

(2007) 01 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (C) No. 6370 of 2006

Tilleshwar Sahu

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:

Arms Act, 1959 — Section 27

Constitution of India, 1950 — Article 162

Jharkhand Area Autonomous Council Act, 1994 — Section 23(7)

Penal Code, 1860 (IPC) — Section 302

Water (Prevention and Control of Pollution) Act, 1974 — Section 10, 3(2), 4(1), 4(2), 5(1)

Water (Prevention and Control of Pollution) Rules, 1975 — Rule 29, 3

Citation : (2007) 2 BLJR 1030 : (2007) 3 JCR 178

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Advocate : Anil Kr. Sinha and Saurav Arun, for the Appellant; S.B. Gadodia, General and Sumit Gadodia, J.C. to A.G., for the Respondent

Final Decision : Allowed

Judgement

Permod Kohli, J.—Challenge in this writ petition is made to the order, issued under Memo No. 5299 dated 3rd November, 2006, removing the petitioner from the post of Chairman, Jharkhand State Pollution Control Board, Ranchi, (hereinafter to be referred as "the Board") with immediate effect. Operation of the impugned notification was stayed by this Court vide interlocutory order dated 9th November, 2006. On completion of the pleadings and keeping in view the urgency involved, this matter was heard for final disposal. It may be useful to briefly notice the factual background, leading to filing of the present writ petition. After creation of the separate State of Jharkhand, State Pollution Control Board was constituted for the first time on 22nd January, 2003 with one Thakur Balmukund Nath Sahdeo as its first Chairman. His appointment as Chairman came to be challenged in W.P.(C) No. 1624 of 2002. A Division Bench of this Court set aside the appointment of the Chairman vide its judgment dated 15th

May, 2002. Judgment of this Court, however, came to be stayed in S.L.P.(C) No. 19100 of 2002 vide order passed on 7th February, 2003. During pendency of the SLP before the Hon"ble Supreme Court, three years" tenure of the then Chairman of the Board expired, necessitating appointment of the Chairman. The State Government vide its Memo No. 2971 dated 11th May, 2005 appointed the petitioner, Sri Tileshwar Sahu, as Chairman of the Jharkhand State Pollution Control Board, Jharkhand, Ranchi with the following conditions:

(i) Sri Sahu will continue as the working Chairman of the Pollution Control Board till further orders and

(ii) A separate order will be issued in respect to his service conditions.

2. While the petitioner continued to hold the office of Chairman pursuant to the aforesaid order, State Pollution Control Board came to be reconstituted in terms of Section 4(1) of the Water (Prevention & Control of Pollution) Act, 1974 (hereinafter to be referred to as "the Act") vide Notification No. 107/2001-920 dated 27th February, 2006. The preamble of this notification indicates that the State Pollution Control Board is reconstituted by repealing earlier Notification No. 03/2000-394 dated 22nd January, 2003. It further notifies the name of the petitioner as Chairman, having been appointed vide Notification No. 05/05-2971 dated 11th May, 2005 and the names of other Members of the Board, appointed by the Government. Foot of the notification contains a stipulation that the tenure of the Members of the Board and other conditions, relating to service, shall be such, as specified under the Water (Prevention & Control of Pollution) Act, 1974.

3. While this notification was in operation, petitioner has been removed by the impugned notification dated 3rd November, 2006 on the grounds, noticed hereinafter. Legality and validity of this notification has been questioned on variety of grounds (i) the order of removal has been passed in contravention of the provisions of Sections 5(3) and 6(2) of the Water (Prevention & Control of Pollution) Act, 1974; and (ii) the order is the outcome of the political vendetta having been passed on political considerations.

4. Counter affidavit has been filed by the Deputy Secretary, Forest & Environment Department, Jharkhand, Ranchi. The only plea raised to justify the impugned notification is that the petitioner was appointed as working Chairman of the Jharkhand State Pollution Control Board till further orders vide Notification No. 2971 dated 11th May, 2005 and the State has all competence and jurisdiction to cancel the earlier notification, which has been cancelled vide the impugned order. When the matter came up for consideration on 16th November, 2006, learned Advocate General appearing for the State sought leave of the Court to file additional counter, which was allowed. In the additional counter filed, various additional facts have been introduced, which are noticed hereunder:

(a) Order of appointment of the petitioner dated 11th May, 2005 is contrary to law, having been passed by then Chief Minister Sri Arjun Munda in a most arbitrary manner and in great hurry;

(b) Petitioner was involved in several criminal cases, including the offences committed under the Indian Forest Act. Reference has been made to a confiscation case, instituted by the Forest Department for confiscating the truck as well as the timber loaded thereon. Another case instituted against the petitioner being Case No. C-II 29/1990 for an offence under the Forest Act, related to transportation of timber without necessary permit, wherein, petitioner was fined Rs. 150/- on his confession. In another case being Case No. C-II 10/1990 petitioner was fined Rs. 500/-.

(c) Petitioner did not have necessary qualifications, specified in various Acts, relating to prevention and control of pollution.

(d) Petitioner was involved in Kamdara P.S. Case No. 46 of 2006 dated 16th August, 2006 for committing offence u/s 302 of the Indian Penal Code and Section 27 of the Arms Act and was taken into custody on 27th September, 2006, where he remained for a period of more than a month.

5. Petitioner has filed reply to the supplementary counter affidavit and also another supplementary affidavit by way of rejoinder with a view to explain the allegations, made in the additional counter affidavit filed by the respondent-State, Reference to some of the relevant pleas, raised in these pleadings, shall be made at a later stage.

6. With a view to appreciate the contention of the learned Counsel appearing for the parties, it is necessary to notice certain relevant provisions of Water (Prevention & Control of Pollution) Act, 1974:

2. Definitions-In this Act, unless the context otherwise requires,-

(a) "Board" means the Central Board or a State Board:

XX XX XX XX (c) "member" means a member of a Board and includes the Chairman thereof:

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4. Constitution of State Boards.- (1) The State Government shall with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) A State Board shall consist of the following members namely:

(a) Chairman, being a person having special knowledge or practical experience in respect of matter relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the State Government:

Provided that the Chairman may be either whole-time or part-time as the State Government may think fit;

(b) such number of officials, not exceeding five, to be nominated by the State Government to represent that Government;

(c) such number of persons, not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning with the State;

(d) such number of non-officials, not exceeding three, to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interests which, in the opinion of the State Government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by the Government;

(f) a full-time Member-Secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.

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5. Terms and conditions of services of members.- (1) Save as otherwise provided by or under this Act, a member of a Board, other than a member-secretary, shall hold office for a terms of three years from the date of his nomination:

Provided that member shall notwithstanding the expiration of his term continue to hold office until his successor enters upon his office.

(2) The term of office of a member of a Board nominated under Clause (b) or Clause (e), of Sub-section (2) of Section 3 or Clause (b) or Clause (e) of Sub-section (2) of Section 4 shall come to an end as soon as he ceases to hold the office under the Central Government or the State Government or, as the case may be, the company or corporation owned, controlled or managed by the Central Government or the State Government, by virtue of which he was nominated.

(3) The Central Government or, as the case may be, the State Government may, if it thinks fit remove any member of a Board before the expiry of his term of office, after giving, him a reasonable opportunity of showing cause against the same.

(4) A member of a Board, other than the member-secretary, may, at any time, resign his office by writing under his hand addressed-

(a) in the case of Chairman, to the Central Government or as the case may be, the State Government; and

(b) in any other case, to the Chairman of the Board,

and the seat of the Chairman or such other member shall thereupon become vacant.

(5) A member of the Board other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, sufficient in the opinion of the Board, from three consecutive meetings of the Board, or where he is nominated under Clause (c) or Clause (e) of Sub-section (2) of Section 3 or under Clause (c) or Clause (e) of Sub-section (2) of Section 4; if he ceases to be a member of the State Board or of the local authority or, as the case may be, of the company or corporation owned, controlled or managed by the Central Government or the State Government and such vacation of seat shall, in either case, take effect from such date as the Central Government or, as the case may be, the State Government may, by notification in the Official Gazette, specify.

(6) A casual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was nominated.

(7) A member of a Board shall be eligible for renomination.

(8) The other terms and conditions of service of a member of a Board, other than the Chairman and member-secretary, shall be such, as may be prescribed.

(9) The other terms and conditions of service of the Chairman shall be such as may be prescribed.

xx xx xx xx 6. Disqualifications.-(1) No person shall be a member of a Board, who-

(a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent Court, or

(c) is, or has been, convicted of an offence which, in the opinion of the Central Government or, as the case may be, of the State Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company earning on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of a sewage or trade effluents, or

(f) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any contract with the Board, or with the Government constituting the Board, or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the earning out of sewerage scheme or, for the installation of plants for the treatment of sewage or trade effluents, or

(g) has so abused, in the opinion of the Central Government or as the case may be, of the State Government, his position as a member, as to render his

continuance of the Board detrimental to the interest of the general public.

(2) No order of removal shall be made by the Central Government or the State Government, as the case may be, under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in Sub-sections (1) and (7) of Section 5 a member who has been removed under this section shall not be eligible for renomination as a member.

XXX XXX XXX XXX 64. Power of State Government to make rules.- (1) The State Government may, simultaneously with the constitution of the State Board, make rules to carry out the purposes of this Act in respect of matters not falling within the purview of Section 63:

Provided that when the State Board has been constituted, no such rule shall be made, varied, amended or repealed without consulting that Board.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the terms and conditions of service of the members (other than the Chairman and the Member-Secretary) of the State Board under Sub-section (8) of Section 5:

7. In exercise of power conferred upon the State Government u/s 64(2)(a) of the Act the then unified State of Bihar framed rules, namely, Water (Prevention & Control of Pollution) Rules, 1986. Since u/s 64(2)(a) of the Act, terms and conditions of service of the Members do not include the Chairman and Member Secretary, the Rules as contained in Chapter II(4) also specify that the terms and conditions of service, including monthly remuneration shall be such, as may be fixed by the State Government from time to time and in absence of any such terms being specified, terms as are applicable to the 1st Class employees will be applicable. Though no specific averment has been made in the pleadings of the parties, however, during the course of argument learned Advocate General has brought to my notice that the terms and conditions of appointment of the petitioner were laid down by the State Government vide order dated 5th October, 2005. A perusal of this order, produced along with records, reveals that the petitioner has been conferred with the status of a Minister in the State Government.

8. It has been vehemently argued by the learned Advocate General that the appointment of the petitioner vide notification dated 11th May, 2005 (Annexure 1) was an executive order of the State Government and the State was, thus, competent to revoke the same involving doctrine of pleasure. It is further strenuously argued that the appointment of the petitioner was as working President and till further orders and, thus, the appointment has been validly terminated vide the impugned order in accordance with the stipulation, contained

in the order of appointment. It is further stated that no right of the petitioner has been infringed in any manner.

9. With a view to support his contention, learned Advocate General has referred to a judgment of the Apex Court, reported in (2001) 2 SCC 441 Krishna v. State of Maharashtra. In this case the provisions of Nagpur Improvement Trust Act, 1936 came under examination by the Apex Court while considering the validity of removal of the trustee, appointed under the Act. The Act contains two sections for removal Section 6 deals with the removal simplicitor whereas Section 10 relates to removal of Ex-officio trustee on account of certain acts of omission and commission. The removal of the trustee in the said case was u/s 6, which reads as under:

6. The term of office of the Chairman or of any trustee appointed under Clause (e) of Sub-section (1) of Section 4 shall be five years, provided that the Chairman or any trustee may be removed from office by the State Government at any time before the completion of such term.

As far removal u/s 10 is concerned, Sub-section (3) of this Section mandated opportunity of explanation to the trustee concerned, who is sought to be removed. The Apex Court on consideration of the scope of the two Sections observed as under:

8. In the present case, the appellant was appointed under Sub-section (2) of Section 4 read with Clause (e) of Sub-section (1) of Section 4 and was removed by order dated 9-2-2000 u/s 6 of the Act. Having considered the submissions for the parties and after perusing the language of the sections, we have no hesitation to hold, that the field of Section 6 and Section 10 are separate. The removal spoken u/s 6 is removal without any stigma while the removal u/s 10 is removal with penal consequences attaching stigma. If submission for the appellant is accepted, viz., Section 6 empowers and Section 10 lays down the conditions and procedure to remove, then removal of trustee could only be far penal consequences and not otherwise. If that be so, there could be no reason to enact Section 6 as Section 10 covers such cases. It is significant, the removal u/s 6 is confined only to such trustees who are covered under Clause (e) of Sub-section (1) of Section 4 and who are also nominated by the State Government. Rights of trustees falling under the aforesaid Clause (e) are rights created under a statute and hence that very creator can always limit or curtail such right. In such cases, if a trustee is removed, he cannot project any grievance that no opportunity was given to him. If any rights which is creature of statute, is limited or curtailed by that very statute, in the absence of any other right under that very statute or the Constitution of India, such trustee cannot claim any right bases on the principle of natural justice.

10. Reference is also made to a decision of the Apex Court, reported in Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, , wherein, removal of two nominated members of the Municipal Board was upheld by the

Apex Court under the doctrine of pleasure. This removal was under fifth proviso to Section 9 of the United Provinces Municipalities Act, 1916. It is useful to reproduce the proviso, wherein, power was exercised.

Provided also that a member nominated under this section, whether before or after February 15, 1990 shall hold office during the pleasure of the State Government but not beyond the term of the Board.

The Apex Court while upholding the validity of this proviso also approved the removal of the nominated members without observing the principles of natural justice. The Apex Court, thus, observed:

In our view, such provision neither offends any Article or the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. 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....

11. Further reference is made to a Division Bench judgment of Ranchi Bench of Patna High Court, as it was at the relevant time, in the case of Kumar Varun v. State of Bihar reported in 1999 (2) P.L.J.R. 420, wherein removal of Chairman and Vice Chairman of the Interim Council came under challenge. This removal was ordered in terms of Sub-section (7) of Section 23 of the Jharkhand Area Autonomous Council Act, 1994, which reads as under:

(7) The Chairman and the Vice Chairman of the Interim Council and the members of the Interim Executive Council shall hold their office during the pleasure of the State Government.

While considering the removal under Sub-section (7) of Section 23 of the aforesaid Act, the Court observed as follows:

9. ...The Government while removing the Chairman, the Vice Chairman of the Interim Council and the members of the Interim Executive Council is also not required to give them an opportunity of being heard. They are appointed at the pleasure of the Government and therefore, they are liable to go at its displeasure unless the exercise of displeasure is malafide or is based on extraneous consideration.

12. From the relevant provisions of various Acts and the observations, noticed hereinabove, it transpires that in all these cases, referred to by the learned Advocate General, there was explicit provision of doctrine of pleasure in all statutes, whereunder, action was initiated. Bases upon the legislative intention of the relevant provisions, whereunder action was taken, the Apex Court and the Division Bench of Patna High Court ruled out the application of doctrine of *audi alteram partem*. The provisions, contained in Water (Prevention & Control of Pollution) Act, 1974, namely, Sections 5 and 6, have distinctive features. It is

pertinent to note that principles of natural justice have been specifically incorporated under Sections 5(3) and 6(2) of the Act. Under this Act also removal u/s 5 is permissible without any stigma but by affording him an opportunity of showing cause against the action and in case of removal u/s 6, which is with stigma on the basis of some allegation within the prescribed bounds, principles of natural justice are also required to be observed. Therefore, irrespective of the fact whether the removal of the petitioner is with or without stigma, principles of natural justice are necessarily to be observed, being statutory mandate incorporated under Sections 5(3) and 6(2) of the Act. It is further necessary to examine whether the removal of the petitioner is in exercise of administrative authority or the power has been exercised under the statutory provisions of the Act.

13. Thus, it becomes relevant to examine whether the State Government had has any administrative authority or jurisdiction to issue the order dated 11th May, 2005, appointing the Chairman of the Pollution Control Board. It is not in dispute that appointment of the Chairman and Members of the Pollution Control Board is the statutory duty of the State Government in terms of Section 4 of the Act. Thus, the power of the State Government to constitute the Board and appoint its Chairman and Members emanates from Section 4 itself. In so far the administrative power of the State is concerned, such a power is conferred upon the State Government under Article 162 of the Constitution of India, which reads as follows:

162. Extent of executive power of State. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

14. This Article confers administrative power upon the State in respect of all matters for which it has authority and jurisdiction to legislate. Neither it has been brought to my notice nor it appears from List II of Schedule 7 that the State Legislature has the power to enact law, relating to pollution. In any case, Union Parliament has enacted this law whereunder power to constitute the Board for the State has been delegated and conferred upon the State Government. At the first place the State does not seem to have legislative power governing the field. Assuming it has such power, the Central Legislation being in place and provides for constitution of the Board by statutory provision, the State does not have any power and authority divorced from the statutory provisions to appoint the Chairman of the Board. Thus, even if it is assumed that the appointment of Chairman and the Members of the Board is an administrative action, the power having been conferred by statutory provision, it is to be exercised and shall be

deemed to be statutory function of the State Government. Thus, the appointment of the petitioner as Chairman vide notification dated 11th May, 2005 cannot be construed purely as an administrative action independent of Section 4 of the Act. Therefore, the rigour of law for removal of the Chairman has to be observed. It is also relevant to notice that though the petitioner was appointed as working Chairman on 11th May, 2005 and his tenure was till further orders, the Board was reconstituted on 27th February, 2006, as noticed above, and the petitioner's name was also indicated to be its Chairman, shown to be appointed on 11th May, 2005. Vide this notification the entire Board is reconstituted. As observed above, this notification contains a clear stipulation regarding the tenure of the Members of the Board, to be governed by the Act. The tenure of the members of the Board is prescribed u/s 5(1) of the Act as three years from the date of nomination. Proviso to Sub-section (1) further prescribes the continuation of the Members even after expiry of tenure till his successor enters upon his office. Therefore, on reconstitution of the Board vide notification dated 27th February, 2006 with clear stipulation regarding the statutory tenure, conditions in the initial order of appointment of the petitioner in notification dated 11th May, 2005 stood merged in the second notification, although the tenure of three years may commence from the date of original appointment of the petitioner on 11th May, 2005. It is in this context reconstitution notification refers to the appointment of the petitioner vide earlier notification dated 11th May, 2005. Stipulation at the foot of this notification prescribing the statutory tenure cannot be said to be inapplicable in case of the petitioner merely because reference is made to earlier notification in the order, Since the appointment of the petitioner was continued vide second notification, the earlier condition that the petitioner will be a working Chairman and his tenure is till further orders does not survive, particularly when the second notification of reconstitution of the Board refers the petitioner as the Chairman and not as a working Chairman with further stipulation of the statutory tenure, contained therein. As far the settlement of terms and conditions vide order dated 6th October, 2005 are concerned, the State Government having power u/s 64 of the Act read with 1986 Rules has fixed the terms and conditions. In the order dated 6th October, 2005 laying the terms and conditions of petitioner's appointment there is no mention of the tenure for the appointment. Tenure was fixed only in the 2nd notification dated 27th February, 2006, Once the appointment of the petitioner is u/s 4 read with Section 5(1), the contention of the learned Advocate General that the petitioner's initial appointment being till further orders vide notification dated 11th May, 2005, the State had the power to rescind under doctrine of pleasure, cannot be accepted.

15. In the additional counter various allegations have been made against the petitioner regarding his conviction in some forest matters, wherein, he was fined. It is also stated that the petitioner has been involved in criminal cases, Based upon these allegations, it is stated that the petitioner was disqualified to be a member of the Board. It has also been urged that the petitioner having been arrested in criminal case the work of the Board was suffering, hence the State

Government decided to remove him. Learned Advocate General has also referred to the notings on the file leading to the appointment of the petitioner and it has been, accordingly, stated that petitioner's appointment was totally on political considerations and without verifying his credentials. It is further stated that he was appointed in most arbitrary manner in utter haste by the then N.D.A. Government.

16. Section 6 of the Act prescribes various disqualifications for appointment as a Member of the Board. Under Clause (c) a person is disqualified if he has been convicted of an offence, which, in the opinion of the Central Government or the State Government, involves moral turpitude. Apex Court in the case of State of M.P. Vs. S.P. Sales Agencies and Others, , held that the confiscation proceeding is distinct from a criminal case. The Hon"ble Supreme Court observed as under:

10. In the present case, the allegations are that by committing breach of Rule 3 a forest offence within the meaning of Section 2(3) of the Act has been committed for which a criminal prosecution under Rule 29 of the Transit Rules as well as a confiscation proceeding u/s 52 of the Act could be initiated. From the scheme of the Act, it would appear that for contravention of Rule 3, two independent actions are postulated- one, criminal prosecution and the other, confiscation proceeding. The power of confiscation, exercisable u/s 52 of the Act, cannot be said to be in any manner dependent upon launching of criminal prosecution as it has nowhere been provided therein that the forest produce seized can be confiscated only after criminal prosecution is launched, but the condition precedent for initiating a confiscation proceeding is commission of forest offence, which, in the case on hand, is alleged to have been committed....

17. Petitioner has been fined in confiscation proceedings of forest cases. It has been argued on behalf of the petitioner that the cases where the petitioner was fined no moral turpitude is involved and fine was imposed merely for irregularities in transportation of the timber without proper permit, though the timber belonged to the petitioner and the petitioner has not been convicted for any other serious offence. Clause (c) of Section 6 clearly indicates that if a person has been convicted of an offence, the State Government has to formulate an opinion that it involves moral turpitude. From the entire records produced, no such opinion was formulated and rightly so, as imposition of fine in confiscation proceedings under the Forest Act does not amount to conviction involving moral turpitude.

18. I do not find that the petitioner suffers disqualifications under Clause (c) of Section 6. Even under Clause (d) of Section 6 a person also suffers disqualification if he has been convicted for an offence under this Act, which is not the case of the respondents, With respect to the allegation of the respondent-State that the continuance of the petitioner is against the interest of the Board, though no specific averment has been made in this regard, however, reference is made to arrest of the petitioner in criminal case, registered against him, wherein, he was granted bail. Mr. Anil Kumar Sinha, learned Senior Advocate appearing on

behalf of the petitioner, has attempted to convince the Court that the registration of these cases is only on account of political rivalry with a view to devise a ground for petitioner's removal. According to him, with the coming into power of the new Government with the help of Members of various Parties and on account of restriction for Ministerial births provided under the constitution, the ruling party has passed the impugned order removing the petitioner with a view to accommodate one of its aspirant M.L.A. I need not go into all these questions but one thing is evident that if the petitioner's appointment was a political convenience, his removal can not be said to be apolitical. Even if it is assumed for the sake of argument that the petitioner earned disqualification on account of imposition of fine in forest cases or subsequent involvement in criminal cases, Sub-section (2) of Section 6 of the Act clearly provides for affording reasonable opportunity of showing cause against the removal. No such notice was ever served upon the petitioner. Learned Advocate General has also referred to various other aspects. It has been further argued that the petitioner was not qualified to be appointed as Chairman of the Board and he does not possess any special knowledge etc. to function as the Chairman of the Board. To the contrary Mr. Sinha has brought to my notice bio-data of the petitioner, which was placed before the High Court in W.P.(PIL) No. 6505 of 2003 and is available on the record produced. He has also referred to the counter affidavit filed by the State Government in the said Public Interest Litigation, wherein, a direction was issued to constitute the Board. It is, accordingly, stated that the Board has been constituted in due deference to the direction of this Court vide notification dated 27th February, 2006. He has also referred to earlier litigation initiated in W.P.(C) No. 1624 of 2002. A Division Bench of this Court in its judgment dated 15th May, 2002 ordered removal of Thakur Balmukund Nath Sahdeo on the ground that he does not possess any specialized qualification to continue as the Head of the Board. However, this judgment has been stayed by the Hon'ble Supreme Court and, thus, the issue what should be the qualification for a Chairman of the Board being sub-judice before the Apex Court, no opinion needs to be expressed at this stage.

19. It is not that once a Member of the Board is appointed by the State Government, it has no authority whatsoever to remove him prior to expiry of the tenure of three years. Section 5(1) prescribes the tenure of the Members of the Board whereas Sub-section (3) thereof deals with the premature removal by giving him a reasonable opportunity of showing cause, if the State Government thinks it fit and proper. It is admitted case of the respondent-State that no show cause notice was ever given to the petitioner in terms of Section 5(3) before passing of the impugned order, rather it is the case of the petitioner that he has been removed in gross violation of the principles of natural justice, embodied u/s 5(3) and 6(2) of the Act.

20. From the records produced I have noticed that at page 31 note has been initiated by the Deputy Secretary-II on 26th September, 2006 regarding constitution of Search Committee. Thereafter, reference is made to registration of

criminal case No. 46 of 2006 with Kamdara Police Station under various penal sections and on the basis of registration of this criminal case removal of the petitioner was proposed. Vide the impugned order only petitioner's initial appointment on 11th May, 2005 has been cancelled and it is in this context that the learned Advocate General has vehemently argued that the petitioner has simply been said goby by invoking doctrine of pleasure as the appointment of the petitioner was at the pleasure of the Government and till further orders. I have already observed that the initial order of appointment of the petitioner dated 11th May, 2005 has merged into subsequent notification dated 27th February, 2006, which, inter alia, contains stipulation for statutory tenure and in terms of Section 5(1) of the Act, the statutory tenure for the Board is three years. A Chairman is included in the Board constituted u/s 4 of the Act. Therefore, reference to members of Board u/s 5 includes reference to the Chairman. As far as the question of doctrine of pleasure is concerned, even if Section 5 of the Act is considered to contain the doctrine of pleasure embodied therein, it has been circumvented by Sub-section (3), which in unequivocal terms incorporates the doctrine of "Audi alteram partem". As a matter of fact, Sub-section (3) speaks of removal before the expiry of the statutory tenure. Hence, an order in terms of Section 5, curtailing the tenure of office of a member of the Board is, in fact, removal envisaged under Sub-section (3) of Section 5 of the Act. Such a removal is permissible only after observance of the principles of natural justice i.e. giving a reasonable opportunity of showing cause. Though it has been urged by the learned Advocate General that the removal of the petitioner is without any stigma, however, from the records produced it is apparent that removal of the petitioner is on account of registration of First Information Report against him and his arrest in the said case. Such a removal cannot be said to be without aspersion and for this reason also observance of principles of natural justice becomes necessary. From the above discussions it ultimately culminates that the order impugned is an order of removal irrespective of the fact whether it is an order u/s 5 or u/s 6 of the Act. In both the eventualities, the order is not sustainable, having been passed in contravention of the mandatory requirement of Sub-section (3) of Section 5 or Sub-section (2) of Section 6 of the Act. The order impugned, thus, is liable to be quashed. Quashment of this order does not mean that the State Government has no authority to order removal by following the due procedure of law, contained u/s 5(3) and/or u/s 6(2) of the Act. In view of the detailed discussions, this writ petition is allowed and the impugned order dated 3rd November, 2006, issued under Memo No. 5299, is hereby quashed, in the light of the above observations. However, there shall be no order as to costs.