

(2008) 10 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No 18222 of 2007

Sri Gurubasappa Hologundi, Chairman Koppal Urban
Development Authority

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Urban Development Authorities Act, 1987 — Section 5

Citation : (2011) 4 KCCR 423 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : S.N. Hatti, for the Appellant; K Vidyavati, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition by a person who was appointed as chairman of Koppal Urban Development Authority, in terms of the government order dated 30-3-2007 [Annexure-A to the writ petition] Petitioner, who is a member of the Karnataka District Cooperative Central Bank [KDCC], Uttarakannada district and also claims to be a director of Automobiles Parts and Consumers' Co-operative Society Ltd., Haliyal, has questioned the legality of the order dated 8-1-2007 [Annexure-A to the writ petition], is aggrieved that he is being coerced to tender resignation in terms of the communication dated 9-11-2007 [Annexure-C to the writ petition] originated from the office of the deputy commissioner of Koppal district, purporting to be on the basis of the government circular dated 7-11-2007 [Annexure-D to the writ petition]; that the Petitioner is sought to be relieved of his office before the expiry of three years as has been mentioned in the order dated 30-3-2007; that a request of the deputy commissioner seeking for Petitioner's resignation to the post or even the government circular under Annexure-D are all without any basis or reason; that it is a circular without any application of mind, an outright arbitrary action and therefore liable to be quashed. Hence this writ petition is filed questioning the

legality of the circular and the request of the deputy commissioner.

2. Notices had been issued to the Respondents and they are represented by Ms K. Vidyavati, learned government pleader. Statement of objections has also been filed on behalf of the Respondents. An application is moved seeking for vacating the interim order of stay, on the strength of which the Petitioner has continued to be in office of the chairman, Koppal UDA so far.

3. Appearing for the Petitioner, Sri S.N. Hatti, learned Counsel, submits that the question being same for vacating the interim order and disposal of the writ petition, the writ petition itself can be heard on merits. Hence, the matter is taken up for disposal.

4. Sri Hatti, learned Counsel for the Petitioner would very vehemently urge that the action under the impugned circular as well as the direction of the deputy commissioner seeking for the resignation of the Petitioner and like persons, is an outright arbitrary action; that it is without any reason or justification and without evaluating the performance or merit of any of the incumbents in the office; that an action of this nature seeking en masse resignation or holding out threat to terminate the services in the event of office bearers not obliging to tender their resignation, is nothing short of a gross arbitrary action opposed to the requirement of the state action being fair and the power being exercised in a bona fide manner and only for justifiable reasons; that even a power like the power of "pleasure" as indicated in the order of appointment is a power that has to be exercised in a fair and reasonable manner; that the power is not so exercised in the given case; that neither an opportunity had been given to the Petitioner nor any thing pointed out against the Petitioner as being justification for the threatened action; that if the Petitioner should not oblige the deputy commissioner, it will inevitably lead to a situation that the first Respondent -state - will automatically terminate the appointment of the Petitioner and in which event the Petitioner will be put to great ordeal; that such an arbitrary and mindless action has been frowned upon by the Supreme Court while examining a like action in the case of *Shrilekha Vidyarthi v. State of Uttar Pradesh* [(1991) SCC 212]; that the ratio of this case clearly applies to the present set of facts; that the request letter of the deputy commissioner as well as the circular of the government are all required to be quashed.

5. On the other hand, Ms K Vidyavati, learned government pleader, would submit that matters of this nature questioning the legality of the very circular had come in for examination before this Court on an earlier occasion and such writ petitions have been dismissed; that such is the view taken by the Division Bench, following which, a learned single judge of this Court has dismissed a similar writ petition and the Petitioner's case being in *pari materia* with the case disposed of by this Court earlier in WP No 18461 of 2007 on 14-10-2008 in the case of *Sri M Ravindra Babu v. State of Karnataka*, this writ petition is to be dismissed and there is no justification to continue the interim order of stay; that the interim order should be vacated and consequently the writ petition should also be dismissed.

6. Attention is also drawn to the provisions of Section 5 of the Karnataka Urban Development Authorities Act, 1987 and submits that the very appointment being at the "pleasure" of the government, the Petitioner cannot have any grievance if such appointment is terminated; that such aspect had been indicated in the very appointment order and therefore the Petitioner cannot complain of any violation of principles of natural justice.

7. I have examined the pleadings, submissions and also the earlier decision of this Court and the judgment of the Supreme Court in the case of SHRILEKHA VIDYARTHI [supra].

8. While it is true that any arbitrary action is frowned upon as violative of Article 14 of the Constitution of India and all actions of the State is required to be fair and any power is also required to be exercised in a fair and bona fide manner, in the present case, the ratio of the decision in the case of SHRILEKHA VIDYARTHI [supra] is distinguishable for the simple reason that the exercise of power in the case of SHRILEKHA VIDYARTHI [supra] was being examined in the context of en masse termination of services of district government counsel by the state of Uttarpradesh who had been appointed for a period of three years after undergoing some initial scrutiny period, akin to probation. The change of government brought about the termination and the Supreme Court has frowned upon saying that it is an action which was uncalled for particularly having regard to the nature of the service that is being rendered by the district government counsel.

9. The present situation was one involving the appointment of chairmen to public bodies and the appointments are all purely political. It is not as though either the suitability or qualification or merit of the persons are looked into nor are they examined for their performance in the posts. The appointment itself is purely political and at the pleasure of the governor, in the sense that it can be terminated at any time within three years.

10. While Sri Hatti, learned Counsel for the Petitioner submits that the circular having been issued in the context of change of government and the state being brought under the President's rule and therefore submits that the circular is bad in law etc., even this being purely a political decision and not involving any right of the Petitioner, there is no need for this Court to enter the area of political thicket for examining such action on the touchstone of Article 14 of the Constitution of India. While Article 14 essentially mandates the state not to discriminate from person to person in all actions of the state, one dimension of the Article 14 is taken to be a mandate to the state to desist from arbitrary action and that is how arbitrary actions are also held to be discriminatory. These are normally in the context of a right/benefit in favor of a citizen or in the sense a deprivation of any existing right. The very appointment to the office being at the discretion and during the pleasure of the government, such matters cannot be examined on the same touchstone.

11. Be that as it may, in my opinion, the ratio laid down in the case of SHRILEKHA VIDYARTHI [supra] cannot be invoked for the examination of the merits of this case, particularly in the wake of the facts that the deputy commissioner has only sought for the resignation from persons like Petitioners. Further action is yet to come and at this stage, the Petitioner has approached this Court. Even if the deputy commissioner is acting as per the directions of the government, even then, no threatened action has been carried out as against the Petitioner and therefore no need to further examine the merits of this writ petition.

12. In the result, the interim order of stay granted earlier in this writ petition is vacated and the writ petition itself is dismissed.