

(2008) 02 CAL CK 0076
In the Calcutta High Court
Case No : MAT No. 2190 of 2007

Swapan Kumar Nayak

APPELLANT

Vs

Egra Municipality and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

West Bengal Municipal Act, 1993 — Section 12, 13, 13(1), 13(3), 14

Citation : AIR 2008 Cal 108 : (2007) 3 CALLT 371

Hon'ble Judges : Tapen Sen, J; Tapan Kumar Dutt, J

Bench : Division Bench

Advocate : Kashi Kanta Moitra, Amal Baran Chatterjee, Debasish Das, for the Appellant; Bikash Ranjan Battacharya, Amal Sen, Parsun Kr. Dutta, Probal Chatterjee, Fazlul Haque, Supriya Roy Chowdhury, for the Respondent

Judgement

Tapen Sen, J.—This Appeal is directed against the judgment and order dated 15-3-2007 passed by a learned single Judge in W.P. No. 14246 (W) of 2006 dismissing the Writ Petition.

The Writ Petitioner-Appellant (hereinafter referred to for the sake of brevity as the appellant) filed the said Writ Petition challenging an Order dated 5-6-2006 of the Chairman, Egra Municipality, Purva Midnapore, issued under Memo No. EM 269/Removal of V.C.-1/06 whereby and whereunder and in terms of the provisions as contained in Section 21(c) of the West Bengal Municipal Act, 1993, power was sought to be exercised by the said Chairman (Respondent No. 3 herein) for the removal of the appellant from the Office of the Vice Chairman of the said Municipality with effect from 6-6-2006. The said Order reads as follows:

EGRA MUNICIPALITY OFFICE OF THE COUNCILLORS P. O. EGRA DIST. PURBA MEDINIPUR PIN- 721429

Ref. No. E.M. 269/Removal of V.C.-1/06 Date 5-6-2006 From : Tapan Kanti Kar, Chairman, Egra Municipality. To : Sri Swapan Kumar Nayak Vice Chairman Egra Municipality P.O. - Egra Dist.- Purba Medinipur. WHEREAS you have not

performed your duties as entrusted to you properly

AND

WHEREAS you have not maintained the secrecy which you have taken oath at the time of assuming office of Vice Chairman.

Being dissatisfied, the undersigned remove you from the office of Vice Chairman on and from 6-6-2006 in terms of Section 21(c) of West Bengal Municipal Act 1993.

You are hereby requested to make over the charge to the undersigned within 24 hours from the date of removal.

Tapan Kanti Kar Chairman, Egra Municipality Egra, Purba Medinipur

(Quoted as it appears in the Paper-book)

2. The facts, as pleaded in the Writ Petition, were, that the appellant was duly elected as a Councillor of the Egra Municipality from Ward No. 3 in the general elections which were held on 27-6-2004. Thereafter, the Chairman of the said Municipality (Respondent No. 3) nominated the Appellant as a Vice-Chairman in a meeting of the Board of Councillors on 28-7-2004.

On the same day i.e. on 28-7-2004, the appellant took oath as the Vice Chairman and started functioning as such. According to the appellant, he performed his duties as Vice Chairman sincerely, honestly and without any remarks.

3. The further case of the appellant was that there are 14 Wards in the said Municipality and therefore, 14 Councillors were duly elected in the aforementioned general elections held on 27-6-2004. According to the appellant, 7(Seven) Seats in the said elections went to the Trinamool Congress, 2 to the Congress and 5 (five) went to the CPI CM).

While the appellant was elected as a Congress candidate, the Chairman of the Municipality (Respondent No. 3) was elected as a Trinamool Congress Candidate.

4. On 5-6-2006, the respondent No. 3, in exercise of the powers conferred upon him u/s 21(c) of the West Bengal Municipal Act, 1993, issued the Order quoted above removing the appellant from the Office of the Vice-Chairman. According to the Appellant, the said Order was received by him on 8-6-2006.

5. According to the further case of the appellant before the Writ Court, he had not received any Notice from either the Chairman or from any other authority relating to any irregularities in the performance of his duties as Vice Chairman nor had he been ever proceeded against for not maintaining the Oath of Secrecy which he had taken at the time of assuming office as the Vice-Chairman. The further case of the appellant was that the Chairman had not even issued any show cause notice for dereliction of duties.

6. The appellant made a grievance before the Writ Court as well as before us that the Chairman passed the said Order dated 5-6-2006 without disclosing any specific reasons and without following the principles of natural justice and proceeded to exercise his discretion conferred upon him u/s 21(c) in an arbitrary and illegal manner by making observations which were "sigmatic" in nature resulting in civil consequences and causing prejudice to him and therefore, the Order, being arbitrary, was liable to be set aside.

7. According to the appellant, the passing of such an Order by the Chairman was also an example of colourable exercise of power as the order of removal was passed with a stigma of having failed to perform his duties and also of having failed to maintain the Oath of Secrecy and therefore, in the absence of any opportunity of hearing having been given to him, the Order was liable to be set aside.

8. The learned single Judge, by his Judgment and Order dated 15-3-2007, considered the submissions of the parties and held that there was no illegality in the Order dated 5-6-2006 and as a result, proceeded to dismiss the Writ Petition without imposing any costs.

9. The said judgment has been impugned in this Appeal and it shows that the learned single Judge considered the submissions of both the parties and came to the conclusion that since a Vice-Chairman is a mere nominee of the Chairman, he holds the Office of the Vice Chairman during the pleasure of the Chairman and therefore, the principles of natural justice did not apply. He also held that the Statute did not confer an unfettered right upon the Vice Chairman to remain in Office for the entire term and on the contrary, the Statute conferred power upon the Chairman to remove the Vice Chairman. Therefore such removal, according to the learned single Judge, was beyond the scope of judicial review.

10. Mr. K.K. Moitra, learned Senior Advocate for the appellant, has submitted that the "Doctrine of Pleasure" cannot apply nor can be made applicable in this case because unlike Articles 75(2) read with Article 310 of the Constitution of India, the words "during the pleasure" has not been used u/s 21 of the West Bengal Municipal Act, 1993 (hereinafter referred to for the sake of brevity as the Municipal Act).

Learned Counsel then submitted that in the absence of the Vice Chairman, the quorum of the Chairman in Council becomes incomplete and an incomplete quorum made the very existence of the Municipality redundant. He referred to the provisions of Sections 15(1) and 15(3) of the Municipal Act and submitted that reading these provisions along with Sections 16(2) as well as Section 19, it becomes clear that the very functioning of the Municipality becomes jeopardized whenever there is a void in the quorum of the Chairman-in Council.

He submitted that in view of these provisions, the Vice Chairman is the "holder" of an integral and Statutory "Post" without whom, there cannot be a Chairman-in Council which is a "Municipal Authority" as defined u/s 12 of the Municipal Act.

According to him, since a Chairman in Council is a statutory Council under the Municipal Act and since a Vice Chairman is an integral part thereof, he becomes the holder of a Statutory Post which is indispensable after nomination.

He further submitted that the nomination of a Vice-Chairman stands on a very high pedestal and therefore, once he is nominated to the "Post" of a Vice Chairman, he becomes a part of the Chairman-in-Council which is a statutory body and therefore, such a statutory body cannot be frustrated by an act of the Chairman in a unilateral and/or capricious manner. He submitted, with reference to Sections 12 and 13(3) of the Municipal Act, that in the absence of the Chairman-in-Council, a Municipality becomes meaningless.

The relevant portions of the different provisions of the Municipal Act which are relevant for this case are quoted below:

12. Municipal authorities.- The municipal authorities charged with the responsibility of carrying out the provisions of this Act shall, for each municipal area, be as follows:

- (a) the Municipality,
- (b) the Chairman-in-Council, and
- (c) the Chairman.

13. The Municipality.- (1) The Municipality established for a town shall mean the Board of Councillors charged with the authority of municipal government of the town, and shall consist of-

(a) such manner of elected members as there are wards within the municipal area, and

(b) persons having special knowledge or experience in municipal administration as may be nominated by the State Government from time to time, provided that such persons shall not have the right to vote in the meetings of the Municipality.)

(2) The Municipality shall be a body corporate with perpetual succession and a common seal, and may, by the name of the Municipality of the town by reference to which the Municipality is known, sue and be sued.

(3) All executive actions of the Chairman-in-Council shall be expressed to be taken in the name of the Municipality.

(4) Subject to the provisions of this Act, the Municipality shall be entitled to acquire, hold and dispose of properties,

14. Constitution of Board of Councillors- (1) the Councillors elected in general election or a by election of a Municipality and the members nominated by the State Government under Clause 2b) of Sub-section (1) of Section 13 shall constitute the Councillors, unless dissolved earlier, shall hold office for a period of five years from the date appointed for its first meeting after the general election

and no longer:

Provided that the Board of Councillors, unless dissolved earlier, shall continue in office till the next Board of Councillors assumes office.

15. Chairman-in-Council.- (1) There shall be chairman-in-Council consisting of the Chairman, Vice-Chairman and other members not exceeding, in the case of a municipal area included in Group A, five, in the case of a municipal area included in Group B, four, in the case of a municipal area included in Group C, three:

Provided that in respect of the municipal areas included in Group D and Group E, all the powers and functions vested with the Chairman in Council under this Act or under any other law, for the time being in force, shall be examined or performed, as the case may be, by the Chairman of the concerned Municipality.)

(2) The Vice Chairman and the other members referred to in Sub-section (1) shall be nominated by the Chairman from amongst the Councillors of the Municipality (within a period of thirty days of his entering into office,) and shall assume office after taking (oath of secrecy u/s 50A):

(Provided that the State Government may, on an application by the Chairman and for reasons to be recorded in writing, extend the period as aforesaid by such period not exceeding thirty days as the State Government may think fit.)

(3) All executive powers of the Municipality shall vest in the Chairman in Council.

(4) The manner of transaction of business of the Chairman-in-Council shall be such as may be prescribed.

(5) The Chairman-in-Council shall be collectively responsible to the Municipality.

16. Chairman shall be the executive head of the Municipality, and the municipal administration shall be under his control.

(2) The Chairman shall allocate the business among members of the Chairman-in-Council.

(3) The Chairman shall preside over the meetings of the Chairman-in-Council as well as the Board of Councillors.

(4) The Chairman may transact any business or make any order authorized by any law for the time being in force, unless it is otherwise expressly provided in such law:

Provided that the Chairman shall not act in opposition to or in contravention of any decision of the Board of Councillors.

17. Election of Chairman-(1) The Board of Councillors, (in its first meeting u/s 50B), shall elect in accordance with such procedure as may be prescribed, one of its (elected) members to be the Chairman who shall assume office forthwith (after taking oath of secrecy u/s 50A).

(2) If the Board of Councillors fails to elect a Chairman in the manner prescribed, the State Government shall appoint by name one of the Councillors to be the Chairman.

19. Vice Chairman.- (1) The Vice Chairman shall, in the absence of the Chairman, preside over the meetings of the Chairman-in-Council as well as the Board of Councillors.

(2) When----

(a) the office of the Chairman falls vacant by reason of death, resignation, removal or otherwise, or

(b) the Chairman is, by reason of leave, illness or other cause, temporarily unable to exercise the powers, perform the functions and discharge the duties of his office, the Vice Chairman shall exercise the powers, perform the functions and discharge the duties of the Chairman until a Chairman is elected under Sub-section (3) of Section 17 and assumes office or until the Chairman resumes his duties, as the case may be.)

(3) The Vice-Chairman shall, at any time, perform such other duty or exercise such other powers as may be delegated to him under the provisions of this Act.

(Quoted from The West Bengal Municipal Act, 1993)

11. Learned Counsel then submitted that upon a perusal and joint reading of the different provisions referred to above, it will be evident that it is not only the Vice Chairman who holds a statutory "Post" but it is also the Chairman, who is himself a statutory functionary who must act within the four corners of the Statute and, if there is any deviation from the procedure prescribed in the Statute (in the instant case, the Municipal Act), then such an act must be set aside.

He submitted that under the provisions of Section 21, a Vice Chairman can only be removed by a "Written" Order and the moment the Statute speaks of a "Written" Order, it entails not only the passing of a reasoned Order but also the passing of such an Order after giving Notice and an opportunity of hearing.

He then submitted that a statutory functionary must act within the four corners of the statute and cannot take recourse to a procedure which has not been provided therein. He referred to para 10 of the judgment of the Supreme Court passed in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, where it has been observed that "it is a well settled rule of administrative Law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them" (Quoted).

Relying on the said paragraph, he drew our attention to the observations of Mr. Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535 : 3 L Ed. 1012 which have been quoted in the said para 10 in support of his submission that under the

Municipal Act, a clear cut procedure of a "Written" Order having been prescribed, the Chairman was bound to have adhered to the same by passing an Order supported by reasons and giving adequate opportunity of hearing to the Appellant but he could not have passed an Order making allegations against him. According to the learned Counsel, by doing so, the Chairman clearly transgressed his statutory limits and thereby acted against the principles enunciated by Mr. Justice Frankfurter (supra) who said that "an executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly if dismissal from employment is based on a defined procedure, even though generous beyond the recruitments that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative Law is now firmly established and, if I may add rightly so. He that takes the procedural sword, shall perish with the sword." (Quoted)

12. Learned Counsel submitted that the learned single Judge failed to take note of the aforementioned point to the effect that the Order dated 5-6-2006 could not be sustained inasmuch as the Chairman clearly overstepped his jurisdiction by making serious allegations against the Appellant which not only has serious consequences, but also entails civil consequences causing extreme prejudice to the appellant.

He submitted that since the Order, being stigmatic, was extremely prejudicial, it was all the more necessary that the principles of natural justice should have been adhered to. In support of the aforesaid contention, he relied upon paragraphs 26 and 27 of the judgment of the Supreme Court passed in the case of Ashok Kumar Sonkar Vs. Union of India (UOI) and Others,

26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well settled that it cannot put any straitjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise.

(Quoted Verbatim)

13. For the same proposition, Mr. Moitra then relied upon Paragraph 53 of the judgment of the Supreme Court passed in the case of Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others,

53. The factors enumerated in Section 142(2-A) of the Act, thus, are not

exhaustive. Once it is held that the assessee suffers civil consequences and any order passed by it would be prejudicial to him, principles of natural justice must be held to be implicit. The principles of natural justice are required to be applied inter alia to minimise arbitrariness.

(Quoted)

14. He then submitted that the scope of the "Doctrine of Pleasure" can be applied only when there is a requirement relating to public policy, public interest, public needs and public good. According to him, in the present case there is no such ingredient and therefore, when the Chairman considered it to be his discretion to filing allegations against the appellant, it was all the more necessary that the Chairman should have adhered to the Principles of Natural Justice. He relied upon paragraph 44 (infra) and paragraph 45 of the judgment passed by the Supreme Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, .

44??.These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown which has been inherited by India and transposed into our Constitution adapted to suit the Constitutional set up of our Republic but because public policy requires, public interest needs and public good demands that there should be such a doctrine.

45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by Clauses (1) and (2) of Article 311 and the withdrawal of the protection under Clause 22) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good.

(Quoted)

15. On the basis of the aforementioned reasons, learned Counsel submitted that the "Doctrine of Pleasure", being a purely Constitutional theory, cannot be imported in a Statute which specifies statutory functions specifically but does not specify the applicability of the "Doctrine of Pleasure". Mr. Moitra then submitted that under the provisions of Section 21(c), a Vice-Chairman can only be removed from his office by a "Written Order" of the Chairman. According to him, such a "written order" must necessarily mean that the same must be supported by reasons and it should not be left to be passed on the subjective caprices and whims of the Chairman. Relying upon a judgment of the Supreme Court passed in the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, as well as para 16 of the case of S.L. Kapoor Vs. Jagmohan and Others, , learned Counsel submitted that persons proceeded against must know that they are required to meet the allegations which might lead to a certain action being taken against them. He submitted that in the instant case, since the Order contains allegations against the appellate, he should have been given an adequate opportunity to meet those allegations.

16. We are unable to accept all the submissions of the learned Counsel for the appellant. According to us, the provisions of Section 15(2) clearly go to show that the Vice Chairman can become a part and parcel of the Chairman-in-Council only when the Chairman proceeds to nominate him from amongst the elected Councillors within a period of 30 days from the date he enters into Office. In other words, the Vice Chairman is a mere nominee of the Chairman.

17. Now under the provisions of Sections 13 and 14 of the Municipal Act, the Municipality means the Board of Councillors and the members of such a Board are the elected Councillors or members nominated by the State Government u/s 13(1)(b) of the Municipal Act.

18. Now under the provisions of Section 17 of the Municipal Act, it is the Board of Councillors which has the onerous responsibility of electing, from amongst its own members who are all elected Councillors, to be the Chairman of the Chairman-in-Council. In the event the Board of Councillors fail to do so, then the State Government can appoint one of the Councillors to be the Chairman.

19. Now under the provisions of Section 18, the chairman shall cease to hold Office if he ceases to be a Councillor or if at any time, he resigns from office by giving notice in writing to the Board of Councillors. He can also be removed by a procedure prescribed therein.

20. However, so far as the Vice-Chairman is concerned, he can be removed by any of the methods prescribed u/s 21. Unlike the elaborate procedure prescribed u/s 18(3), we notice that the removal of the Vice-Chairman can be at the instance of the Chairman straightway on the basis of a written order or when a newly elected Chairman enters office in the case of a vacancy caused in the office of the Chairman by death, resignation, removal or otherwise. This is provided u/s 21(d) and this provision clearly indicates that the moment the person who had nominated him goes out of office, the Vice Chairman, being his nominee, must vacate his Office as the Vice Chairman as soon as a newly elected Chairman enters office. This is a clear pointer that in fact, the Vice-Chairman functions as such during the "Pleasure" of the Chairman. At this juncture therefore, it would be relevant to notice both Sections 18 as well as 21 of the Municipal Act and place them in juxtaposition to each other.

Section 18		Section 21		
of Chairman- (1) The Chair-		Vice-Chairman and other		man shall cease to
hold of- members of Chairman-in-		fice as such if he ceases to		Council. -
The Vice-Chair-		be a Councillor of the mu-		man or any other member
nicipal area. of the Chairman-in-Coun-		(2) The Chairman may.-at		cil sha11
hold office until- any time, by giving a notice		(a) he ceases to be a		in
writing to the Board of		Councillor, or		Councillors, resign his of-
resigns his of-		fice, and the procedure for		fice by writing under his

acceptance or otherwise of | hand addressed to the | |the resignation shall be |
Chairman in which case | |such as may be prescribed. | the resignation shall
take | |(3) The Chairman may be | effect from the date of its | |removed from
office by a | acceptance- or | |resolution carried by a ma- |(c) he is removed
from | |jority of the total number |office by a written order of | |of (elected
members) of the |the Chairman, or | |Board of Councillors hold- |(d) a newly
elected | |ing office for the time be- |Chairman enters upon his | |ing at a special
meeting to |office in the case of any | |be called for this purpose |casual vacancy
in the of- | |in the manner prescribed |fice of the Chairman | |upon a requisition
made |in caused bY death> resigna- | |writing by not less than one |tion removal
or otherwise.) | |third of the total number of | | |(elected members) of the | | |
Board of Councillors, and | | |the procedure for the conduct| | |of business in the
special | | |meeting shall be such as may | | |be prescribed : Provided that| | |no
such resolution shall be | | |moved before the expiry of | | |six months from the
date of | | |assumption of office by a | | |Chairman, and if such | | |resolution is
not carried by | | |a majority of the total | | |number of (elected members), | | |
no further resolution for | | |such purpose shall be moved | | |before the expiry
of a period| | |of six months from the date | | |on which the former | | |
resolution was moved, | | |_____ |

_____ | 21. We should also take notice of the fact
that by merely being removed from Office, a Vice-Chairman does not cease to be
a Councillor because the removal of a Councillor and/or his disqualification for
being such has been very elaborately prescribed u/s 21B of the Municipal Act
which includes the procedure of following the Principles of Natural Justice and
which has been incorporated under the 1st proviso appended to the said Section
21B which lays down that the competent authority can not declare a Councillor to
be disqualified without giving a reasonable opportunity to him.

22. The words "reasonable opportunity" as has been used in the 1st proviso
appended to Section 21B has not been used in Section 21. The relevant portion
of Section 21B reads as under:

21B. Disqualification for being a Councillor on change of political party by the
Councillor. (1) Notwithstanding anything to the contrary contained in this Act or
in any other law for the time being in force, such competent authority for a
Municipality as may be appointed by the State Government by notification in this
behalf (hereinafter referred to in this section as the competent authority), may,
subject to the other provisions of this section, declare, for reasons to be recorded
in writing, a Councillor of such Municipality to be disqualified for being a
Councillor thereof, if--

(a) he is an elected Councillor set up by a recognised political party and has--

(i) voluntarily given up his membership of such recognised political party, or

(iA) joined another recognised political party, or

(ii) exercised the voting right contrary to the manner of voting of the majority of

the Councillors who are the members of such recognised political party in such Municipality, or

(b) he is an elected Councillor (not) set up by a recognised political party and he has joined a recognised political party on the expiry of six months from the date of elections:

Provided that the competent authority shall not declare any Councillor to be disqualified under this section without giving to such Councillor a reasonable opportunity to represent his case and to be heard in person:

Provided further that an elected Councillor referred to in (Sub-clause (iA), or Sub-clause (ii) of Clause 2a) shall not, on the competent authority being satisfied in this behalf, be declared to be disqualified, if....

(Quoted)

23. We once again repeat that unlike the Chairman who can be removed by an elaborate procedure prescribed in Section 18, no such elaborate procedure has been prescribed u/s 21 of the Municipal Act and therefore, reading these provisions together, we are inclined to take the view as has been correctly taken by the learned single Judge that the Vice Chairman functions during the "Pleasure of the Chairman".

24. In the background of the aforementioned provisions, it is evident that the Vice-Chairman being a "mere nominee" of the Chairman has no right to continue to "hold on" to his Office even if it means that his continuance is at the displeasure of the Chairman.

25. Under these circumstances, we are further inclined to take the view that the Vice-Chairman cannot be said to be a "holder of a post" which carries rights with it. That being the position, the principles of natural justice cannot be extended to a holder of a designation which can be withdrawn by a mere written Order by the person who conferred the said designation upon him. The holder of a mere designation does not have any right to say that he has a legitimate expectation to the effect that the designation conferred upon him has also conferred a status which is equivalent to a "Post" carrying rights with it.

26. Under such circumstances we are inclined to apply the ratio of the judgments cited by Mr. Bikas Ranjan Bhattacharya, learned Counsel for the respondents being paragraph 183 of the judgment passed by the Supreme Court in the cases of Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others, and portions of paragraphs 10 and 11 in the case of Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, .

27. Paragraph 183 of the judgment passed by the Supreme Court in the case of Asoka Smokeless (supra) says that the "Principle of natural justice will apply in cases where there is some right which is likely to be affected by an act of administration. Good administration, however, demands observance of doctrine

of reasonableness in other situations also where the citizens may legitimately expect to be treated fairly. Doctrine of legitimate expectation has been developed in the context of principles of natural justice." (Quoted)

28. Now the relevant portions of paragraphs 10 and 11 of Om Narain Agarwal's case say that:

(a) 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 authorized 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. The attack is based on Articles 14 and 15 of the Constitution." and

(b) There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. (Quoted)

29. It is true that under the United Provinces Municipalities Act, 1916 which was under consideration in Om Narain Agarwal's case (supra), one of the provisos appended to Section 9 thereof laid down that a nominated member will hold office during the pleasure of State Government. It is also true that the words "during the pleasure of" has not been used in the West Bengal Municipal Act but when we read Section 21(d) of the said West Bengal Municipal Act, 1993 we are left with no other option but to come to the conclusion that the same clearly means that the Vice-Chairman has no choice except to leave office as soon as a "new" Chairman is elected or enters the office of the Chairman.

30. Upon a plain reading of the different provisions of the Municipal Act which have been taken note of above and specially Section 14(1) thereof clearly go to show that the body which is known as the Board of Councillors, is constituted only after a general election or a bye-election. The Chairman-in-Council constitutes of Councillors including the Chairman, Vice Chairman and other members which form the Board of Councillors. Thus the very birth of the Councillors takes shape through a political process. In fact the petitioner himself

has stated that 7 (seven) seats in the general elections of 27-6-2004 went to the Trinamool Congress while 2 (two) went to the Congress and 5(five) to the CPI (M). He has also stated that while he was a Congress candidate, the Chairman of the Municipality was a Trinamool Congress candidate. Now for purposes of ensuring that the Municipality functions properly, some procedures have been laid down under the Municipal Act. While an elaborate procedure for the removal of the Chairman has been laid down u/s 18(3) and while an elaborate procedure also has been laid down u/s 21B for the removal of the Councillor respectively, the procedure for the removal of the Vice-Chairman which has been provided for u/s 21 is neither elaborate nor does it contemplate that an opportunity of hearing has to be given. Since an opportunity of hearing has not been prescribed u/s 21, this Court in exercise of powers of judicial review should say no more and should not insist that the appellant should have been given an opportunity of hearing. In this context, a judgment of the Supreme Court passed in the case of Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, becomes relevant to be taken note of Paragraphs 23 and 24 of the said judgment read as follows:

23. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified u/s 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs".

24. Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers u/s 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law.

Quoted)

31. We therefore once again repeat at the risk of repetition that since a Vice Chairman functions during the pleasure of the Chairman, and since he does not

cease to be a Councillor even if he is removed as a Vice Chairman, it entails that even if he is removed as Vice-Chairman, he would still continue as a Councillor and therefore this cannot be said to be prejudicial to him. Consequently, the question of following the principles of natural justice was not at all necessary and that too when, paragraph 3 of the Writ Petition shows political activities without there being any element of "Master-Servant" relationship by and between the Chairman and the Vice-Chairman. Therefore, the holder of the office/designation of the Vice Chairman of the Municipality can not be said to hold a "Post" or a "Civil Post". Consequently, the question of relying upon the principles of natural justice does not arise.

32. For the foregoing reasons we are not impressed with the submissions made on behalf of the appellant pertaining to the doctrine of pleasure not being applicable or the points pertaining to opportunity of hearing. Consequently and in view of our reasonings given above, we do not wish to import a provision that has not been specified in the Statute by insisting and/or by holding that prior to passing the Order dated 5-6-2006, the appellant should have been given an opportunity of hearing.

33. However, this case must succeed only partially on a totally different point following the ratio of the judgment passed by the Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . The reason why we say so is because we have noticed that under the Municipal Act, the Vice Chairman can be removed from Office by a written Order of the Chairman. In the instant case, the Order dated 5-6-2006 is a written Order because it is not only an Order of the Chairman but it is also an Order in writing. However, while passing this Order, the Chairman apparently overstepped his jurisdiction by giving reasons which have the effect of lowering the appellant Vice-Chairman in the eyes of the society. It should always be remembered that a Councillor comes to office after having won the confidence of the electorate. The moment some body tells him that "he has not performed his duties entrusted to him properly" and that "he has not maintained the secrecy" of which he had taken oath at the time of assuming Office of the Vice Chairman, he immediately falls in the eyes of the electorate. Therefore we are of the view that while exercising powers u/s 21(c) of the Municipal Act, the chairman should have confined his action only to the extent of passing a written Order removing a Vice Chairman from office but he could not have overstepped his jurisdiction by casting aspersions upon the person being sought to be removed.

34. Since the power to remove a Vice Chairman by a written Order has been prescribed u/s 21 without laying down that before such removal an opportunity of hearing should be given and since such a written order dated 5-6-2006 has been passed, we therefore, are not inclined to interfere with the order of removal but since the State does not authorize the Chairman to make aspersions for the removal, we therefore, expunge those parts of the order dated 5-6-2006 and direct that the two reasons given by the Chairman in the Order dated 5-6-2006

shall be obliterated and shall not be used to the prejudice of the appellant at any future point of time. However, the order of removal is not interfered with.

35. For the foregoing reasons, we agree with the view expressed by the learned single Judge and hold that since this is a case where there is no relationship of "Master and Servant" and since this is a case where a nominee does not have any right to "hold on" to the Office because after nomination, he becomes merely the holder of a "designation" during the pleasure of the Chairman, the question of insisting on following the principles of natural justice, in the facts and circumstances of this case, does not arise.

36. For the foregoing reasons, this Appeal is allowed in part, only to the extent indicated above and the order of the learned single Judge is also modified only to the extent indicated above. In other words, the Order of removal is not interfered with but, the remarks made against the appellant by the Chairman are hereby ordered to be expunged.

37. There shall be no order as to costs. Upon appropriate application(s): being made, urgent Xeroxed Certified copy of this Order, may be given/issued expeditiously subject to usual terms and conditions.