

Krishna S/O Bulaji Borate vs State Of Maharashtra And Ors on 23 January, 2001

Equivalent citations: AIR 2001 SUPREME COURT 695, 2001 (2) SCC 441, 2001 AIR SCW 337, 2001 (2) SRJ 417, 2001 (1) UJ (SC) 490, 2001 (1) SCALE 339, 2001 (1) LRI 153, (2001) 1 ALLMR 855 (SC), (2001) 1 JT 631 (SC), 2001 (1) JT 631, (2001) 1 SUPREME 323, (2001) 1 UC 339, (2001) 1 SCALE 339, (2001) 2 MAHLR 195, (2001) 2 SCT 628, (2001) 2 SCJ 197, (2001) 2 RECCIVR 483, (2001) WLC(SC)CVL 110, (2001) 2 BOM CR 293

Bench: A.P. Misra, D.P. Mohapatra

CASE NO.:

Appeal (civil) 788 of 2001

PETITIONER:

KRISHNA S/O BULAJI BORATE

RESPONDENT:

STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT: 23/01/2001

BENCH:

A.P. MISRA & D.P. MOHAPATRA

JUDGMENT:

JUDGMENT 2001 (1) SCR 504 The Judgment of the Court was delivered by MISRA J. Leave granted.

This appeal raises the following question:

"Whether Section 6 of the Nagpur Improvement Trust Act, 1936 (hereinafter referred to as the 'Act') confers power on the State Government independent of the power of State Government under Section 10; to remove the Trustees appointed under Section 4(1)(e) at the pleasure of the Government even before the Trustee concerned completes a period of five years."

This appeal is directed against the judgment and order of the High Court which dismissed the appellant's writ petition challenging the order dated 9.2.2000 passed by the State Government (respondent no. 1), removing the appellant from the trust (respondent no. 2) created under the aforesaid Act, The Preamble of the Act suggests, the Act was brought on the statute book to provide for the improvement and expansion of the town of Nagpur The second respondent-trust was created

under Section 3 of the said Act. Section 4 provides that the trust shall consist of nine Trustees of which one shall be the Chairman. Out of nine such Trustees four persons are appointed including the Chairman by the State Government under Sub-section (2) of Section and 4 out of the said four persons not less than two shall have to be non-officials residing within the limits of the area to which this Act applies. In the present case we are concerned with Clause(e) of sub-section (1) of Section 4 to which the appellant belongs. Section 6 specifies about the term of the Chairman and the Trustees appointed under Clause(e) of sub-section (1) of Section 4. It provides that term of the office under it of the Chairman and of any Trustee shall be five years and both the Chairman and such Trustee may be removed from the office by the State Government at any time before completion of such term. Section 10 provides for the removal of Trustees, a provision which would fall for consideration along with Section 6 of the Act. For the purpose of appreciating the controversy we are here under reproducing Sections 4 (1)

(e), 4(2), 6 and 10:-

"Section 4(1)(e): Four persons appointed under sub-section (2) of whom not less than two shall be non-officials residing within the limits of the area to which this Act applies.

Section 4(2): The Chairman and the four persons referred to in clause (e) of sub-section (1) shall be appointed by the State Government by notification.

Section 6: The term of office of Chairman or of any Trustee appointed under clause (e) of sub-section (1) of Section 4 shall be five years, provided that the Chairman or any Trustee may be removed from office by the State Government at any time before the completion of such term.

Section 10: The State Government may remove from the Trust any Trustees other than an ex-officio Trustee who-

(a) refuses to act, or becomes incapable of acting as a Trustee, or absents himself without the permission of the trust for more than three consecutive months from the meeting of the Trust or of any Committee of Which he is a member and is unable to explain such absence to the satisfaction of the Trust, or

(b) is an undischarged insolvent or has compounded with his creditors, or

(c) has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently being reversed or remitted or the offender pardoned, or

(d) has acquired or continued to hold without the permission in writing of the State Government directly or indirectly or by a partner, any share or interest in any

contract or employment with, by or on behalf to the Trust or the Municipal Committee, or

(e) has acted as a trustee in a matter other than a matter referred to in clause (iv) or clause (v) of the proviso to this sub-section in which he had either directly or indirectly, a personal interest, as a partner, employer, agent or counsel, or

(f) has added in contravention of Section 20 or

(g) being a legal practitioner, in any suit or other proceedings, acts or appears on behalf of any other person against the Trust, or acts or appears on behalf of any other person in any criminal proceedings instituted by or on behalf of the Trust:

Provided that a person shall not be deemed for the purpose of this sub- section to acquire, or continue to have, any share or interest in a contract or employment by reasons only of his

(i) having a share or interest in any lease, sale or purchase of land or buildings, or in any agreement for the same provided that such share of interest was acquired before he became a Trustee, or

(ii) having a share in a joint stock company which shall contract with, or be employed by or on behalf of, the Trust, or

(iii) having a share or interest in a newspaper in which an advertisement relating to the affairs of the trust is inserted, or

(iv) holding a debenture or otherwise being interested in a loan raised by or on behalf of the trust, or

(v) having a share or interest in the occasional sale of an article in which he regularly trades to the Trust to a value not exceeding, in any one year, such amount as the Trust, with the sanction of the State Government, may fix in this behalf.

(2) the State Government may remove from the Trust a trustee who in its opinion has so flagrantly abused in any manner his position as a Trustee as to render his continuance as a Trustee detrimental to the public interest.

(3) Wherever the State Government proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the Trustee concerned, and, when such action is taken the reasons therefor shall be placed on record.

(4) A Trustee, who remains absent without the permission of the Trust for more than three consecutive months from the area to which this Act extends, shall be deemed to have resigned his office."

On 4.10.1996 the appellant was appointed as Trustee of the second respondent by the first respondent under sub-section (2) of Section 4 of the Act and his term was to expire on 3.10.2001. The submission for the appellant, incorporated in this appeal is, that after election of State Legislature Assembly, new national democratic Government came into power in the State of Maharashtra and started undoing what was done by the previous Government under pressure of various political parties. On 9.2.2000 respondent no. 1 passed an order removing the appellant from the office of Trustee. The order reads hereunder:

"In exercise of powers conferred on the Government by Section 6 of the Nagpur Improvement Trust Act, 1936 (C.P. & Berar Act No. XXXVI of 1936) the Government of Maharashtra from the date of this Notification cancel the appointment of S/Shri Pravin Barde and Krishna Bulaji Borate, Nagpur as the Trustee of the Nagpur Improvement Trust.

By the order and in the name of the Governor of the Maharashtra State."

This order was challenged by the appellant through a writ petition before the High Court. The High Court dismissed the writ petition (impugned order) by holding that Section 6 is an independent power for the removal of a Trustee falling under Section 4(1) (e), notwithstanding what is contained in Section 10. The initial appointment of the appellant is under Section 4(2) which is under the doctrine of pleasure hence in such termination there could be no question of violation of any principle of natural justice. It further held, when power is exercised u/s 6, the provisions of Section 10 are not attracted. Hence before the impugned order there would not arise any question of giving opportunity, in effect there cannot be any violation of the principle of natural justice. Aggrieved by this the appellant has filed the present appeal.

Learned senior counsel Mr. P.G. Palshikar, appearing for the appellant submits, Section 6 specifies the tenure of a Trustee which is for a period of five years and removal referred therein could only be after following the procedure specified under Section 10. In other words, Section 6 empowers the State Government to remove but it could only be done through the procedure as specified under Section 10. He submits both Section 6 and Section 10 use the word 'remove' and being under the same chapter same meaning should be given. The submission is, it is not in dispute that the appellant was removed as a Trustee without giving any opportunity, hence it is violative of the principle of natural justice. Further in the absence of any such explicit words in Section 6, the doctrine of pleasure could not be applied.

On the other hand learned Attorney General Mr. Soli J. Sorabjee submits that s.6 carves out a separate field for its application and is only for such Trustees appointed under Clause (e) of sub-Section (1) of Section 4. Section 10 refers to the removal of Trustees other than ex-officio Trustees. The distinguishing feature is, there is no stigma while removing a Trustee under Section 6

but there is when removed under Section 10. Though Section 6 does not explicitly state that removal is at the pleasure of the Government but is implicit within its frame and texture, This is reinforced by the fact that the appointment under Clause (e) of sub-section (1) of Section 4 is by way of nomination. The submission is, it is significant when Section 6 specifies tenure of such trustee to be of five years it also confers power to curtail it at any time before the completion of such term. This later power of removal of such nominated Trustee, implicitly reveals it to fall under the doctrine of pleasure.

In the present case, the appellant was appointed under sub-section (2) of Section 4 read with Clause (e) of sub-section (1) of Section (4) and was removed by order dated 9.2.2000 under Section 6 of the Act. Having considered the submissions for the parties and after perusing the language of the sections. We have no hesitation to hold, that the field of Section 6 and Section 10 are separate. The removal spoken under Section 6 is removal without any stigma while the removal under Section 10 is removal with penal consequences attaching stigma. If submission for the appellant is accepted, viz. Section 6 empowers and Section 10 lays down condition and procedure to remove then removal of trustee could only be for penal consequences and not otherwise, If that be so, there could be no reason to enact Section 6 as Section 10 covers such cases. It is significant, the removal under Section 6 is confined only to such Trustees who are covered under Clause (e) of sub-section (1) of Section 4 and who are also nominated by the State Government. Rights of trustees falling under the aforesaid Clause (e) are rights created under a statute and hence that very creator can always limits or curtails such right. In such cases, if a Trustee is removed, he cannot project any grievance that no opportunity was given to him. If any right which is creature of statute, is limited or curtailed by that very statute in the absence of any other right under that very statute or the Constitution of India, such Trustee cannot claim any right based on the principle of Natural Justice.

The removal spoken here neither casts any stigma nor lead to any penal consequences. This clearly reveals doctrine of pleasure which is implicit in this section. In any statute expression of the will of the legislature may be explicit or it may be implicit It is open for the courts, while interpreting any provision to spell or read with other provisions of the statute if so intended to read implicitly, in the absence of any explicit words that subserve the intent of the legislature.

In the present statute Section 6 refers to the trustee falling under Clause

(e), sub-section (1) Section 7 refers to Trustees falling under Clauses (b) and (c) and sub-section (2) refers to Trustees falling under Clause (d) and sub-section (3) refers to Trustees falling in Clause (f) of sub-section (1) of Section 4 and Section 10 refers to cases of removal of trustees by way of stigma, and Section 11 refers to the disability of such removed trustees. In view of this we have no hesitation to hold that removal of Trustee under Section 6 is based on the principle of doctrine of pleasure. We may only strike a note here if the legislature would have used some other words for the word 'removed' for expressing curtailment of the tenure of such trustee in Section 6, this possible confusion would not have arisen.

Once doctrine of pleasure is applicable neither the principle of natural justice would step in nor any question of giving opportunity before removal would arise. It is significant when stigma is cast then

SUB-SECTION (3) of Section 10 specially provides for giving an opportunity to such incumbent before passing an order of removal under Section 10, while there is no such corresponding sub-section under Section 6. Thus intent of legislature is very clear which reinforces the inference which we have drawn that doctrine of pleasure is implicit under Section 6. In *Om Narain Agarwal and Ors. v. Nagpur Palika, Shahjahanpur and Ors.*, [1993] 2 SCC 242, this Court was considering the provisions of Section 9 of the U.P. Municipalities Act, 1916 as introduced by U.P. Act 19 Of 1990, which made provision for the nomination of two women members by the State Government, and fourth proviso provides that the nomination of such two members is at the pleasure of the State Government. This Court held:

"The initial nomination of the two women members itself depend on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are 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. The nominated members do not have the will or authority to any residents of the Municipal Board behind them as may be present in the case of an elected member.....But so far as the nominated members are concerned, the legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations."

This decision clearly covers the point-as against the appellant. Learned senior counsel for the appellant tried to distinguish this case by submitting that doctrine of pleasure was incorporated in the section itself. In our opinion this does not make any difference. It may be in this case doctrine of pleasure is explicit but if on another statute it is implicit, which we have held in this case, the same principle would be equally applicable. Accordingly we do not find any merit in this submission.

For the aforesaid reasons we hold the present appeal has no merit and the High Court was right in dismissing the writ petition filed by the appellant. We hold the removal of the appellant as Trustee of the second respondent by order dated 9.2.2000 was valid. The appeal is dismissed Costs on the parties.