

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2852 OF 2020

Sanjay S/o Kisanrao Kenekar
Age : 49 years, Occ : Social-work,
R/o Harshwardhan Building,
Opp. Shri Shivaji High School,
Khokadpura, Aurangabad,
Tq. & Dist. Aurangabad.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through it's Principal Secretary
Housing Department,
Mantralaya, Mumbai-32
2. The Hon'ble Minister,
Housing Department,
Mantralaya, Mumbai-32.
3. Deputy Secretary for
the State of Maharashtra
4. Deputy Chief Executive Officer,
Aurangabad Housing and Area
Development Board.

..RESPONDENTS

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Mr.A.M. Karad, advocate for petitioner.
Mr.S.B. Yawalkar, Addl. G.P. for respondent nos.1
to 3.
Mr.Ajit B. Kadethankar, advocate for respondent
no.4.

...

CORAM : S.V. GANGAPURWALA
AND

S.G. DIGE, JJ.

RESERVED ON : 16th FEBRUARY, 2022
PRONOUNCED ON : 04th MARCH, 2022

JUDGMENT (PER S.G. DIGE, J) :

. Rule. Rule made returnable forthwith. With consent of the parties taken up for final hearing at admission stage.

2. The petitioner is appointed as a Part Time Chairman of Aurangabad Housing and Development Board, Aurangabad (Hereinafter referred to as "the Board") by respondent no.1- State Government. On 31st January, 2020, a notification was issued under the Maharashtra Housing and Area Development Act, 1976 (Hereinafter referred to as "the said Act") by respondent no.1 - State Government and by the said notification, the appointment of the petitioner as Part Time Chairman is cancelled. The said notification was communicated to the petitioner on 11th February, 2020. Same are assailed in the present Writ Petition.

3. Mr.Atul Karad, learned counsel for the petitioner submits that as per section 7 of the said Act, the term of petitioner as Part Time Chairman is for three years from the date of publication of appointment in the Official Gazette. He further submits that the petitioner was appointed on 9th July, 2019 by then State Government. Thereafter, the assembly elections took place in the month of October, 2019 and new State Government has formed by alliance of three

political parties. Section 12(2) of the said Act gives power to the State Government to remove President, Vice-President or any non-official member from his office even prior to the stipulated period of three years. However, the said powers are not unfettered. The State Government while exercising its powers has to notify the reasons. Section 12(2) prescribes that the President, Vice-President and other members shall hold office during the pleasure of the State Government but the Doctrine of Pleasure cannot be invoked in an arbitrary manner. Mere mentioning the public interest, the petitioner is removed from the post in the public interest, but no reason is given for removal of the petitioner from the post of Part Time Chairman. The Notification dated 31.01.2020 is contrary to the provisions of the said Act. The petitioner's appointment was for three years. In absence of any material before State Government regarding necessity and/or expedient to remove the petitioner in public interest, the impugned Notification dated 31st January, 2020 is issued. The said action of the respondent is illegal, arbitrary and contrary to the provisions of law and not as per the procedure contemplated in the said Act. The appointment of the petitioner is statutory appointment. The petitioner has put lot of efforts to implement the schemes as prescribed in the Statute for the Marathwada Region for

Housing Development. Learned counsel further submits that the respondent has nowhere mentioned in the Notification what is the public interest involved for issuing such notification. Hence prayed to quash and set aside the impugned Notification dated 31st January, 2020 along with the communication dated 11th February, 2020. The learned counsel relied upon the judgments in the cases of *B.P. Singhal V/s Union of India* reported in 2010(6) SCC 331, *Jeevanrao Vishwanathrao Gore V/s State of Maharashtra and others* reported in 2015(5) Mh.L.J. 375, *Dnyaneshwar Digamber Kamble V/s State of Maharashtra and others* reported in 2016(1) Mh.L.J. 602 and *Sampat Paraji Jawalkar and others V/s The State of Maharashtra and others* in Writ Petition No.2949 of 2015 and other connected matters (decided on 04.02.2016).

4. Mr.S.B. Yawalkar, learned A.G.P. submitted that the appointment of the petitioner is purely on the pleasure of the State Government. Section 12(2) of the said Act gives power to the State Government to cancel the appointment of President, Vice-President and any member of the Board. The provisions of the said Act does not preclude the State Government from exercise of it's powers resorting to Doctrine of Pleasure for nominating a more suitable person. The petitioner has not preferred any representation before the State Government for

seeking further details in respect of the termination order. Learned A.G.P. further submits that the present Petition is filed on assumption that the State Government has not applied its mind while cancelling the appointment of the petitioner. He relied upon the judgment in the case of *Krishna Borate Vs. State of Maharashtra* reported in (2001) 2 SCC 441.

5. Mr.Kadethankar, learned counsel for respondent no.4 supported the submissions of the learned A.G.P.

6. We have carefully considered the submissions canvassed by learned counsel for the respective parties.

7. Before we advert to the propositions put forth by learned counsel for respective parties, it would be appropriate to refer to the relevant provisions of said Act. The section 7 of the Act reads as under :-

Section 7 :-

"The President, Vice-President and every member shall, subject to the provisions of this Act, hold office for a period of three years from the date of publication of his appointment in the Official Gazette:

Provided that, the State

Government may, by a notification in the Official Gazette, extend the said period by a further period not exceeding one year as may be specified in the notification,

Provided further that, after the expiry of the period or extended period of his appointment, a person shall, unless disqualified, be eligible for re-appointment as the President, the Vice-President or such member, so however, that he does not hold office for a period of more than seven years in the aggregate."

8. This section empowers the State Government to make appointment of the President, Vice-President and every member by notification in the Official Gazette for the Board. The section 12(1)(b) empowers the State Government to remove President, Vice-President or any non-official member from their office. The section 12 of the said Act reads as under :-

Section 12 :-

(1) The State Government may, by notification in the Official Gazette, remove from office the

President, Vice-President or any non-official member who-

a) is or has become, subject to any of the disqualifications mentioned in section 11, or

b) in the opinion of the State Government, has been guilty of any misconduct whether before or after the appointment or neglect, or has so abused his position as to render his continuance as member detrimental to the interest of the Authority or of the general public, or is otherwise unfit to continue as member, or

c) is absent without permission of the Authority for two consecutive meetings of the authority:

Provided that, no person shall be so removed from office unless he has been given an opportunity to show cause against his removal.

2) Notwithstanding anything contained in Section 7 or other provisions of this Act, the President, the Vice-President and

other members shall hold office during the pleasure of the State Government, and the State Government, if it appears to it to be necessary or expedient so to do in the public interest, may by order remove all or any of them from office at any time.

9. In the present case, the petitioner is nominated as a Part Time Chairman of Aurangabad Housing and Area Development Board as per the notification published in the Official Gazette dated 09.07.2019. As per section 7 of the said Act, the petitioner is entitled to hold the office for a term of three years from the date of publication of notification in the Official Gazette. However, the State Government has removed the petitioner from his post as Part Time Chairman of the said Board vide publication in the Official Gazette dated 31.01.2020 i.e. within a period of three years. Section 12 of the said Act, empowers State Government to remove President, Vice-President and any non-official member from their office by two way's i.e. under section 12(1)(a)(b) and 12(2). Under section 12(1)(a)(b), removal can be done on the ground of any disqualification mentioned in section 11 of the said Act and on ground of

misconduct, abuse of position and continuance of his membership is detrimental to the interest of authority or general public or unfit to continue as member. Petitioner has not been removed under section 12(1) of the said Act.

10. Reading the provisions of section 12(2) of the said Act, there is no manner of doubt that appointed members of the said Board like the petitioner hold the office at the pleasure of the State Government and though the term is of three years, they can be removed at any time during the pleasure of State Government.

11. Black's Dictionary defines "Pleasure Appointment" as the assignment of someone to employment that can be taken away at any time with no requirement for notice or hearing.

12. The petitioner is appointed by the Government and the provisions of section 12(2) of the said Act gives right to the State Government to remove the petitioner at it's pleasure. The provision does not require the State Government to adhere to the principles of natural justice before cancelling his membership nor it mandates issuance of any show-cause notice. Once Doctrine of Pleasure

is applicable then neither the principle of natural justice would step in nor any question of giving opportunity before removal would arise as has been held by the Hon'ble Apex Court in the case of **Krishna Borate (supra)**. In this case, the Hon'ble Apex was dealing with the *pari materia* removal of nominated trustees under the Nagpur Improvement Trust Act, 1936. It is held that where Doctrine of Pleasure is applicable and removal of trustee does not casts any stigma nor lead to any penal consequences then in that case, the petitioner cannot claim opportunity before removal nor principle of natural justice would apply.

13. We have perused Government Notification dated 31st January, 2020. In this notification, it is mentioned that Government of Maharashtra is of opinion that it is expedient and necessary in public interest to cancel the appointment of above part time Chairman/Vice Chairman from the said Board under provisions of Section 12(2) and section 18(8) of the said Act. In said Notification nowhere mentioned what is 'public interest'.

14. We have perused the affidavit in reply filed by respondent no.1. In reply it is mentioned that appointment of petitioner is

purely on the pleasure of the Government. It is also mentioned that provisions of said Act does not preclude the State Government from exercise of it's power resorting to Doctrine of Pleasure for nominating a more suitable person. In said reply no reasons are given for removal of petitioner.

15. The question is even if "at pleasure" doctrine is applied, then whether the State Government has unbridled power of removal without any cause or reason. Whenever the law bestows discretion in any authority, the said discretion cannot be an arbitrary or unregulated discretion, but the same has to be exercised fairly. There cannot be a concept of unfettered and unbridled discretion, where the rule of law exists. The Hon'ble Apex Court in a case of B. P. Singhal (supra) has observed as under.

"22. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that

some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however, necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set up, when an office is held during the pleasure of any Authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that, the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause. The doctrine of pleasure, however, is not a license to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a persons holding office at the pleasure of an Authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the Authority, but can only be for valid reasons.

48. The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in *Ex parte Daly* [2001 (3) All ER 433], in law, context is everything, and intensity of review will depend on the subject-matter of

review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for other. Mala fides may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments. For withdrawal of pleasure in the case of a Minister or an Attorney General, loss of confidence may be a relevant ground. The ideology of the Minister or Attorney General being out of sync with the policies or ideologies of the Government may also be a ground. On the other hand, for withdrawal of pleasure in the case of a Governor, loss of confidence or the Governor's views being out of sync with that the Union Government will not be grounds for withdrawal of the pleasure. The reasons for withdrawal are wider in the case of Ministers and Attorney-General, when compared to Governors. As a result, the judicial review of withdrawal of pleasure, is limited in the case of a Governor whereas virtually nil in the case of a Minister or an Attorney General."

16. In the present case, absolutely no reason is forthcoming, nor the respondents have come with case as to what was the cause for terminating the Part Time Chairmanship of the petitioner. The State Government can only exercise this power on the basis of any relevant and strong material to suggest that continuation

of such member would not be in public interest. There should be reason for removal of member.

17. The powers of removal of the office-bearers of statutory board is to be exercised, firstly to ensure that the circumstances exist for the exercise of powers of removal and to safeguard the institution from continuation of such office-bearers.

18. As observed above, no reason has been set out by the State Government for removal of petitioner, when the admitted position is that the removal of the petitioner is on account of Doctrine of Pleasure. The law laid down by the Hon'ble Apex Court in case of ***B.P. Singhal (supra)*** would clearly apply to the facts of case that withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority but can only be for valid reasons. Mere using the word public interest can not become a ground for removal of petitioner from the Board. There should be valid reasons for removal.

19. In view of the above, we pass the following order :-

ORDER

(i) The Writ Petition is allowed.

(ii) The impugned Notification dated 31.01.2020 and communication dated 11.02.2020 are quashed and set aside.

(iii) We make it clear that the judgment and order will not preclude the State Government from taking appropriate action of removal of the petitioner in accordance with law;

(iv) Rule is made absolute in above terms. No costs.

(S.G.DIGE, J.)

(S.V. GANGAPURWALA, J.)

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