

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.310 OF 2015**

Hakim Abdul Munaf Abdul Jabbar	... Petitioner
v/s	
State of Maharashtra	... Respondents

**WITH
WRIT PETITION (L) NO.160 OF 2015**

Janet D'Souza and others	... Petitioners
v/s	
State of Maharashtra	... Respondents

Ms Abha Singh with Mr Aditya Pratap for Petitioners.
Mr H.S. Venegaonkar, AGP for Respondents.

**CORAM : V.M. KANADE &
B.P. COLABAWALLA JJ.**

**Reserved on : 7th July, 2015
Pronounced on : 15th July, 2015**

JUDGMENT / Per B. P. Colabawalla J. / :-

1. By these Writ Petitions filed under Article 226 of the Constitution of India, the Petitioners challenge the Notification dated

15th January, 2015 under which the nominations of the Petitioners have been revoked from the posts of Chairperson, Vice-Chairperson and Member of the Maharashtra State Minorities Commission. The main grounds of challenge are that the impugned Notification violates the provisions of section 5 of the *Maharashtra State Minorities Commission Act, 2004 (the said Act)* as no reasonable opportunity of being heard was accorded to the Petitioners prior to the revocation of their nomination, and the impugned Notification is arbitrary and violates Article 14 of the Constitution of India. Another ground raised is that the Members of the Maharashtra State Minorities Commission have powers of a Civil Court and hence, the impugned Notification undermines independence of the judiciary. Since both the Petitions are identical on facts as well as in law, they are being disposed off by this common judgement.

2. The brief facts are that the Petitioner in Writ Petition (L) No.310 of 2015 was nominated by the Government of Maharashtra as the Chairperson of the Maharashtra State Minorities Commission vide Government Notification dated 28th August, 2012 for a period of five

years from the date he assumed Office. Similarly, the Petitioners in Writ Petition (L) No.160 of 2015 were nominated as Vice-Chairperson and Member by Government Notification dated 5th August, 2013. It is the case of the Petitioners in both the Petitions that they, in their respective capacities, have been diligent, dedicated and performing their statutory functions without an iota of blemish or reservation with respect to their capability or professional capacity.

3. Before the Petitioners' tenures had come to an end, the Government of Maharashtra issued the impugned Notification dated 15th January, 2015 under which the Government of Maharashtra revoked the nomination of the Petitioners and other Members of the Commission from the date of publication of the said Notification in the Official Gazette. Aggrieved by this Notification, the Petitioners have approached this Court under Article 226 of the Constitution of India.

4. The learned counsel appearing on behalf of the Petitioners submitted that before revoking the nomination of the Petitioners no

notice or hearing was given to them by the Government of Maharashtra. She submitted that under section 5 of the said Act, a person could be disqualified from being appointed or for being continued as a Chairperson or Member if the conditions set out in the said section were violated. She placed heavy reliance on the proviso to section 5(1) which stipulates that no person shall be removed under section 5(1) until that person has been given a reasonable opportunity of being heard in the matter. She submitted that admittedly in the present case, the Petitioners have not been heard and therefore the impugned Notification was contrary to section 5 of the said Act and was hence liable to be quashed and set aside. She submitted that this was also violative of Article 14 of the Constitution of India as there was a breach of the principles of natural justice and on this count also, the impugned Notification suffered from the vires of unconstitutionality.

5. We are unable to agree with the submissions made on behalf of the Petitioners. Section 3 of the said Act talks about the constitution of the Commission and inter alia provides that the

Commission shall consist of a Chairperson, Vice-Chairperson and nine other Members to be nominated by the Government. These persons would be of eminence, ability and integrity. Section 4, and which is relevant for our purpose, reads as under:-

“4(1) Subject to the pleasure of the Government, the Chairperson, Vice-Chairperson and every Member of the Commission, shall hold office for a term of five years from the date he assumes office.

(2) The Chairperson, Vice-Chairperson or a Member may, resign from his office in writing under his signature addressed to the Government, but shall continue in office until his resignation is accepted.

(3) The Chairperson, Vice-Chairperson and other Members shall receive such salary and allowances, as may be prescribed.

(4) The salary and allowances payable to the Chairperson, Vice-Chairperson and other Members shall be defrayed out of the grants referred to in sub-section (2) of section 11.

(5) A casual vacancy in the office of a Member shall be filled up as soon as may be, by the Government and a Member so nominated shall hold office so long as the Member in whose place he is nominated would have held office.

(6) In the absence of the Chairperson, the Vice-Chairperson shall perform the functions of the Chairperson under the Act and rules made thereunder.”

(emphasis supplied)

6. Section 4(1) clearly sets out that subject to the pleasure of the Government, the Chairperson, Vice-chairperson and every Member of the Commission shall hold office for a term of five years

from the date they assume office. In the present case, the Petitioners therefore hold their respective offices for a term of 5 years, but subject to the pleasure of the Government. Therefore, the Government can remove the Petitioners at any time without assigning any reason and without giving any opportunity to show cause. We must mention here that though no reason need be assigned for discontinuance of the pleasure resulting in removal, the same cannot be exercised in an arbitrary, capricious or unreasonable manner. This power would have to be exercised for valid reasons. As there is no need to assign reasons for removal as a consequence of withdrawal of the pleasure, the same would be presumed to be valid, and open only to a very limited judicial review. It is only when the aggrieved person (in the present case, the Petitioners) is able to demonstrate prima facie that his removal is arbitrary, malafide, capricious or whimsical, the Court will call upon the Government to disclose to the Court, the material upon which the decision was taken to withdraw the pleasure. If the reasons disclosed to the Court are found to be irrelevant, arbitrary, whimsical or malafide, the Court would then interfere in its limited jurisdiction. We must of course mention a note of caution that

the Court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.

7. What is stated by us earlier has been very succinctly set out by a five Judge Bench of the Supreme Court in the case of ***B.P. Singhal v/s Union of India and another.***¹ Paragraph 83 of this judgement reads thus:-

“83. *We summarise our conclusions as under:*

- (i) *Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.*
- (ii) *Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case.*
- (iii) *A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Nor can he be removed on the ground that the Union Government has*

¹ (2010) 6 SCC 331

lost confidence in him. It follows therefore that change in government at the Centre is not a ground for removal of Governors holding office to make way for others favoured by the new Government.

- (iv) *As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, mala fide, capricious or whimsical, the Court will call upon the Union Government to disclose to the Court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or mala fide, the Court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.*

(emphasis supplied)

8. This enunciation of the law will now have to be applied to the facts of the present case to see if we can interfere in the decision of the Government to remove the Petitioners from their respective offices. In the facts of the present case, the Government of Maharashtra through its Joint Secretary, Minorities Development Department, has filed an affidavit dated 23rd June, 2015 in which it is stated that the Government of Maharashtra, in pursuance of its powers under section 4(1) of the said Act, considered it necessary to re-

organize the functioning and regulations of the Maharashtra State Minorities Commission and therefore, for the purpose re-organization, it was just and necessary to revoke the nomination of the Chairperson, Vice-Chairperson and the Members of the Commission so that the re-organization can be facilitated effectively. We find that from what is stated in the affidavit in reply of the Government of Maharashtra, plausible reasoning has been given for revoking the nomination of the Petitioners. It is not as if the Petitioners have been singled out and removed from their respective posts. For the purposes of re-organisation, all the Members of the Commission have been removed. Apart from the three Petitioners, no other member has any grievance with the decision of the Government. As set out in the case of ***B. P. Singhal (supra)***, the Court in its limited judicial review is not supposed to go into the sufficiency of the reasons even if the Court may be of a different view. In this view of the matter, we are clearly of the view that the Petitioners have been unable to make out a case to set aside the impugned Notification by which the Petitioners were removed from their respective posts.

9. As far as the reliance placed on section 5 of the said Act is concerned, we find that the same is totally misplaced. Section 5 of the said Act deals with disqualification of a Member and reads as under:-

“5(1) A person shall be disqualified for being appointed as and for being continued as the Chairperson, the Vice-Chairperson or a Member, as the case may be, if he -

- (a) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude; or*
- (b) is of unsound mind and stands so declared by a competent court; or*
- (c) is an undischarged insolvent; or*
- (d) has been removed or dismissed from service of the Central Government or a State Government or a Body or Corporation owned or controlled by the Central Government or a State Government; or*
- (e) refuses to act or becomes incapable of acting; or*
- (f) is without obtaining leave of absence from the Commission, absents from three consecutive meetings of the Commission; or*
- (g) has, in the opinion of the government, so abused the position of the Chairperson, Vice-Chairperson or Member as to render that person's continuance in office as detrimental to the interests of the minorities or the public interest;*

Provided that, no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

(2) Any person who is disqualified under sub-section (1) shall be removed by the Government.”

10. Section 5 provides that in case a Chairperson, Vice-Chairperson or a Member suffers from any of the impediments set out in clauses (a) to (g) of sub-section (1), that person shall be disqualified. The proviso to section 5(1) provides that no person shall be removed under this clause until that person is given a reasonable opportunity of being heard in the matter. In the present case, it is not the case of the Government that the Petitioners have been removed on account of incurring a disqualification under section 5. In such a scenario, the proviso to the said section, which provides for a reasonable opportunity of being heard before removal, cannot and does not arise. As stated earlier, the nominations of the Petitioners have been revoked by invoking the provisions of section 4(1) which categorically states that the Chairperson, Vice-Chairperson and Member of the Commission shall hold office for a term of five years, subject to the pleasure of the Government. This being the case, the reliance placed on section 5 is wholly misplaced and has no merit.

11. Having said this, we shall now deal with the Judgment of

a Division Bench of this Court relied upon by the Petitioners in the case of *Jeevanrao Vishwanathrao Gore and Ors. Vs. State of Maharashtra & Ors.*² On perusing this judgment, we find that the facts in *Jeevanrao's case* were materially different from the ones before us. In the facts of *Jeevanrao's case*, the Petitioners were appointed as Chairman and non-official Directors on the Board of Directors of the Maharashtra State Transport Corporation Ltd. Thereafter, on 23rd December 2014, the Government passed an order under Rule 4A of the Rules under the said Act and terminated the appointment of the Petitioners. This termination came to be challenged in this Court. In defence of the action against the Petitioners, it was argued by the Government that section 8(2) of the Road Transport Corporation Act 1950, gave it plenary powers and was based on the doctrine of pleasure. The State Government was therefore entitled to terminate the appointments of the Chairman as well as the non-official Directors by exercising power under section 8(2) of the Road Transport Corporation Act 1950. After referring to the judgment of the Supreme Court in *B.P. Singhal's case (supra)*,

² Writ Petition No.326 of 2015 decided on 08.05.2015

the Division Bench set aside the order of termination of the non-official Directors and declared that they continue on the Board of Directors of the Maharashtra State Transport Corporation Ltd. as per their order of appointment. As a matter of fact, the the Division Bench found that there was no attempt made to set out what was the valid reason for invoking the doctrine of pleasure and for withdrawal of the same. In fact, in the said judgment, the Division Bench referred to the affidavit filed by the Government and then opined that no attempt was made to set out as to what were the valid reasons for withdrawal of the pleasure and also held that the Government had not even made out a case that the pleasure had been withdrawn for valid reasons and public good. It is in these circumstances, and following the judgment of the Supreme Court in *B.P. Singhal's case*, the Division Bench set aside the termination of the non-official Directors. We therefore find that the facts in *Jeevanrao's case* were materially different from the ones before us. In our case, the Government has filed an affidavit and has in fact stated that the nomination of the Petitioners alongwith other members of the Maharashtra State Minorities Commission, had been revoked to ensure reorganization

and to facilitate the same effectively. As stated earlier, it is not as if the Petitioners have been singled out and it is not even the case of the Petitioners that the said power had been exercised by the Government for any malafide reasons. We therefore find that the reliance placed on *Jeevanrao's* judgment is wholly misplaced and is of no assistance to the Petitioners.

12. For all the aforesaid reasons, we are not inclined to exercise our extraordinary equitable jurisdiction under Article 226 of the Constitution of India. Writ Petitions are accordingly dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B.P. COLABAWALLA, J.)

(V.M. KANADE J.)