

(2013) 06 KAR CK 0130

In the Karnataka High Court

Case No : Writ Petition No. 25812 of 2013 GM-RES

Sri K.V. Nagendra

APPELLANT

Vs

The Principal Secretary and Others

RESPONDENT

Date of Decision : 27-06-2013

Acts Referred:

Citation : (2013) 06 KAR CK 0130

Hon'ble Judges : Mohan M. Shantanagoudar, J

Bench : Single Bench

Advocate : Jayakumar S. Patil, for SRI. A. Kumaravel, for the Appellant;
Ravivarma Kumar, Advocate General for Sri. Vijayakumar A. Patil, Government
Advocate for R1, 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantanagoudar, J.—The petitioner has sought for quashing the, Notification "Annexure-E" dated 6.6.2013 issued by the first respondent in the name of the Governor of Karnataka. By the said Notification, appointment of the petitioner to the post of Chairman of Maharshi Valmiki Scheduled Tribes Development Corporation Limited (herein after called as Corporation for the purpose of brevity) is cancelled with immediate effect. The records reveal that the petitioner is appointed as a Chairman of the Corporation as per "Annexure-C" dated 28.12.2012 with a specific note that the petitioner will officiate as a Chairman until further orders. The case of the petitioner is that, though initially no term was fixed for the petitioner to work as a Chairman of the Corporation, an order came to be issued as per "Annexure-D" dated 18.5.2013 by the respondent No. 1 fixing the term of office of the petitioner for three years. When the petitioner was working so as the Chairman of the Corporation, the impugned order came to be issued as per "Annexure-E" dated 6.6.2013 cancelling the order of appointment of the petitioner as a Chairman of the Corporation. In the place of the petitioner, the Principal Secretary to the Social Welfare Department is appointed as a Chairman of the Corporation until an alternative arrangement is

made. The petitioner is aggrieved by the such order of cancellation vide Annexure-E".

2. Sri Jayakumar S. Patil, the learned Senior Advocate appearing on behalf of the petitioner submits that, since the tenure is fixed for a period of three years by virtue of the order Annexure-D" dated 18.5.2013, it is not open for the respondent No. 1 to terminate the service of the petitioner from the post of Chairman of the Corporation pre-maturely. In other words, the petitioner's advocate contends that the petitioner will remain in the post of Chairman of the Corporation for a period of three years from the date of appointment. It is further submitted that, there is no provision for removal of a Chairman of the Corporation either in the order of appointment or in the Memorandum and Articles of Association of the Corporation during the fixed tenure. In other words, according to him the Pleasure Doctrine is not applicable to the facts of this case inasmuch as there is nothing on record to show that the petitioner is appointed as Chairman of Corporation and he will continue to hold that post during the Pleasure of the Governor/Government.

3. The writ petition is opposed by Sri Ravivarma Kumar, learned Advocate General placing the original records before this Court. He submits that the order "Annexure-D" dated 18.5.2013 fixing the tenure of the petitioner at three years is not issued by the State Government; such order is created for the purpose of this writ petition; since such an order is not passed, the petitioner cannot base his claim on such non existing order. He has drawn the attention of the Court to the records maintained by the State Government to contend that the request of the petitioner for fixing the tenure of three years is not accepted by the Chief Minister at any point of time; on the other hand, the consideration was being postponed till 14.5.2013, on which day the petitioner was directed to resign from the post of Chairman. Since the resignation of the petitioner sought by the State Government officially on 14.5.2013, according to the learned Advocate General, the fixing of tenure of three years by the State Government in respect of the post of Chairman of the Corporation on 18.05.2013 is illusory.

4. I have perused the original records maintained by the State Government. This Court does not wish to burden this judgment by narrating the day to day no tings made by the State Government in respect of the request by the petitioner for fixing at-least three years tenure. It would be sufficient for the purpose of this matter, if the request letter of the petitioner dated 16.5.2013 made to the first respondent is adverted to. In the said letter, the petitioner has requested on 16.5.2013 to fix the tenure at-least for a period of three years; he further prays in the very letter that he may be permitted to continue to work as a Chairman of the Corporation for the period of three years. If really the State Government had already passed an order prior to 16.05.2013 in favour of the petitioner fixing the tenure for three years, there was no occasion for the petitioner to request once again to the State Government to continue him in the post of Chairman of the Corporation for three years on 16.5.2013. The said letter dated 16.5.2013 is

received by the State Government on 17.5.2013. The said letter was put up before the concerned officer on 18.5.2013, on which day the Jurisdictional Officer after putting up his note, has simply forwarded the file to the Chief Minister for orders. After two days i.e. on 20.5.2013, another note is put up directing the file to be put up to place before the Social Welfare Minister and the Chief Minister for orders. However, the prayer of the petitioner for fixing three years tenure is not acceded to by the Social Welfare Minister and consequently resignation of the petitioner is sought for. The order made by the Minister for Social Welfare Department is confirmed by the Chief Minister. Thus, the proceedings clearly reveal that the tenure of the petitioner is not fixed for any period much less for three years at any point of time. Since the request of the petitioner for fixing the three years" tenure to the post of Chairman was still pending consideration before the State Government on 20.05.2013, learned Advocate General is justified in arguing that so-called order dated 18.05.2013 vide Annexure-D", appears to be a got up document. In view of the same, learned Advocate General is justified in arguing that the petitioner would hold the post of a Chairman during the Pleasure of the Government.

5. Clause 17 of the Memorandum and Articles of Association of the Corporation reads thus;

17. The Chairman of the Company shall be nominated by the Governor for such period, on such terms and conditions as may be considered necessary by him.

All the executive powers, functions and responsibilities will be exercised by the Managing Director and the Chairman will only preside over the Board Meeting and provide necessary guidance for transacting the business of the Company.

6. The aforementioned Clause reserves liberty to this Governor to appoint the Chairman of the Corporation for any period and on such terms and conditions as may be necessary. Thus, the term may or may not be fixed by the Governor. In the matter on hand, the order of appointment Annexure-C dated 28.12.2012 does not fix any term.

7. On the other hand, the said order of appointment clearly reveals that the petitioner will hold the office until further orders, meaning thereby the office will be held by the petitioner during the Pleasure of the Government.

8. I have meticulously perused all the records maintained by the State Government. But, I do not find any Order/Notification as the one produced at "Annexure-D" dated 18.5.2013. The learned Advocate General on instructions by the concerned department submits that order at "Annexure-D" is not signed by the Under Secretary to Social Welfare Department.

9. Even assuming that there is some note in favour of the petitioner in the proceeding sheets maintained by the State Government," such note on the file cannot be the basis for the petitioner to contend that the note itself should be acted upon. Unless there is an order passed by the State Government

subsequently on any particular subject including the subject of fixing the tenure of the Chairman, the petitioner or the similarly placed persons would not get any benefit. Since this court finds that there is no such order as the one produced at "Annexure-D" produced on 18.5.2013 in the original file of State Government, it can be safely concluded that the petitioner's appointment was during the Pleasure of the State Government. In view of the same, no interference is called for.

Petition fails and the same is accordingly dismissed.