

(2007) 03 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition No. 14246 (W) of 2006

Sri Swapan Kumar Nayak

APPELLANT

Vs

Egra Municipality and Others

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

West Bengal Municipal Act, 1993 — Section 15(2), 17, 18(3), 21, 21A

Citation : (2007) 3 CALLT 371

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : B.R. Patranabis and S. Sengupta, Kashi Kanta Moitra, Amal Baran Chatlerjee, Atin Bhattacharya and Debasish Das, for the Appellant; Milan Chandra Bhattacharya, Prasun Kumar Datta, B.P. Vaisya, Koushik Chatterjee and Subhasis Bandopadhyay for Respondent Nos. 1, 3 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—The order of removal of the Vice-Chairman passed by the Chairman of Egra Municipality on 5th June, 2006 vide annexure "P-6" to this writ petition is under challenge in this writ petition.

The Vice-Chairman of the said Municipality was removed on two fold grounds which are as follows:

- (i) The Vice-Chairman has not performed his duties as entrusted to him property and
- (ii) The Vice-Chairman has not maintained the oath of secrecy which he had taken at the time of assuming the office of Vice Chairman.

2. Mr. Moitra, learned Senior Counsel, appearing for the petitioner, submitted that when the Vice-Chairman was sought to be removed with a stigma of inefficiency and his failure to maintain the oath of secrecy, an opportunity of hearing should have been given to the Vice Chairman before his removal.

3. Mr. Moitra thus submitted that whenever the Vice-Chairman is sought to be removed with imputation, he should be given an opportunity to explain the charges on which he was sought to be removed by the Chairman, otherwise the Vice-Chairman will have to carry the stigma all-through-out even though imputation has no basis.

4. Mr. Moitra further submitted that even though Section 21 of the West Bengal Municipal Act, 1993 does not specifically provide for affording an opportunity of hearing to the Vice-Chairman before his removal, but still then, since such right of hearing was not excluded specifically by the legislature, principles of natural justice should be followed in case of removal of the Vice-Chairman, particularly when he is stigmatised.

5. In support of such submission, Mr. Moitra relied upon the following decisions of the Hon''ble Supreme Court:

(i) Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, - wherein it was held that whenever a man's rights are affected by a decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute as non-observance of the rules of natural justice and/ or non-compliance with rules and regulations imposed by statute vitiates the action of the authority.

(ii) Fateh Bibi etc. Vs. Charan Dass, -wherein it was held that where power is of a drastic nature and its exercise in a mode other than one provided, such exercise will be violative of the fundamental principles of natural justice.

(iii) Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others, wherein it was held that simply because certain consequences would ensue if the principles of natural justice are required to be complied with, the same by itself would not mean that Court would not insist on complying with the fundamental principles of law as the observance of principles of natural justice can only be excluded when Parliament could have said so expressly. It was further held therein that when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed, although no express provision is laid down in this behalf as compliance of the principles of natural justice in such a case would be implicit.

(iv) S.L. Kapoor Vs. Jagmohan and Others, - wherein it was held that merely because an opportunity of hearing is not expressly provided in Section 238(1) of Punjab Municipal Act, 1911, it cannot be inferred that the principle audi alteram partem was excluded from Section 238(1) as administrative action u/s 238(1) of the said Act entails civil consequences.

6. Relying upon the aforesaid decisions, Mr. Moitra submitted that the impugned

order cannot be maintained as the said order was passed without observing the principles of natural justice though the impugned order entails civil consequences.

7. Mr. Moitra further contended that when removal was sought with a stigma, removal cannot be maintained even by withdrawal of stigma at this stage as the stigma cannot be dissected from the action of removal. According to Mr. Moitra, without taking the petitioner into confidence, the Chairman should not have passed the impugned order of removal.

8. Mr. Moitra, thus, prayed for quashing of the said order of removal of the Vice-Chairman.

9. Mr. Bhattacharya, learned Counsel, appearing for the respondent Nos. 1, 3 and 5, refuted the said submission of Mr. Moitra by submitting that Vice-Chairman being the nominee of the Chairman, holds his office during the pleasure of the Chairman and as such for removal of the Vice-Chairman, the principles of natural justice need not be followed. By referring to the provision contained in Section 21 of the West Bengal Municipal Act, 1993, Mr. Bhattacharya submitted that the said provision does not provide for giving an opportunity of hearing to the Vice-Chairman before his removal.

10. Mr. Bhattacharya further submitted that removal of the Vice Chairman under the pleasure doctrine as per Section 21 of the said Act does not put any stigma on the efficiency of the nominated member and as such legality of such removal for non-observance of the principles of natural justice, cannot be complained of. In support of such submission, Mr. Bhattacharya relied upon the following citations:

(i) Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, - wherein it was held that there is no question of violation of principles of natural justice in not affording any opportunity of hearing to the nominated members before their removal nor the removal under pleasure doctrine contained in the fourth proviso to Section 9 of U.P. Municipality Act puts any stigma on the performance or character of the nominated member.

(ii) Tammanna and etc. Vs. State of Karnataka and others, - wherein it was held that where the Government acts in exercise of the power of pleasure conferred on it by statute and revokes the nomination and makes a fresh nomination it need not be supported by reasons.

(iii) Ghanshyam Singh Vs. Union of India and Others, - wherein it was held that nomination cannot be equated with employment and as such nomination can be revoked before expiry of full term fixed for elected members.

(iv) Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, - wherein it was held that a termination order which explicitly states what is implicit in every order of termination of a probationer, termination is not stigmatic as in order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

(v) *Satyewar v. Government of Assam* reported in AIR 1974 Gau 20 - wherein it was held that when the Government terminates the tenure of District Council's Member in exercise of the doctrine of pleasure, such termination is not invalid even if order of termination was passed without following the principles of natural justice.

11. Mr. Bhattacharya thus submitted with all emphasis that when the Vice-Chairman has no unfettered right to remain in office by virtue of his nomination, he cannot complain that his removal is invalid for non-observance of the principles of natural justice, inasmuch as his right to remain in office depends upon the pleasure of the Chairman. Accordingly, Mr. Bhattacharya submitted that the Chairman did not commit any illegality by removing the Vice-Chairman by the order impugned.

12. Mr. Bhattacharya further submitted that the decisions cited by Mr. Moitra have no application in the instant case as none of the said decisions was passed in a case where the removal of a nominated member was at issue.

13. Let me now consider the submissions of the Counsel of the respective parties as recorded hereinabove.

14. Chairman of a Municipality is an elected post. The manner in which a Chairman is to be elected, is provided in Section 17 of the West Bengal Municipal Act, 1993.

15. Vice-Chairman is not an elected post. The manner of selection of Vice-Chairman is provided in Section 15(2) of the said Act which provides that Vice-Chairman will be nominated by the Chairman from amongst the Councillors of the Municipality within a period of 30 days of his entering into office and shall assume office after taking oath of secrecy u/s 50A of the said Act.

16. Chairman being an elected person cannot be removed save and except in the manner as prescribed in Sub-section (3) of Section 18 of the said Act which provides that the Chairman can only be removed by resolution carried by a majority of the total number of elected members.

17. The right of the Councillor to remain in office for a fixed period is specified in Section 21A of the said Act. They do not hold the office during the pleasure of the Chairman. They cannot be removed at the pleasure of the Chairman. Elaborate provision has been made in the Act itself following which an elected councillor can be removed. Such protection is given to the elected member, so that an elected member cannot be removed at the whim of the Chairman.

18. No such protection has been given to the Vice-Chairman against his removal, as the Vice-Chairman is a nominated person and he holds the office during the pleasure of the Chairman as would be evident from Section 21(c) of the said Act which provides that a Vice Chairman can be removed from office by a written order of the Chairman. The said provision does not provide for observance of principles of natural justice before passing an order of removal by the Chairman.

At the same time, observance of the principle of natural justice is not explicitly excluded by the legislature in the said Act.

19. In this context, this Court is required to consider as to whether removal of the Vice-Chairman without giving him an opportunity of hearing can be maintained or not, particularly when the Vice Chairman was sought to be removed with a stigma of inefficiency and his failure to maintain the secrecy of oath which he took at the time of assuming his office.

20. It is no doubt true that the citations relied upon by Mr. Moitra were mostly decisions either in service matter or in contractual field where the service of an employee and/or right of a party under the contract is secured and/or protected either in statute or in contract. As such, on apparent looking, these decisions have no application herein but still then this Court holds that the basic principle which was laid down therein cannot be ignored as it is universally accepted that affectation of one's right without observing the principles of natural justice, cannot be allowed.

21. On consideration of the decisions cited by Mr. Moitra, this Court holds that when termination ensues civil and/or evil consequences, principles of natural justice should be followed, though observance of principles of natural justice is not explicitly provided in the provision of the Act. But when termination will ensue civil and evil consequences?

22. Termination, in my view, in all circumstances cannot ensue civil and evil consequences. Termination will create civil and evil consequences only when the enjoyment of a secured post and/or a secured benefit and/or secured privileges is terminated causing disruption of right to enjoy one's protected right. If the right to remain in the post and/or to enjoy certain privileges are not secured either by a contract or under the statute and/or the rules and/or regulations framed thereunder, termination cannot cause any civil and/or evil consequences as the holder of the post remain in office and/or the beneficiary of the privileges enjoy certain benefits during the pleasure of the authority by whom he is nominated.

23. Elected member and nominated member cannot be treated at par. As such, though right of the Councillors to remain in office for the full term is ensured under the said Act, but such protection is not extended to the nominated person. As such, the nominated person cannot claim any protection against his removal as he holds the office during the pleasure of the Chairman.

24. The Chairman-in-Council is just like a team of which the Chairman is a captain who was given unfettered right to select his team members of his choice and to remove them at his sweet will whenever any member is subjected to his displeasure. If any fetter is imposed on the power of the Chairman either in the process of selection and/or removal of his team members, the team will not be able to show its best performance. In fact, the Chairman is the head of the Chairman-in-Council. In his absence, be temporary or permanent, the Vice-

Chairman has to discharge the functions of the Chairman. Thus, if there is lack of co-operation between the Chairman and the Vice-Chairman during the temporary absence of the Chairman, the entire activities of the municipality will collapse. When the Chairman has lost trust and confidence in the Vice-Chairman, the Chairman cannot be compelled to entrust his duties to him. Thus, whenever the Chairman loses confidence in the Vice-Chairman, the Vice-Chairman will have to vacate, as he cannot force the Chairman to keep him in his team by justifying his conduct.

25. Since the Act does not give any unfettered right to the Vice-Chairman to remain in office for the entire term and his removal is also not protected under the statute, justifiability of the Chairman's decision for removal of the Vice-Chairman, is beyond the scope of judicial review. No conclusion other than this can be drawn by this Court as any conclusion other than this, will make the doctrine of pleasure unworkable.

26. In the aforesaid context, this Court holds that the order impugned cannot be vitiated for non-observance of the principle of natural justice for the simple reason that even if the Vice-Chairman succeeds in proving that imputation against him is not correct, still then he cannot remain in office against the pleasure of the Chairman. Furthermore, the charges on which the petitioner was removed does not amount to stigma as the language which is used in the order of removal does not impute something over and above mere unsuitability for the job. This conclusion is arrived at by this Court by following the decision of the Hon'ble Supreme Court in Pavanendra Narayan Verma v. SGPGI of Medical Sciences (supra).

27. In my view, removal of the Vice-Chairman by the Chairman even with imputation, cannot create any civil and/or evil consequences and even if it really does so then, he can project his crystal image by proving such imputation as untrue and incorrect by initiating a legal proceeding against the Chairman in appropriate forum by observing the formalities as contained in Section 407 of the said Act. But in any event, Vice-Chairman cannot compel the Chairman to keep him in his team against his pleasure.

28. Under such circumstances, this Court does not find any illegality in the order which is impugned in this writ petition. As such, no interference is warranted in the facts of the instant case.

The writ petition, thus, stands rejected. There will be, however, no order as to costs.

Urgent xerox certified copy of this Judgment, if applied for, be given to the parties, as expeditiously as possible.