October, 2006 up till 8th October, 2009 and conveyed the said decision to the State Government. Rule 3(v)(a) of the Rules clearly stipulated that the Chairperson of the State Board is selected by the Chairperson of the Central Board in consultation with the State Government. Para 3 of the aforesaid Administrative Order dated 14th November, 2007 made a mention of the aforesaid consultation process.

5. On 6th May, 2008, Executive Director of the Central Board sent a Communication to the petitioner that the Central Board had received a complaint against the petitioner from Sri R.K. Chauhan, Deputy Secretary, Government of Uttarakhand. This Communication also mentioned about some inquiry having been made. Based on the contents of second para of this Communication, the petitioner was asked to handover the charge of the post of Chairperson, State Board with immediate effect. The text of this Communication reads thus:

Dear Madam,

Please be informed that a complaint was forwarded by Shri R.K. Chauhan, Deputy Secretary, Govt. of Uttarakhand vide letter dated 02.04.08, a copy of which was forwarded to you by fax as well as by speed post on 24.04.08 for your comments. No reply has been received till date.

In the meanwhile, a team of officers from the CSW were deputed to make inquiries on the complaint and their report received that you are heading NGO namely Matru Shakti Kalyan Samiti, Nainital and most of its officers/bearers are closely related to you. The NGO has been receiving grant from Uttarakhand State Board under various programmes. By sanctioning grant under various programmes to NGO headed by you with your family members as Managing Committee members, you have misused the position of the Chairperson and undermined it. This has been viewed seriously by the Govt. of India and has decided that your continuation as Chairperson, Uttarakhand State Board is not in the best interests of the organization.

Therefore, you are requested to please handover charge of the post of Chairperson, Uttarakhand State Board with immediate effect to an officer of the State Govt. Please complete all handing over formalities like handing over of keys of your chamber, almirahs and control assets etc.

6. This action of the Central Board was challenged by the petitioner in this Court by filing Civil Writ Petition No. 92 of 2008 (S/B). Vide its Judgment dated 25th June, 2008, a Division Bench of this Court disposed of the said Writ Petition on the basis of an agreed order, whereby the aforesaid Communication dated 6th May, 2008 was quashed and set aside. The respondents were directed to reconsider the matter on the basis of and in the light of the representation/reply to be submitted by the petitioner.

7. An order was passed on 8th July, 2008, purportedly on behalf of the Central Board in purported compliance of the direction contained in the aforesaid Division Bench Judgment dated 25th June, 2008, rejecting the petitioner's representation and confirming as well as ratifying the decision contained in the Communication dated 6th May, 2008. This order came to be challenged by the petitioner in this Court by filing Writ Petition No. 140 of 2008 (S/B). A Division Bench of this Court vide Judgment dated 17th September, 2008, by referring to Rule 3(viii) of the Rules, which relates to and governs the removal of the Chairperson on the grounds mentioned in the said Rule, and by holding that there is no other Rule, which relates to or governs the removal of the Chairperson, recorded the statement of the Counsel appearing for the respondents that the respondents wanted to withdraw the order dated 8th July, 2008 with liberty to them to proceed afresh and dispose of the representation of the petitioner upon due consideration and by passing a reasoned and speaking order.

8. It is in the aforesaid background that the impugned order dated 30th September, 2008 was ultimately passed by the respondent Central Board ordering the petitioner's removal from the Office of Chairperson of the State Board. As a consequence of the petitioner's removal, respondent No. 5 came to be appointed as the Chairperson of the State Board by virtue of the order dated 25th July, 2008.

9. The operative part of the impugned order dated 30th September, 2008 reads thus:

In compliance of aforesaid order, the entire material and your representation has been considered once again. It is clear from the record that:

i. NGO namely Matra Shakti Kalyan Samitee Nainital was getting grant from the Central Social Welfare Board/State Social Welfare Board under various programmes viz. Creche, FCC, Condensed Course and AGP programmes while the organization was being run by your good self as President of Organization and further found that as per list of Managing Committee for the year 2004-05 your daughter Km. Swati and your husband Shri Harish Chandra Ghildiyal were members of Managing Committee. This fact was not declared by you when you

were heading the Board.

ii. It is also undisputed that Grant was extended to the aforesaid NGO against guidelines which stipulate that members of recipient voluntary organization should not be related to each other and thus by granting financial help to the Matra Shakti Kalyan Samitee Nainital, you improperly and illegally extended benefits to organization whereof you are President and your family members are members of the Managing Committee and thus you acted in a manner which is detrimental to the interest of Uttarakhand Social Welfare Board and to the interest of public at large.

iii. It is clear from instructions contained in booklet issued by Uttaranchal Social Welfare Board itself while you were the Chairperson of Uttarakhand Board, the financial assistance to the NGO manned by relatives cannot be extended. The grant to Matra Shakti Kalyan Samitee Nainital was therefore, extended in violation of the aforesaid norms.

The Chairperson, CSWB is thus satisfied that your conduct as Chairperson, Uttarakhand State Social Welfare Board was detrimental to the public interest and therefore with the consent of the Department of Social Welfare, Government of Uttarakhand she has ordered your removal from the office of Chairperson. Your representation is also dismissed accordingly.

This issues by the orders of the Chairperson, CSWB passed on file No. F.1-33/2003/Reconst./SB on 30.09.2008.

10. As is evident, the petitioner's removal is based upon, was ordered and had a direct nexus with the allegation that the petitioner her capacity as Chairperson of the State Board had misused her official position by giving and extending undue benefit to a NGO namely Matra Shakti Kalyan Samiti, Nainital. The specific allegation against the petitioner was that despite being the Chairperson of the State Board, she was also the President of the aforesaid NGO in which her husband and her daughter were Members and the said NGO was the beneficiary of the acts of omission and commission on the part of the petitioner inasmuch as the petitioner was channelising and siphoning of funds from public exchequer to the aforesaid NGO. The petitioner does not dispute that she was associated with the aforesaid NGO even though in her capacity as its Patron (and not as President as was alleged). The petitioner does not dispute that her daughter was a Member of the Managing Committee of the aforesaid NGO, even though it is disputed that in the year 2004-2005, her husband was in the Managing Committee. (The petitioner's husband being in the Managing Committee of the aforesaid NGO for the year 2007-2008 is an undisputed fact.)

11. Insofar as the allegation about the funds having been siphoned off and channelised to the aforesaid NGO at the instance of the petitioner while she was the Chairperson of the State Board is concerned, far from refuting and rebutting the said allegation, in Para 34 of the Writ Petition, there is an implicit admission of this fact on the part of the petitioner. Para 34 of the Writ Petition reads thus:

34. That the letter dated 6.5.2008 further reveals that some inquiry was conducted in furtherance of the aforesaid letter of Sri R.K. Chauhan. The said enquiry report was placed on record in WP 92 of 2008 (S/B). Even the bare perusal of the same would transpire that the enquiry officers had reported that the said NGO in the name of Matri Shakti Kalyan Samiti is running various programmes. Merely being the chairperson of the Board and running the NGO with the help of her daughter and few other social activists does not mean that the petitioner has committed any offence. If the aforesaid NGO is getting the grant from the Board like other NGO's, it is just because it is in functional state and has received on its own merits. It has never been the case in the complaint that the funds granted by the Board to the said NGO are being diverted to some illegal use or is used for the purposes other than those of the projects. Even the impugned letter dated 30.9.2008 does not anywhere mentions that. The true copy of the enquiry report is annexed herewith as Annexure 26.

12. From what we have noticed above, two things clearly emerge; firstly, in the aforesaid NGO, three persons namely the petitioner, her daughter and her husband were directly involved in its Management and, being related to each other, they were responsible for the affairs of the said NGO. Secondly, this NGO received funds from Public Exchequer at the instance of the petitioner, which clearly amounted to misuse and abuse of the position and power by the petitioner as Chairperson of the State Board.

13. Rule 3(viii) of the Rules provides for the dissolution/supersession of the State Board and the removal from office of a Chairperson or a Member of the Board for the reasons and the grounds specified in the said sub-rule. For ready reference, Sub-rule (viii) of Rule 3 is reproduced hereunder, which reads thus:

viii) The State Board can be dissolved/superseded or the Chairperson or any member can be removed from her office for specified reasons with the mutual consent of the Central Board and the State Govt. concerned. The term of the Chairperson, State Social Welfare Board, should not be terminated except for the following reasons:

If she is:

- i) of unsound mind.
- ii) Convicted or sentenced to imprisonment for an offence which involves moral turpitude.
- iii) Declare insolvent.
- iv) Person who refuses to discharge her duties or becomes incapable of discharging her duties.
- v) Absent from three consecutive of the Board and
- vi) Having such conduct due to which continuance in office becomes detrimental in public interest.

vii) In case the Chairperson of the State Board is contesting any election (Assembly or Lok Sabha), she will have to resign from the post of the Chairperson in administrative grounds.

14. As can be very easily seen in the light of the facts which have emerged in the foregoing Paras of this Judgment, the removal of the petitioner as the Chairperson of the State Board in the present case was ordered on the ground mentioned at Item No. (vi) of the aforesaid Sub-rule (viii) of Rule 3, which stipulates that the Chairperson or the Member can be removed from Office if she has conducted in such a manner whereby her continuance in Office becomes detrimental to public interest.

15. Article 14 of the Constitution of India is a complete safeguard against any arbitrary action by the State. Respondent No. 2, undoubtedly, is an instrumentality of the State and thus an "Authority" in terms of Article 12 of the Constitution of India. In the present case, the action of respondent No. 1 as well as respondent No. 2 is under challenge before us and we have to find out whether the said impugned action, in any manner, violates Article 14 of the Constitution of India, keeping in view the position that the action of respondent No. 2, being an organ of the State in terms of Article 12 of the Constitution of India, is amenable to judicial scrutiny by this Court on the touchstone of Article 14 of the Constitution of India.

16. The fact that the petitioner indulged in misuse and abuse of her position as Chairperson of the State Board by siphoning off and channelising the public funds into the aforesaid NGO in which she, in her capacity as Patron, was a part of the Managing Committee and in which her husband (in the year 2007-2008) and her daughter all along were Members. This act of the petitioner, undoubtedly, would amount to a conduct, which would render her continuance in Office as detrimental to public interest. We have no hesitation, therefore, in holding that the aforesaid action of the respondents in the present case cannot be said to violate Article 14 of the Constitution of India in any manner.

17. In our considered opinion, the impugned action of the respondents in removing the petitioner as Chairperson does not suffer from any illegality or irregularity. The writ petition has no merit and is dismissed but without any order as to costs.