

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 375 of 2019**

{Arising out of Order dated 02/05/2019 passed in Writ Petition(C) No. 408 of 2019 by the learned Single Judge}

- State of Chhattisgarh through The Secretary, Department of General Administration, Mahanadi Bhawan, Mantralaya, Atal Nagar District Raipur Chhattisgarh. **(Respondent No. 1)**
- The Secretary Department of Woman and Child Development, Mantralaya, Mahanadi Bhawan, Raipur, District Raipur, Chhattisgarh. **(Respondent No. 3)**

----Appellants

VERSUS

1. Smt. Padma Chandrakar W/o Shri Vinod Chandrakar aged About 39 Years R/o Behind Budhwari Bazar Birgaon, Police Station Urla, Tahsil and District Raipur Chhattisgarh. **(Petitioner No. 1)**
 2. Mamta Sahu D/o Kriparam Sahu Aged About 47 Years R/o E - 5 Shatabdi Nagar, Street No. 7, Telibandha, Police Station Telibandha, District Raipur Chhattisgarh. **(Petitioner No. 2)**
 3. Smt. Khileshwari Kiran W/o Jalwa Singh Kiran aged About 56 Years R/o Village Bhanpuri, Police Station Arjuni, District Dhamtari Chhattisgarh. **(Petitioner No. 3)**
- (All the above petitioners are appointed Members of Chhattisgarh State Women Commission, Raipur, Chhattisgarh. Rajya Mahila Ayog.)*
4. The Secretary Chhattisgarh Rajya Mahila Ayog, Gayatri Bhawan, 13 Jal Vihar Colony Raipur, District Raipur Chhattisgarh. **(Respondent No. 2)**

-----Respondents

For Appellants : Mr. Siddharth Dubey, Dy. G.A.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per P.R. Ramachandra Menon, Chief Justice.

15/10/2019

1. Cancellation of nomination of the writ petitioners/respondents No. 1, 2 & 3 as per Annexure P/1 and P/2 proceedings, for the reason that they were only 'nominated' and had not undergone any due process of selection to hold the

office as members of State Women Commission, which came to be interdicted by the learned Single Judge for not complying with the statutory mandate, in particular, under Section 4 of Chhattisgarh Rajya Mahila Ayog Adhiniyam, 1995 (referred to as "Act of 1995"), is put to challenge in this appeal filed at the instance of the State.

2. We have heard Mr. Siddharth Dubey, the learned Deputy Government Advocate representing the State at length.
3. As per the scheme of the Act of 1995, it is for the State Government to constitute a State Commission for Women in the manner as provided under Section 3 of the Act of 1995. Under the said provision, the Commission shall consist of a Chairperson who shall be an eminent woman social worker or a professional committed to the cause of women, to be nominated by the State Government, besides Six members, to be nominated by the State Government from amongst persons of ability, integrity and standing. Amongst the six members, one shall be an official; one shall be an eminent Advocate; two shall be social workers of repute and the remaining two shall be experts in education and health. Proviso to sub-section 2 of Section 3 says that, out of the six members, one shall be from Scheduled Castes, Scheduled Tribes and Other Backward Classes respectively and under sub-section 3, it is stipulated that an Officer not below the rank of a Deputy Secretary to the State Government shall be the member representing the State. It was in compliance with the statutory prescription as above, that the State Government had identified the persons concerned and nomination was effected accordingly. Petitioners No. 1 & 3 were identified as 'social workers' of repute and petitioner No. 2 was nominated in the capacity as an 'eminent lawyer'. The 1st and 2nd petitioners were nominated as per the proceedings dated 29-10-2016; whereas the 3rd petitioner came to be nominated as per the proceedings dated 31-08-2017.

4. By virtue of the mandate under Section 4 of the Act of 1995 (dealing with the term of office and Conditions of Service of Chairperson and members), they shall hold the office for such period, not exceeding 3 years, as may be specified by the State Government in this behalf.
5. It is fairly conceded by the learned counsel representing the State that no 'lesser term' has been separately specified by the State Government, by way of appropriate proceedings as envisaged under sub-section 1 of Section 4. This being the position, the normal tenure for holding the office is for 3 years, which cannot be exceeded under any circumstance. Once nomination is made and the State Women Commission is constituted, it is still possible for the State Government to remove the Chairperson or Member from office, under the circumstances mentioned in **Clauses (a) to (f) of sub-section 3 of Section 4** of the Act of 1995, which are to the following effect.-

“(3) The State Government shall remove a person from the Office of Chairperson or a Member referred to in sub-section (2) is that person-

- (a) becomes an undischarged insolvent;
- (b) is convicted and sentenced to imprisonment for an offence involving moral turpitude;
- (c) becomes of unsound mind and stands so declared by a competent Court;
- (d) refuses to act or becomes incapable of acting;
- (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission;
or
- (f) in the opinion of the State Government, has so abused the position of Chairperson or Member as to render his continuance in office detrimental to the public interest;

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

6. 'Proviso' to sub-section 3 of Section 4 says that, such removal shall only be after giving a reasonable opportunity of hearing to the person sought to be removed. While the writ petitioners have been continuing in office, pursuant to the nomination as aforesaid, Annexure P/1 and P/2 order came to be passed, virtually cancelling the nomination and terminating their assignment in holding office as the Chairperson/Members of the State Commission for Women of Chhattisgarh. Annexure P/2 is an order dated 20-12-2018, cited as a 'common order' passed by the Government in respect of various similar establishments; pointing out that in the case of persons who have not come to be appointed/engaged by way of 'selection' will have to vacate the seats. Based on Annexure P/2 order, P/1 order came to be passed on 26-12-2018 for removing the members of the State Women Commission including the writ petitioners herein, for the reason that they were identified and placed by way of 'nomination' and not pursuant to any process of selection. This made the petitioners to feel aggrieved who approached this Court by filing writ petition, challenging Annexure P/1 & P/2 on various grounds. It was also contended that Annexure P/1 order was not issued 'in the name of the Governor' and hence, it cannot have any valid existence, apart from contending that there was no ground to remove them from the office as envisaged under Section 4(3) of the Act of 1995; that too, without giving an opportunity of hearing as envisaged under the 'proviso' to sub-section 3 of Section 4 of the Act of 1995.
7. The prayers were resisted by the State and the course of action pursued by the Government was sought to be justified by filing a return, contending that the writ petitioner was only 'nominated' to the Commission and had not undergone any process of 'selection', by virtue to which, they were only holding the office under the '**doctrine of pleasure**' of the Government. For the said reason, it was asserted in paragraph-9 of the return, that they were not entitled to get any opportunity of hearing as well and as such, there was

no violation of any provision of law or principles of natural justice. In response to the contentions of the petitioners that Annexure P/2 had not been issued 'in the name of the Governor' and hence it was not a valid order, the appellant/State had produced Annexure R/2 order dated 22-12-2018 issued 'in the name of Governor', to contend that it was with reference to the said proceeding, that the consequential order was issued as per Annexure P/2 dated 20-12-2018; by virtue of which, there was no defect in any manner. After hearing both the sides, the learned Single Judge observed that the 'doctrine of pleasure' was having only limited application, by virtue of the ruling rendered by the Apex Court on many an occasion including in the case of **B.P. Singhal v. Union of India**, (2010) 6 SCC 331 and in **Saji D. Anand v. State of Kerala**, 2016 SCC OnLine Ker 21468. The learned Single Judge has specifically made it clear that, since the removal of the persons concerned is specifically taken care of under the statute, specifying the grounds under Clauses (a) to (f) of sub-section 3 of Section 4; they could be removed only under such circumstances and that the 'doctrine of pleasure' cannot be pressed into service, in the given situation. It was accordingly, that Annexure P/1 order was set aside, insofar as the writ petitioners were concerned and they were declared as entitled to hold the office under Section 4 of the Act of 1995; adding that they shall be entitled to all consequential reliefs from their date of stoppage, thus allowing the writ petition. Correctness and sustainability of the said verdict is put to challenge in this appeal filed by the State, as mentioned already.

8. Learned counsel for the appellant/State submits that, it is more concerned and aggrieved because of the observation made by the learned Single Judge in 'paragraph-5' of the judgment, where it has been held that the writ petitioners are 'entitled to continue for a period of 3 years' from the date of nomination. Learned counsel submits that, sub-section 1 of Section 4 only says that, '3

years' shall be the maximum period for which they could continue and as such, it cannot be said that the petitioners, as a matter of right, are entitled to continue for a minimum period of 3 years. We find it appropriate extract 'paragraph-10' of the judgment to understand and analyse the scope of the observation therein, as given below:

“10. Reading of Section 4 shows that the Chairperson and other members shall hold the office not exceeding 3 years as may be specified by the State government in this behalf. Therefore, the appointment of petitioner No.1 Smt. Padma Chandrakar and petitioner No.2 Mamta Sahu who were nominated on 29/10/2016 was to last up till 29/10/2019. Likewise, the nomination of the petitioner No.3 Khileshwari Kiran having been made on 31/8/2017 was to last up till 31/8/2020. Sub-Section 3 of Section 4 gives the State government power to remove the person from the office of chairperson or member on specific ground which are mentioned from (a) to (f). The proviso to the Section 3 however purports that no person should be removed from the office under this clause until he has been given reasonable opportunity of being heard in the matter.”

9. Obviously, sub-section 1 of Section 4 of the Act of 1995 says that the Chairperson and other members shall hold the office for such period not exceeding 3 years, as may be specified by the State Government in this behalf. The provision is very clear that the maximum period for holding the office is stipulated as '3 years' and further that, it could only be for such period as specified by the State Government in this behalf, within that outer limit. The question is whether any lesser period has been specified by the State; the answer to which can only be in 'negative' in view of the submission made by the learned counsel representing the State, that no lesser period has been specified by the State Government so far. It is in the said context, that an

observation has been made by the learned single Judge in paragraph-10 of the judgment, that since the petitioners No. 1 & 2 were nominated on 29-10-2016, the last date up to which they could hold the office would only till 29-10-2019 and likewise, since the 3rd petitioner was nominated on 31-08-2017, the maximum tenure can only be up to 31-08-2020. On the very next breath, the learned Judge adverted to sub-section 3 of Section 4 of the Act of 1995, giving power to the State Government to remove the persons from the office of Chairperson or Member on the specific grounds which are mentioned from Clauses (a) to (f) of sub-section 3 of Section 4, adding that, such removal shall not be done without giving an opportunity of hearing. The operative portion of judgment as contained in para-14 is given below.

“14. When the Act governs the appointment and removal under specific legislation then in such case the removal has to be according to the Act itself. The doctrine of pleasure can be given an over riding effect to the statute governing the field. The State is bound to follow its own law and if the Act provides certain things to be done in a particular way, the same is to be done accordingly. Consequently the Annexure P-1 with reference to the petitioners can not be allowed to be sustained. As a result, the same is quashed. The petitioners shall be entitled to hold the office under Section 4 of the Ahiniyam of 1995 and further shall be entitled to all the consequential reliefs from their date of stoppage.”

10. From the above, it is clear point blank, that the learned Judge has not given any direction to the effect that the writ petitioners shall be entitled to continue till expiry of 3 years from the date of nomination; but for holding that they are entitled to hold the office under Section 4 of the Act of 1995, which virtually means that they could be removed before expiry of the outer limit of 3 years, if any of the grounds mentioned under sub-section 3 of Section 4 exists and

established, after affording an opportunity of hearing, as stipulated under the 'proviso' to the above provision.

11. In fact, there was no case for the writ petitioners that, that they were entitled to continue for a minimum period of 3 years as a matter of right, and there was no prayer in the writ petition for a direction to permit them to continue for a period of 3 years. The prayers in the writ petition are extracted below, for convenience or reference:

“10.1 It is prayed that this Hon'ble court may kindly be pleased to set aside the impugned order Annexure P/1 dt. 26/12/2018 by issuing suitable writ, order etc. in the circumstances of the case, as per the facts narrated and grounds urged in the instant petition.

10.2 Any other relief which this Hon'ble Court may deem fit and proper may also be passed in favor of the petitioner in the circumstances, together with cost of the petition.

10.3 It is prayed that, Hon'ble Court may kindly be further pleased to set aside the impugned order dated 22.12.2018 (vide Annexure R/2 of the Return) as the said order completely misconstrues and misinterprets the order Annexure P/2 as in the said order Annexure P/2, it was clearly stated that members appointed under any Act after selection process, would be exceptions to the said order, by which appointments en masses set aside/annulled with immediate effect.”

The contention raised on the part of the State before the learned Judge, to sustain the course of action in terminating the engagement of the writ petitioners as Chairperson/Members of the Women Commission, by cancelling the nomination, was with reference to the fact that they were never appointed after any process of 'Selection', but for 'nomination', as taken note of in the opening sentence of 'paragraph 5' of the judgment under challenge. Virtually,

it appears to be based on the contents of Annexure P/2 dated 20-12-2018, which is a common order in respect of various bodies governed by various provisions of different enactments. Insofar as the writ petitioners are concerned, the provisions of 'Act of 1995' are very specific and categorical, which do not envisage any process of 'Selection'. It was for the Government to satisfy themselves as to the credentials of the persons to be identified for being nominated; representing the different segments like 'social worker', 'eminent lawyer' etc. On recording satisfaction as above, nomination was to be effected and insofar as no process of any 'Selection' is envisaged under the statute; the observation to this extent, as contained in Annexure P/2 for cancelling the nomination and the consequential order issued as Annexure P/2 dated 26-12-2018 are not correct or sustainable. When the statute does not envisage any process of 'Selection', it could not have been a ground to send out the persons nominated unceremoniously, merely with reference to 'doctrine of pleasure' of the Government; that too, without affording any opportunity of hearing. The submission made on behalf of the State in this regard is absolutely without any basis, having no footing with reference to the provisions of law.

12. In the said circumstances, we do not find any tenable ground to interdict the verdict passed by the learned Single Judge. Appeal fails and it is dismissed accordingly. No costs.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge