

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.33138 of 2014

ORDER:

In the present writ petition challenge is to the order of the 1st respondent – State Government vide G.O.Rt.No.251, dated 31-10-2014.

Heard Sri V.R. Avula, learned counsel for the petitioners and learned Additional Advocate General for respondents, apart from perusing the material available before this Court.

The 1st respondent – State Government, in exercise of the powers conferred under Section 10(3) of A.P. Public Libraries Act, 1960 (for short, 'the Act'), appointed the petitioners 1 to 3 as Chairmen of Zilla Grandalaya Samsthas of West Godavari, Prakasham and Anantapur Districts respectively by virtue of the orders vide G.O.Rt.No.1152 Education (PE-LIB) Department, dated 15-10-2013, G.O.Rt.No.1332 Education (PE-LIB) Department, dated 31-10-2013 and G.O.Rt.No.1499 Education (PE-LIB) Department, dated 19-12-2013.

The State Government/1st respondent herein vide orders issued in G.O.Rt.No.251, dated 31-10-2014 ordered termination of the appointment of the petitioners herein along with other similarly situated individuals. Calling in question the validity and the legal sustainability of the said orders passed by the State Government, the present writ petition came to be instituted.

This Court on 23-06-2015 ordered *status quo*. Seeking vacation of the said orders, W.V.M.P.No.2217 of 2015 supported counter-affidavit has been filed, denying the averments and

allegations made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

Submission/contentions of the learned counsel for the petitioners:

1. The questioned orders passed by the 1st respondent are highly illegal, arbitrary, un-reasonable and in gross violation of Article 14 of the Constitution of India.
2. The impugned action which culminated in termination of the petitioners is in contravention of the doctrine of audi alteram partem.
3. The impugned orders are opposed to the very spirit and object of the provisions of Section 18-A of the Act as no opportunity of explanation was afforded to the petitioners before resorting to the impugned action.
4. Order of removal operates as a bar to the re-election for three years under Section 18 (4) of the Act and since the same acts as a stigma, 1st respondent ought to have been issued prior notice before initiating the action.
5. The impugned action is contrary to Section 18 (A) of the Act.
6. Since the power of the 1st respondent under Section 18 (A) of the Act is limited to the commissions and omissions done by the Chairman stipulated therein, the 1st respondent is under a mandate to conduct enquiry before contemplating any action under the statute.

To bolster his submissions and contentions learned counsel for the petitioners placed reliance on the judgment in case of **KUMARI SHRILEKA VIDYARTHI ETC., V. STATE OF U.P. AND OTHERS**^[1],

Submissions/contentions of the learned Advocate General:

1. Termination of the petitioners does not fall under the scope of Section 18-A of the Act, as such, no reasons need be assigned and no explanation needs be called for.
2. Since the present posts are subject to pleasure of the Government no reasons are required to be assigned for termination of the petitioners.
3. The embargo as stipulated under Section 18 (4) of the Act is not applicable to the petitioners as the posts held by them are only nominated posts, but not elected posts and the petitioners are removed as part of the policy decision.
4. In view of the powers conferred under Section 11 (1) of the Act the Government has decided to terminate the term of all the nominated members including the petitioners for constitution of the Zilla Grandhalaya Samasthas afresh, as such, there is no violation of either the provisions of the Act or the principles of natural justice.
5. Section 11 (1) of the Act was amended by Act No.16 of 1990 which took away the period of office as stipulated under the said provision of law.

The learned Additional Advocate General takes the support of his submissions and contentions relied on a case reported in ***B. ISSAC PRABHAKAR V. GOVERNMENT OF ANDHRA PRADESH REPRESENTED BY ITS PRINCIPAL SECRETARY, HYDERABAD AND OTHERS***^[2], and ***AVJINDER SINGH SIBIA V. S. PRAKASH SINGH BADAL AND OTHERS***^[3].

In the above backdrop now the issue that emerges for consideration of this Court in the present writ petition is:

Whether the orders of the Government, which are under challenge in the present writ petition are sustainable and tenable?

The information available before this Court manifestly reveals that the 1st respondent appointed the petitioners as Charimen of Zilla Grandhalaya Samsthas without stipulating any period under Section 10 (3) of the Act. By virtue of the questioned orders issued vide G.O.Rt.No.251, dated 31-10-2014, the State Government terminated the petitioners from the posts of Chairmen along with others.

According to the petitioners, the 1st respondent resorted to the said action without any prior notice and without affording any opportunity of being heard to the petitioners.

Learned Addl. Advocate General seeks to sustain the impugned action on the ground that the subject posts are only pleasure posts and there is no mandatory requirement to issue notice to the petitioners before termination and the provisions of Section 18-A of the Act has of no application.

In order to appreciate the said rival contentions and to decide their validity it would be highly essential to refer to the provisions of the Act. The provisions of law, which are germane and relevant for adjudication of the issue in the present writ petition, are Sections 10, 11 and 18-A of the said Act, which reads as under:

Section 10 of the Act reads as under:

10. Composition of Zilla Grandhalaya Samsthas

(1) The ZGS for the twin cities of Hyderabad and Secunderabad shall consist of the following members, namely:

(a) Three members nominate^{3d} by the Government from

among the residents of the twin cities of Hyderabad and Secunderabad who have rendered eminent service in the field of Education or Public Libraries;

- (b) One member nominated by the Government from among the Presidents of the Governing bodies of the aided libraries in the twin cities of Hyderabad and Secunderabad;
 - (c) Two members nominated by the Government from among the Councilors of the Municipal Corporation of Hyderabad;
 - (d) The District Educational Officer, Hyderabad, Ex-Officio;
 - (e) The Deputy Director, Office of the Directorate of Adult Education, Hyderabad, Ex-Officio;
 - (f) The District Public Relations Officer, Hyderabad, Ex-officio;
 - (g) The Librarian, City Central Library, Hyderabad, Ex-Office who shall be the Member Secretary.
- (2) The ZGS for each District shall consist of the following members, namely;
- (a) Three members nominated by the Government from among the residents of the District, who have rendered eminent service in the field of education or Public Libraries;
 - (b) One member nominated by the Government from among the Presidents of the governing bodies of the aided libraries in the District;
 - (c) One member nominated by the Government from among the Councilors of either Municipal Corporations or Municipalities of the District;
 - (d) Two members nominated by the Government from among the Presidents of Mandal Panchayats in the District Concerned;
 - (e) The District Educational Officer, Hyderabad, Ex-Officio;
 - (f) The Deputy Director, Office of the Directorate of Adult Education, Hyderabad, Ex-Office
 - (g) The District Public Relations Officer, Hyderabad, Ex-

officio;

(h) The Librarian, District Central Library, Ex-Officio who shall be the Member Secretary,

(i) The District Panchayat Officer of the district concerned, ex-Officio

3) The Government shall nominate one of the non-official members as the Chairman of the ZGS.

Section 11 of the Act reads as under:

11A. Disqualification For Being A Member of The Zillah Grndhalaya Samstha

(1) A person shall be disqualified for being a member of the ZGS, if he—

(a) Is or has been sentenced by a Criminal Court to imprisonment for a period of more than six months for any offence involving moral delinquency, such sentence not having been reserved or the offence pardoned and period of five years has not elapsed from the date of the expiration of such sentence. Provided that the Government may direct that such sentence shall not operate as a disqualification;

(b) Is of unsound mind and stands so declared by a competent Court;

(c) Is a deaf-mute is suffering from leprosy;

(d) Applies to be adjudicated as an insolvent or is an undercharged insolvent;

(e) Absents himself from three consecutive meeting without excuse sufficient in the opinion of the ZGS to exonerate the absence.

(2) Where a person ceases to be a member under clause (e) of Sub-section (1), The Secretary, shall at once intimate the fact in writing, to such person and report the same to the ZGS at its next meeting. Where such person applies for restoration of membership to the ZGS on or before the date of its next meeting or within fifteen days of the receipt by him of such intimation, the ZGS, may at the meeting next after the receipt of the application or sue-moto, restore him as member thereof; Provided that a member shall not be so restored more than twice during the period he holds office.

Section 18-A of the Act reads as under:

18.A. Power of Government to Remove Chairman of The

Zilla Grandhalaya Samstha

(1) The Government may, by notification, remove any Chairman of the ZGS, who in their opinion willfully omits or refuses carry out or disobeys the provisions of this Act, or the rules, bye-laws or lawful orders made thereunder, or abuses his position or powers vested in him.

(2) The Government shall when they propose to remove a Chairman under Sub-Section (1), give the Chairman concerned an opportunity for explanation and the notification issued under the said sub-section shall contain a statement of the reasons of the Government for the action taken

(3) The Government shall have power to review any order of removal published under sub-section (1) and pending such review to stay such order.

(4) Any person removed under Sub-section (1) from the office of the Chairman shall not be eligible for re-election to the said office for a period of three years from the date of his removal.

From the reading of the above provisions of law it is now abundantly clear that the State Government is empowered under Section 10 (3) of the Act to nominate one of the non-official members as Chairman and According to Section 11(3) of the Act the Chairman, shall however, cease to hold office, before the expiration of such term on his ceasing to be a member of the Zilla Grandhalaya Samstha and Section 11-A of the Act stipulates that *A person shall be disqualified for being a member of the Zilla Grandhalaya Samstha.* Section 18-A(1) empowers the Government to remove the Chairman when the lapses indicated therein exist. Section 18-A(2) mandates giving opportunity to the Chairman concerned to submit explanation and the same also mandates recording of reasons for the action taken. Sub-Section 4 of Section 18-A the Act debars and disqualifies the removed chairman from re-election for 3 years from the date of removal.

In order to appreciate the rival contentions it would also be appropriate to refer to the judgments cited supra.

Learned counsel for the petitioners placed reliance on the judgment in case of **KUMARI SHRILEKA VIDYARTHI ETC., V. STATE OF U.P. AND OTHERS (1 supra)**, wherein it he held in paragraph Nos.13, 14, 17, 27, 28, 29, 34, 42 and 43 as follows:

"13. The learned Additional Advocate General contended that clause 3 of para 7.06 says that the appointment of a District Government Counsel is only professional engagement terminable at will on either side and not appointment to a post under the Government; and the Government has the power to terminate the appointment at any- time `without assigning any cause'. He contended that this power to terminate the appointment at any time without assigning any cause and the clear statement that the appointment is only professional engagement terminable at will on either side is sufficient to indicate that the relationship is the same as that of a private client and his counsel. In our opinion, this provision has to be read not in isolation, but in the context in which it appears and along with the connected provisions, already referred. The expression `professional engagement' is used therein to distinguish it from `appointment to a post under the Government' in the strict sense. This, however, does not necessarily mean that a person who is not a Government servant holding a post under the Government does not hold any public office and the engagement is purely private with no public element attaching to it. This part of clause 3 of para 7.06 means only this and no more. The other part of clause 3 which enables the Government to terminate the appointment `at any time without assigning any cause' can also not be considered in the manner, suggested by the learned Additional Advocate General. The expression `at any time' merely means that the termination may be made even during the subsistence of the term of appointment and `without assigning any cause' means without communicating any cause to the appointee whose appointment is terminated. However, `without assigning any cause' is not to be equated with `without existence of any cause'. It merely means that the reason for which the termination is made need not to be assigned or communicated to the appointee. It was held in *Liberty Oil Mills and Others v. Union of India and Others*, [1984] 3 SCC 465 that the expression `without assigning any reason' implies that the decision has to be communicated, but reasons for the decision have not to be stated; but the reasons must exist, otherwise, the decision would be arbitrary. The non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointment without the existence of any

cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy. Clause 3 of para 7.06 must, therefore, be understood to mean that the appointment of a District Government Counsel is not to be equated with appointment to a post under the Government in the strict sense, which does not necessarily mean that it results in denuding the office of its public character; and that the appointment may be terminated even during currency of the term by only communicating the decision of termination without communicating the reasons which led to the termination. It does not mean that the appointment is at the sweet will of the Government which can be terminated at any time, even without the existence of any cogent reason during the subsistence of the term. The construction, suggested on behalf of the State of U.P. of this provision, if accepted, would amount to conceding arbitrary power of termination to the Government, which by itself is sufficient to reject the contention and thereby save it from any attack to its validity.

14. We may now refer to some provisions of the Code of Criminal Procedure, 1973, relating to Public Prosecutors. Section 24 provides for appointment of Public Prosecutors in the High Courts and the districts by the Central Government or the State Government. We are here concerned only with the appointment of Public Prosecutors by the State Government in the districts. Sub-section 3 of Section 24 says that for every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district. Sub-section 4 requires the District Magistrate to prepare a panel of names of persons considered fit for such appointments, in consultation with the Session Judge. Sub-section 5 contains an embargo against appointment of any person as the Public Prosecutor or Additional Public Prosecutor for the district by the State Government unless his name appears in the panel prepared under sub-section 4. Sub-section 6 provides for such appointments, where in a State there exists a regular Cadre of Prosecuting Officers but if no suitable person is available in such cadre, then the appointment has to be made from the panel prepared under sub-section 4. Sub-section 7 says that a person shall be eligible for such appointment only after he has been in practice as an advocate for not less than seven years. Section 25 deals with the appointment of Assistant Public Prosecutors in the district for conducting prosecution in the Courts of Magistrate. In the case of Public Prosecutors also known as District Government Counsel (Criminal), there can be no doubt about the statutory element attaching to such appointments by virtue of these provisions in the Code of Criminal Procedure, 1973. In this context, Section 321 of the

Code of Criminal Procedure, 1973. is also significant. Section 321 permits withdrawal from prosecution by the Public Prosecutor or Assistant Public Prosecutor in charge of a case, with the consent of the Court, at any time before the judgment is pronounced. This power of the Public Prosecutor in charge of the case is derived from statute and the guiding consideration for it, must be the interest of administration of justice. There can be no doubt that this function of the Public Prosecutor relates to a public purpose entrusting him with the responsibility of so acting only in the interest of administration of justice. In the case of Public Prosecutors, this additional public element flowing from statutory provisions in the Code of Criminal Procedure, undoubtedly, invest the Public Prosecutors with the attribute of holder of a public office which cannot be whittled down by the assertion that their engagement is purely professional between a client and his lawyer with no public element attaching to it.

17. We are, therefore, unable to accept the argument of the learned Additional Advocate General that the appointment of District Government Counsel by the State Government is only a professional engagement like that between a private client and his lawyer, or that it is purely contractual with no public element attaching to it. which may be terminated at an), time at the sweet will of the Government excluding judicial review. We have already indicated the presence of public element attached to the 'office' or 'post' of District Government Counsel of every category covered by the impugned circular. This is sufficient to attract Article 14 of the Constitution and bring the question of validity of the impugned circular within the scope of judicial review.

... ..

27. Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of State activity in a Welfare State requiring the State to discharge its wide-ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the

touchstone of Article 14.

28. *Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.*

29. *It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. See Ramana Dayaram Shetty v. The International Airport Authority of India and Ors., [1979] 3 SCR 1014 and Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir & Anr., [1980] 3 SCR 1338. In Col. A.S. Sangwan v. Union of India and Ors., [1980] Supp. SCC 559, while the discretion to change the policy in exercise of the executive power, when not trammelled by the statute or rule, was held to be wide, it was emphasised as imperative and implicit in Article 14 of the Constitution that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touch-stone, irrespective of the field of activity of the State, has long been settled. Later decisions of this Court have reinforced the foundation of this tenet and it would be sufficient to refer only to two recent decisions of this Court for this purpose.*

... ..

34. *In our opinion, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government Counsel in the districts and the other rights, contractual or statutory, which the appointees may have. It is for this reason that we base our decision on the ground that independent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment, the impugned circular, issued in exercise of the executive power of the State, must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. However, we have referred to certain provisions relating to initial appointment, termination*

or renewal of tenure to indicate that the action is controlled at least by settled guide- lines, followed by the State of U.P., for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present case.

... ..

42. It is difficult to appreciate this as a reasonable basis for the drastic and sweeping action throughout the State, particularly when the provisions in the Legal Remembrancer's Manual referred earlier provide ordinarily for renewal of the tenure Of the appointees. To say the least. the contents of para 29 of this counter-affidavit Which alone are relied on to disclose the reasons for the circular are beautifully vague and convey nothing of substance and cannot furnish any tangible support to the impugned circular. It was stated by the learned Additional Advocate General that many of the old incumbents were to be re-appointed even after this exercise and, therefore, a wholesale change was not to be made. If at all this submission discloses a further infirmity in the impugned circular. If it be true that many of the existing appointees were to be continued by giving them fresh appointments. The action of first terminating their appointment and then giving them fresh appointment is. to say the least, Uninformed by reason and does not even fall within the scope of the disclosed reason `to streamline the conduct of government cases and effective prosecution thereof'. It is obvious that at least in respect of all such appointees who are to be continued by giving them fresh appointments, the act of terminating their appointment in one stroke, was without application of mind by anyone to the question whether a change was at all needed in their case. It would be too much to assume that every Government Counsel in all the districts of the State of U.P. was required to be replaced in order to streamline the conduct of government cases and indeed that is not even the case of the State which itself says that many of them were to be re-appointed.

43. Non-application of mind to individual cases before issuing a general circular terminating all such appointments throughout the State of U.P. is itself eloquent of the arbitrariness writ large on the face of the circular. It is obvious that issuance of the impugned circular was not governed by any rule but by the whim or fancy of someone totally unaware of the requirements of rule of law, neatly spelled out in the case of John Wilkes, [1770] 4 Burr. 2528 more than two centuries back and quoted with approval by this Court almost a quarter century earlier in Jaisinghani's case (supra). We have considered it necessary to re-emphasize this aspect and reiterate what has been said so often by this Court only because we find that some per- sons entrusted with the task of governance appear to be unaware of the fact that the exercise of discretion they

have must be governed by rule, not by humour, whim, caprice or fancy or personal predilections. It also disturbs us to find that the Legal Remembrancer's Department of the State of U .P. which has the duty to correctly advise the State Government in such matters overlooked the obvious and failed to discharge its bounden duty of correctly advising the State Government in matters of law. We would like to believe that the impugned circular was issued for want of proper legal advice in this behalf instead of any ulterior motive suggested by the petitioners/appellants.

Coming to the judgments cited by the learned Additional Advocate General, in the case of ***B. ISSAC PRABHAKAR V. GOVERNMENT OF ANDHRA PRADESH REPRESENTED BY ITS PRINCIPAL SECRETARY, HYDERABAD AND OTHERS (2 supra)***, this Court at paragraph Nos.15 to 19 held as follows:

“15. No arbitrariness is involved in the action. The constitutional mandate incorporated in Article 14 that all administrative or statutory actions should be free from arbitrariness, has no application, in our considered opinion, in respect of appointments made or terminations effected on political consideration, which is part of the spoils system. When persons are appointed as chairmen of different public corporations, political considerations undoubtedly weigh to a very large extent. When such incumbents cannot be compared with holders of civil posts, in the matter of qualifications, method of appointment and conduct in office, can it be said that their mode of termination alone should be analogous to civil servants? We do not think so. Politicians owing allegiance to the party in power very often are appointed to fill offices of the present type. They retain the liberty to canvass for the party in office and also openly criticize the opposition parties. Normally, only persons, who in the opinion of the Chief Minister lend support to the party in power, are appointed to such offices. They last as long as they retain the confidence of the Chief Minister. When the confidence is shaken, they cannot expect to remain in office. Equality of opportunity in matters of public employment enshrined in Article 16 of Constitution has absolutely no relevance to this type of appointments. The petitioners owed their appointments because of their allegiance to the former Chief Minister, which is self-evident from the averments in the affidavits filed by them in support of the present writ petitions. It was not even their contention that on the basis of their merit

evidenced by any special qualifications, they were chosen to fill these posts. Obviously, such a contention was unavailable to them. In such a situation would it be open for them to question the order of termination on the ground that they became victims of arbitrary action? The observations of the Supreme Court, although made in a different context concerning the removal of standing counsel for the High Court at Allahabad, are opposite. In *State of U.P. v. State Law Officers Association*, the Supreme Court observed:

"The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be no considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door."

16. As the posts in question are not akin to civil posts in any way under Articles 309 and 310 of the Constitution, the protection guaranteed to the holders of civil posts under Article 311, is not available to the petitioners. The doctrine of pleasure incorporated in Article 310 in respect of members of civil service or holders of civil posts is regulated by the protections guaranteed under clauses (1) and (2) of Article 311. We cannot, therefore, in judging the legality of the impugned orders, go by the analogy of the pleasure doctrine incorporated in part XIV of the Constitution of India.

17. As members of the Board of Directors of the Andhra Pradesh State Road Transport Corporation, the petitioners have a large role to play in the decisions taken by the Corporation, in which the management superintendence and control of the entire corporation is vested. The powers of the corporation under Section 19, *inter alia*, encompass acquisition and holding of property, preparation of schemes, purchase of vehicles, entering into contracts besides operating road transport service in the State. To a large extent the prestige of the Government depends upon the successful management of the corporation by the Board of Directors. On their own showing the petitioners have challenged the legitimacy of the present Government in power. Nothing more is needed to infer the disinclination of the petitioners to strive for successful functioning of the corporation. The clash of interests between the party in power and the petitioners is thus self-evident. When the office does not impose any constraints on them to indulge in political activity, it does not require any in-depth inquiry or analysis to conclude in what

light the Government would be shown by the petitioners. No Government can afford to allow any person to remain in office and criticize its policies and challenge its legitimacy.

18. The orders of termination cannot be characterized an undemocratic on the ground that criticism is stifled. No one can stop the petitioners from criticizing the Government, but occupying the present office they cannot do so. When services of certain persons occupying civil posts were terminated on the ground that they were indulging in subversive activities, the contention advanced by them that they have the fundamental right to form associations under Article 19(1) (c) of the Constitution, was rejected by the Supreme Court in P. Balakotaiah v. Union of India, :

"The orders do not prevent them from continuing to be Communists or trade unionists. Their rights in that behalf remain after the impugned orders precisely what they were before. The real complaint of the appellants is that their services have been terminated; but that involves, apart from Article 311, no infringement of any of their constitutional rights. The appellants have no doubt a fundamental right to form associations under Article 19(1)(c), but they have no fundamental right to be continued in employment by the State, and when their services are terminated by the State they cannot complain of the infringement of any of their Constitutional rights, when no question of violation of Article 311 arises. The contention of the appellants must also be rejected."

The same analogy in a slightly different form applies to the petitioners. Their political activity and their right to criticized the Government is in no way affected by the impugned orders.

19. The next argument advanced for the petitioners concerns the application of the doctrine of legitimate expectations. The contention put forth before us in that when the petitioners were appointed for a period of two years in accordance with Section 5(2) read with Rule 4, it was in their legitimate expectation to continue for the full term and their removal could be valid only if it fell within the ambit of sub-section (1) of Section 8 which speaks of disqualifications, but if power is sought to be exercised under Section 8(2), it could only be as a measure of punishment. The contention, in our view, is untenable. We have already held that an order passed under Section 8(2) does not carry any stigma, since it is not the result of any inquiry into the conduct of the incumbent. The power of the State Government under Section 8(2) to terminate the appointment of any director, cannot be read as subject to the provision contained in Rule 4 specifying the tenure as two years. The Rule cannot override the Act or curtail the ambit of

power conferred by the Statute. The specification of tenure as two years under the Rules cannot, therefore, confer on the petitioners any right to continue in office once the Government has invoked the power under Section 8(2) by terminating their appointments. In *Union of India v. Hindustan Development Corporation*, the Supreme Court quoted with approval, the views of the High Court of Australia in *Attorney General for New South Wales' case* (1990 (64) Aus. LJR 327):

"To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the Courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law."

Sounding a note of caution, the Supreme Court observed:

"If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the Court must lift the veil and see whether the decision is violative of these principles warranting interference."

We have already held that no element of arbitrariness was involved when the impugned orders were issued by the State Government and, therefore, the petitioners have no fundamental right to remain in office. That being the case, there is no warrant to apply the doctrine of legitimate expectation. One of the recognised tests for application of this doctrine is whether the circumstances call for a fair procedure (6-A), See: *Legitimate Expectations: A conceptual Analysis - Law Quarterly Review - 01.108 (January 1992) P.79*. Principles of natural justice are only means to an end and not an end in themselves. Where the statute does not provide for application of principles of natural justice, the Court will infer their application to avoid unfairness and injustice. What fairness requires "depends on the nature of the investigation and the consequences it may have on persons affected by it." (see (1975) 1 WLR 1686). No unfairness, we are sure, ensues in the absence of notice to the petitioners in the present case. Judged by the nature of the office the petitioners are occupying, the manner in which the office was filled in and the statutorily ordained mode of termination coupled with their attitude to the legitimacy of the Government headed by the third respondent, termination without notice to

show cause and enquiry can hardly be termed unfair.”

In **AVJINDER SINGH SIBIA V. S. PRAKASH SINGH BADAL AND OTHERS (3 supra)**, the Punjab and Haryana High Court at paragraph Nos.14 to 16 held as under:

14. It appears that the petitioner was only a nominated member of the Market Committee, Raikot (Ludhiana), whereas in the Constitution Bench judgment of Hon'ble the Apex Court in the case of Ram Dial and others AIR 1965 SC 1518 (supra) the appellants, who had been removed by a notification, were elected members of the municipality, and they had been removed on the ground of a resolution passed by outgoing members of the committee belonging to a different political party, who had lost their seats to the appellants in elections. Moreover, the provisions of Section 14(e) of the Punjab Municipalities Act No. 3 of 1911 had given unfettered discretion to the Government to remove elected representatives/ members of municipal committees without any notice to them, and/or without a right of hearing which, on the contrary, was envisaged under Section 16, a parallel provision, of the same Act which also provided for removal of a member of municipal committee in public interest. As regards the Amendment Act No. 5 of 2007 impugned herein which has superseded all the market committees with nominated members in the State, it does not seem to carry an element of mala fide, inasmuch as, it has been passed to supersede all such committees in the State and not any individual market committee. Further, provisions of Section 35 of the Act, which have been heavily relied upon by learned senior counsel for the petitioner, are to apply in individual cases, on the ground of incompetency. An order passed in exercise of powers under Section 35 would essentially be stigmatic in nature and, therefore, before passing any such order, it may require granting an opportunity of hearing to the aggrieved person. The Act in question has been passed by the legislature by exercising powers within its legislative competence and in no manner, it casts any stigma like the one in-built in the grounds under Section 35 of the Act. Moreover, we are also not inclined to accept the submission of learned senior counsel that the doctrine of pleasure would not apply if the statute provides for specific term of the office. This submission was also urged before Hon'ble the Apex Court which could not find favour vide the judgment (Om Narain Aggarwal and Ors v. Nagar Palika, Shahjahanpur and Ors.). The arguments raised on behalf of the appellants are

contained in para 9 of the judgment as under (Para 8 of AIR):

9. Learned Counsel for the private respondents submitted that once the power of nominating the women members is exercised by the State Government, such nominated members cannot be removed prior to the completion of the term of the Board unless they are removed on the grounds contained under Section 40 of the Act. It was also contended that the State Government cannot be allowed to remove a nominated member at its pleasure without assigning any reason and without affording any opportunity to show cause. Once a women member is nominated she gets a vested right to hold the office of a member of the Board and the State Government cannot be given an unanalyzed, uncontrolled and arbitrary power to remove such member. It is contended that such arbitrary and naked power without any guidelines would be contrary to the well-established principle of democracy and public policy. It would hamper the local bodies to act independently without any hindrance from the side of the Government.

15. The Hon'ble Court in para 13 of the judgment held that the nominated members of the Board fall in a different class and cannot claim equality with the elected members. The Hon'ble Court has also held that even the highest functionaries in the Government, like the Governors, the Ministers, the Attorney General and the Advocate General, discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to become demoralized or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remained in the office. This observation of the Hon'ble Court was given in answer to an additional argument raised in the case that in such cases, there would be a constant fear of removal at will of the State Government and is bound to demoralise the nominated members in discharge of their duties as members of the Board. The Hon'ble Court has also held that the right to seek an election or to be elected or nominated to a statutory body depends and arises under the statute. If such appointments have been made initially by nomination on political consideration, there can be no violation of any provision of the Constitution, in case the Legislature authorises the State Government to terminate such appointments at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of the persons to be affected by the act of such body. It also appears from the ratio of the judgment that as the provision challenged therein did not put any stigma on the performance or character of the nominated members, their removal without affording an

opportunity did not offend any provision of the Constitution. Though in an earlier judgment (*State of Bihar v. Abdul Majid*) while dealing with the doctrine of pleasure, the Hon'ble Court has held that to the extent of deviation from the doctrine of pleasure, a civil suit would be maintainable but in the Judgment of 1993 (*supra*), no such liberty appears to have been granted. Moreover, looking to the nature of appointment as being nominated, it would not be open to assail the amendment on the ground of livelihood and even if a party takes the plea of doctrine of livelihood, this being a question of private interest would have to yield to public interest. In the instant case, the Legislature in its wisdom has passed the impugned amendment superseding all the market committees with nominated members and has left it to the administrative exercise of discretion of the Government under Section 35 of the Act, and rightly so,, because in that case, it would cast stigma on the members of the committee and under such circumstances, even though they are nominated, they would be entitled to a personal hearing. Though there is no specific mention about the doctrine of pleasure in the Act to be applicable in this case, but in the facts and circumstances of the case, as the petitioner was nominated to the Board and it was not a selection or election, the doctrine of pleasure may be read into the Act and would certainly apply, thus, principle of natural justice as regards giving of hearing before removal from office in the absence of any stigma would not be attracted. Irrespective of doctrine of pleasure, as argued by learned senior counsel, the impugned Act No. 5 of 2007 whereby all the nominated market committees in the State have been superseded is also justified on the ground that nomination to an office which if made under a Statute can be taken away by suitable amendments in that statute as a nomination does not create a fundamental right or a common law right in favour of a nominated member to continue in the office.

16. From the written statement submitted on behalf of the State detailing the reasons for introducing the amendment in the Act, it appears that there are valid reasons for the State Government, as discussed hereinabove to bring the amendment. Besides, if the exercise of the legislative powers is bona fide, there is no reason for this Court to interfere with the impugned enactment. As said hereinabove, nomination to a committee is always made out of political expediency, therefore, its further continuance may depend upon the statute whereunder the member is nominated and by introducing suitable amendments in the statute the same can be discontinued. As regards the settled principles of law as enunciated by Hon'ble the Apex Court in the judgments

cited hereinabove, we are not oblivious of the fact that the mandate of these judgments have to be applied in similar set of facts and circumstances of a case and if a statute cannot stand on the anvil of such established principles of law applicable for testing the constitutional validity of its provisions, it need not be said that such a statute would not endure. However, if an Act passed by a State Legislature does not suffer from any incompetence and/or arbitrariness, and the actions taken thereunder do not cast any stigma on the affected person, this Court would be loath in exercising its powers under the writ jurisdiction.”

A close and thorough reading of provisions of Section 18-A of the Act makes it abundantly clear that the invocation of section arises only when the action is contemplated for any lapses on the part of the Chairman but the impugned order in the case on hand is termination simplicitor and not in the circumstances stipulated in the said provision of law. Therefore, as pointed out rightly by the learned Addl. Advocate General, the said provisions have no relevance to the impugned action, as such, the impugned action need not be preceded by any notice and opportunity of being heard. Since the post in the instant case is a Pleasure post as per the language employed under Section 11 of the Act, the impugned action cannot be faulted in view of the law laid down in the above referred judgments.

The judgments cited by the learned counsel for the petitioners would not render any assistance to the petitioners herein, in the facts and circumstances of the case as in the decision cited by the learned counsel for the petitioners the Hon'ble Supreme Court dealt with termination of District Government Counsel in the light of the contractual obligations but in the present case posts are only pleasure posts as evident from the provisions of the Act

In view of the above narration this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the petitioners herein have failed in making out a case, warranting any interference of this Court under Article 226 of the Constitution of India.

For the aforesaid reasons, the writ petition is dismissed. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

August 25, 2015

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THE HON'BLE SRI JUSTICE A.V. SESA SAI

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- [\[1\]](#) AIR 1991 Supreme Court 537 (1)
[\[2\]](#) 1995 (3) ALT 695 (D.B.)
[\[3\]](#) AIR 2008 Pubjab and Haryana 67