

WRIT PETITION.3695 OF 2025

Miss. Pritam Dinkar Adhav ...Petitioner
VS
Union of India & Ors. ..Respondents

Mr. T. D. Deshmukh i/b. Sagar Kursija, for the Petitioner.
Mr. Umesh Gupta i/b. Ms. Sangeeta Yadav, for Respondent Nos.1, 3 & 4.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 13 March 2025

P.C.:

1. Issue notice to the respondents returnable on **26 March 2025**. In addition to the Court notice, learned advocate for the petitioner is permitted to serve the respondents by private service by all permissible modes and place on record an affidavit of service. Learned Advocate Mr. Gupta waives service for respondent Nos.1, 3 and 4.
2. Mr. Deshmukh, learned Counsel for the petitioner has prayed for urgent ad-interim orders namely to stay the impugned notification dated 6 March 2025 by which the petitioner who has been nominated as a member of the Cantonment Board under the Notification dated 3 January 2025 issued under sub-section (3) of Section 13 of the Cantonments Act, 2006, has been replaced by one Mr. Sachin Suresh Thakre, respondent

No.4.

3. Mr. Deshmukh has contended that the impugned notification dated 6 March 2025 declaring Mr. Sachin Suresh Thakre as a member to replace the petitioner, could not have been issued, as such power is not available to vary the constitution under sub-section (3) of Section 13 of the Cantonments Act, once the notification dated 3 January 2025 was issued nominating the petitioner. It is his contention that such amending notification, would amount to removal of the petitioner from the nominated members of the board and for which an action was required to be taken under Section 34 of the Cantonments Act, which provides for removal of a member.

4. The basis of Mr. Deshmukh's submission is that although Section 12 of the Cantonments Act provides for constitution of the Cantonment Boards and for such purpose the Board having been defined under Section 2(b) of the Act to mean a Cantonment Board constituted under this Act. Section 13 which provides for the power to nominate a member of the Board is concerned, stands independent of Section 12. It is his contention that for such reason, the constitution of the Board could not have been varied, by exercising of powers under Section 13(3) of the Cantonments Act, to issue the impugned notification dated 6 March 2025.

5. Prima facie we are not inclined to accept Mr. Deshmukh's contention that the Central Government would not have any power to

change nomination of the member who was earlier nominated, considering the provisions of Section 13(1)(b) of the Cantonments Act, which reads thus:-

“Section 13. Power to vary constitution of Boards in special circumstances.

(1) Notwithstanding anything contained in section 12, if the Central Government is satisfied,--

(a) that by reason of military operations, it is necessary, or

(b) **that, for the administration of the cantonment, it is desirable, to vary the constitution of the Board in any cantonment under this section, the Central Government may, by notification in the Official Gazette, make a declaration to that effect.”**

6. On a plain reading of the said provision, it is clear that the provision itself begins with the *non obstante* clause providing that for the administration of the Cantonment, if it is desirable, to vary the constitution of the Board in any cantonment under the said section, the Central Government may, by notification in the Official Gazette, make a declaration to that effect. Thus, the provisions of Section 13(1) are applicable to all sub-sections under Section 13 and more particularly sub-section (3) in the present case. Such contention of the petitioner that the Central Government has no power under Section 13(2) to vary the constitution, does not appeal to us. In our prima facie opinion, the form of the notification is not material, but the substance of the same, when there exists a power to issue the same. In such context, we may usefully refer to the decision of the Supreme Court in “**Om Narain Agarwal & Ors. vs.**

Nagar Palika, Shahjahanpur & Ors.”¹. In such case the Court was dealing with the case in regard to the nomination of two women members on the pleasure and subjective satisfaction of the State Government. The Court observed that if such appointments made initially by nomination were based on political considerations, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. It was observed that the nominated members do not have the will or authority of any residents of the Municipal Board behind them, as in the case of an elected member. The Court observed that insofar as the nominated members were concerned, the legislature in its wisdom has provided that they shall hold office during the pleasure of the Government and such provision neither offends any article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. The Court also held that there is no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor puts any stigma on the performance or character of the nominated members. The position is not different in the present proceedings.

7. For such reasons, we are not inclined to grant any ad-interim relief which would amount to granting a final relief, namely staying the

¹ (1993)2 SCC 242

nomination of the newly nominated person who would be taking oath after some days.

8. Let reply affidavit to the petition be filed.

9. We clarify that all the subsequent actions shall be subject to further orders to be passed on this petition.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]