

(1996) 07 KL CK 0011

In the High Court Of Kerala

Case No : W.A. No. 713 of 1996-B and O.P. No's. 8605, 9125, 9131 and 9467/96

Sugunan, G.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 11-07-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 165, 226, 310, 311
United Provinces Municipalities Act, 1916 — Section 9

Citation : (1996) 07 KL CK 0011

Hon'ble Judges : K. Sreedharan, Acting C.J.; C.S. Rajan, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; M.K. Damodaran, General, for the Respondent

Judgement

K. Sreedharan, Actg. C.J.

1. Issues that arise for consideration in these matters are the same. Therefore we consider it advantageous to dispose of all these cases by common judgment.

2. Appellant in W.A. 713/96 is the Petitioner in O.P. 5628/96. He was nominated as a member of the Board of Directors of the Trivandrum District Co-operative Bank Ltd. by proceedings of the Registrar dated 20th March 1996. The said nomination was withdrawn by the Registrar. Registrar relied on the Model Code of Conduct announced by the Election Commission of India in withdrawing the nomination of the Petitioner as per his proceedings dated 26th March 1996. Petitioner challenged the said action of the Registrar in the O.P. Learned Single Judge dismissed the O.P. at the admission stage itself. Hence the appeal.

3. The other original petitions to be dealt with in this judgment have come before us for admission on reference made by the learned Single Judge. The question referred relates to the scope and ambit of Section 31(2) of the Kerala Co-operative Societies Act, hereinafter referred to as the Act, regarding the right of the Government to withdraw the nomination of a person already nominated to

the Managing Committee of an apex society or central society. Writ Petitioners raised a contention that Government have no power or authority to withdraw the nomination already made to the Board of Directors of a Society. Same issue that was raised in O.P. 5628/96 was decided by a learned Judge repelling the above contentions. Appeal therefrom has been admitted by a Division Bench. So the learned Judge before whom these original petitions came up for admission referred them for being disposed of by a Bench.

4. Petitioner in O.P. 8605/96 was nominated to the Board of Directors of the Kerala State Co-operative Bank by Order dated 26th November 1991 issued by the Government u/s 31 of the Act. Consequent on the nomination, he was elected as President of the Kerala State Co-operative Bank at the election held on 4th May 1996. After election to the Kerala Legislative Assembly, a new Ministry assumed office. First Respondent in the O.P. became the Minister in-charge of Co-operation. On account of the political difference between the Petitioner and the first Respondent, it is alleged, Government issued Ext. P-1 order by which Petitioner's nomination was withdrawn and in his place third Respondent was nominated. That action of the Government is under challenge.

5. Petitioners in O.P. 9131/96 were nominated as members of the Board of Directors of the Kerala State Co-operative Federation for Fisheries Development Ltd. (Matsyafed). They were nominated as such by the Government by order dated 11th March 1994 for a period of three years. While so, before the expiry of the said period, Government issued Order dated 3rd June 1996 withdrawing the nominations of the Petitioners. In their place, Respondents 3 and 4 were nominated as members of the Board of Directors of the MATSYAFED. Petitioners challenge the above order passed by Government.

6. Petitioner in O.P. 9125/96 was a member of the Director Board of Kaduthuruthy Labour Contract Co-operative Society. In that capacity, he was a delegate to the Kottayam District Co-operative Bank. Meanwhile the term of office of Kaduthuruthy Labour Contract Co-operative Society expired on 6th February 1996. Administrator who took charge of the Society by Resolution dated 6th February 1996 nominated the Petitioner as a delegate to the Kottayam District Co-operative Bank. Thereafter Petitioner was elected to the Board of Directors of the Kottayam District Co-operative Bank. Assistant Registrar of Co-operative Societies, the second Respondent, withdrew the Petitioner as delegate of the Kaduthuruthy Labour Contract Co-operative Society to the Kottayam District Co-operative Bank and nominated 4th Respondent in his place by Order dated 31st May 1996. That order is sought to be quashed by the Petitioner.

7. Petitioners in O.P. 9467/96 were nominated by the Government to the Board of Directors of the Kerala State Co-operative Agricultural and Rural Development Bank by order dated 2nd March 1996. Nomination was for a period of three years. After the new Ministry assumed office, Government issued Order dated 13th June 1996 withdrawing the nominations of these Petitioners and Respondents 2 to 6 have been substituted in their place. That action is under

challenge.

8. Section 31 of the Act provides that where the Government had subscribed to the share capital of an apex or central society or have assisted indirectly in the formation or augmentation of the share capital of an apex or central society or have guaranteed the repayment of principal and payment of interest on loans and advances to an apex or central society Government have the right to nominate not more than three persons or one-third of the total number of members of the committee of such apex or central society to be members of the committee. Clause (2) of that section proceeds to state that a person nominated to the committee of an apex or central society in any of the circumstances noted above is to hold office during the pleasure of the Government. The section further enables Government or an authority authorised by the Government in that behalf to nominate persons to the committee of a Co-operative Society. If the nomination is made by a specified authority, then the persons so nominated should hold office during the pleasure of that specified authority. Rule 37 of the Co-operative Societies Rules, hereinafter referred to as the Rules, provides that in the case of apex societies, appointment of nominees should be made by the Government and in the case of other societies by the Registrar. A combined reading; of Section 31 of the Act and Rule 37 of the Rules shows that in the case of apex societies, members to be nominated to the committee of that society are to be nominated by the Government. In other types of societies, nomination is to be made by the Registrar. Whether the nomination is made by the Government or by the specified authority the person nominated is to hold the office as a member of the committee during the pleasure of the Government or specified authority as the case may be. The question that arises for consideration in these matters is regarding the scope and ambit of the pleasure doctrine incorporated in Section 31(2) of the Act.

9. A person nominated by the Government or by the specified authority should hold office during the pleasure of the Government or the specified authority. In such a situation, the question is whether the Government or the specified authority can withdraw the nomination without assigning any reason. It is also to be examined whether before withdrawing the nomination, should the person nominated be given notice of the proposed action to withdraw him from the society and should he be given an opportunity of being heard in the matter. For understanding the true scope of the pleasure doctrine incorporated in Section 31(2) of the Act, we think it advantageous to consider some of the provisions contained in the Constitution of India. Article 76 of the Constitution states that the President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney General for India. That Article proceeds to state that the Attorney General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine. Similarly, Article 165 of the Constitution provides that the Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate General for the State. It further states that the Advocate General

shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine. These provisions clearly show that the Attorney General for India or the Advocate General for the State are to hold office during the pleasure of the President or the Governor, as the case may be. The Constitution do not impose any restriction on this power. Thereby it is evident that the President or the Governor, as the case may be, can terminate the service of the Attorney General of India or the Advocate General for India at will.

10. Article 310 of the Constitution states that every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President and every person who is a member of the civil service of a State holds any civil post under a State holds that office during the pleasure of the Governor. The pleasure of the President and that of the Governor as per the same Article is made subject to the exceptions expressly provided by the Constitution. So the pleasure doctrine engrafted in Article 310 of the Constitution is subject to the exceptions expressly provided by the Constitution. The exceptions to the pleasure doctrine can be found in Article 311 of the Constitution. So, the pleasure doctrine engrafted in Article 310 has got limitations provided in Article 311 of the Constitution. Judicial decisions on pleasure doctrine contained in these two Articles cannot be of any help in understanding the said doctrine engrafted in Article 76 and 165 of the Constitution, for these Articles do not contain any exception. Nor does any other provision in the Constitution provide for any exception. In other words, the pleasure doctrine engrafted in Article 76 and 165 are absolute while that in Article 310 is subject to the exceptions contained in Article 311.

11. Section 31(2) of the Act simply states that a person nominated to the committee of an apex or central society under Sub-section (i) shall hold office during the pleasure of the Government or the specified authority as the case may be. There is no provision in any of the sections in the Act or the rules which imposes any restriction on the power of the Government or the specified authority over the pleasure doctrine incorporated in Section 31(2). Since Statute clearly states that the person nominated shall hold office during the pleasure of the Government or the specified authority, the Government or the specified authority can terminate the nomination at will. Being so terminable, even during the period for which nomination was made, the person nominated can be withdrawn by the Government or the specified authority. In other words, the life of nomination should strictly be limited to the duration of the pleasure of the Government or of the specified authority. The Act and the rules confer upon the Government and the specified authority unrestrained discretion to continue or withhold the pleasure at will. The only restraint on this otherwise unrestrained discretion is the fundamental legal norm that the pleasure must be exercised bona fide and in public interest. The statute gives no nominated member the right to continue on the Board even for a day longer than the duration of the

pleasure of Government or of the specified authority.

12. First proviso to Section 9 of the United Provinces Municipalities Act, 1916 provided for nomination of two women as a member of the Municipal Board by the State Government. There was no provision permitting the State Government to cancel the nomination of such members at its pleasure. Later a 4th proviso was added to Section 9 which provided that the nomination of the aforesaid two members was at the pleasure of the State Government. Invoking that provision the term of office of the nominated members was terminated. The said action of the Government was challenged in *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*. It was argued before Their Lordships that the State Legislature was fully competent to enact the 4th proviso and to lay down that the nominated members shall hold office during the pleasure of the State Government, that if the initial appointment by nomination is made on political considerations, there can be no reason why political consideration should not be allowed to operate in terminating such appointments made by nomination. A contention was also raised before Their Lordships that when the Act authorised the State Government to allow the nominated members to hold office during the pleasure of the State Government, there is no violation of any principle of natural justice nor can it be said that the said provision is arbitrary so as to be violative of Article 14 of the Constitution. On a consideration of all these aspects, Their Lordships observed:

The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the Respondents that the Legislature had no such power to legislate the fourth proviso.

13. The facts on hand squarely falls within the four corners of the circumstances dealt with by Their Lordships. The Appellant in the Writ Appeal and the Petitioners in the Original Petitions got themselves nominated to the Managing Committee of the respective Co-operative Societies u/s 31(2) of the Act. The Government or specified authority as the case may be, nominated them depending on their subjective satisfaction. They are to hold office as nominated members, during the pleasure of the State or the specified authority as the case

may be. Their nomination was also on political grounds. So when the political set up of the State changed, the nomination can also be changed. The places held by the Petitioners can be filled up by a new set of nominated members. Nominated members of the committee formed a different class. They cannot claim equality with elected members. Nor can they claim right to continue for the term for which they were nominated. As observed by Their Lordships in the decision referred to, we are also not impressed with the argument that there would be a constant fear of removal of the nominated members at the will of the State Government and is bound to demoralise them in the discharge of their duties as members of the Managing Committee. With the change of ruling party in the Government if the term of office of the nominated members are cancelled or they are withdrawn, that cannot be a reason for this Court's interference under Article 226 of the Constitution.

14. The highest functionaries in the Government like the Governors, Ministers, the Attorney General and the Advocate General discharge their duties efficiently though removable at the pleasure of the President or the Governor as the case may be. That does not mean that persons holding above office are bound to be demoralised or remain under a constant fear of removal. The office they hold as per the Constitution and the law are such that the term is liable to be terminated, then they cannot complain against the termination on the ground of arbitrariness or on the ground of violation of principles of natural justice.

15. Petitioner in O.P. 8605/1996 has alleged personal mala fides against the first Respondent, the Minister-in-charge of Co-operation. According to counsel representing the Petitioner, when personal malice has been alleged against the first Respondent, the Minister, he was bound to file counter affidavit denying the allegations. In the instant case, he has not filed any counter affidavit and so it was submitted that allegations of mala fides must be taken to have been established in the case. Consequently the order issued by the Government has only to be cancelled. O.P. 8605/1996 is before us for admission. The said Original Petition has not been admitted. Nor was any notice issued to the first Respondent. Consequently, the first Respondent is not to file any counter affidavit in the Original Petition. The absence of counter affidavit at this stage can never be taken as a reason to consider that the ground of mala fides has been established by the Petitioner.

16. Petitioners in certain Original Petitions were nominated after the election to the Parliament and the Assembly was announced on 19th March 1996. That announcement was made public through printed and electronic media. From that date the Model Code of Conduct was to be followed by all the authorities. Nominations were ordered without noting the restrictions and limitations incorporated in the Model Code of Conduct. When this fact was brought to the notice of the Registrar by the Government, Registrar withdrew the nominations. Since the nominated members were to hold office during the pleasure of the specified authority, they cannot question the order withdrawing the nominations.

The order nominating the Petitioners were withdrawn not on account of any adverse conduct on the part of the Petitioners; but because the nominations were exercised without noting the announcement of election and restrictions contained in the general Code of Conduct imposed by the Election Commission. The withdrawal of the nomination has not cast any stigma or evil consequence on the Petitioners. In other words, the withdrawal of the nomination has not gone to adversely affect the Petitioners who were to hold the post at the will of the Government or the specified authority, as the case may be. Viewed in this light, we are clear in our mind that no opportunity of being heard was to be given to the Petitioners before issuing the order withdrawing their nominations.

In view of what has been stated above, we do not find any merit in the Writ Appeal and the other Original Petitions. Writ Appeal and Original Petitions are dismissed.