

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 9th day of December, 2005

BEFORE**THE HON'BLE MR. JUSTICE N KUMAR****WRIT PETITION No. 21732/2005 (S-RES)****BETWEEN:**

N.Bhoomanand Manay,
Aged about 75 years,
No.69, Surveyor Street,
Basavanagudi,
Bangalore - 560 004.

. . . Petitioner

(By Sri A.N.Jayaram, Sr. Counsel for Sri.Naveen
Chandrashekar, Advocate)

AND:

1. State of Karnataka
By its Principal Secretary
to Government, Department of
Ecology and Environment,
7th Floor, Multistoreyed Building,
Bangalore - 560 001.
2. Mr.Sadashivaiah,
Secretary to Government,
Department of Ecology and Environment,
7th Floor, Multistoreyed Building,
Bangalore - 560 001.

3. Karnataka State Pollution Control Board,
"Parisara Bhavana",
No.49, 5th Floor, Church Street,
Bangalore - 560 001,
Represented by its Secretary.

... Respondents

(By Sri B.T.Parthasarathy, AG, with Sri.R.E.Satyanarayana
Singh, GP)

This Writ Petition is filed under Article 226 of the Constitution of India, praying to declare that the general circular dated 22.7.2005 vide Annexure-F by R1 and acted upon by the R2 is not applicable to the petitioner as being violative of the Act and in view thereof, he continues to be the chairman of R3 board and etc.,

This Writ Petition coming on for orders this day, the Court made the following :

O R D E R

Petitioner holds a post graduate qualification in engineering from Karnataka (UVCE) and from Yale University, USA. He was nominated as Chairman of the Karnataka State Pollution Control Board on 26.2.2004 as per Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Act") in place of Sri.J.Alexander the then Chairman. The said notification made it clear that the terms and conditions of the appointment shall be notified separately. On 12.5.2004 a notification was issued prescribing the period for which he was

appointed. The said notification stated that he shall be the Chairman for a period of three years with effect from 26.2.2004 or until further orders. Again by yet another notification dated 14.7.2004 issued in exercise of the powers conferred under Section 5(9) of the Act read with Rule 13(2) of the Karnataka State Pollution Control Board (Procedure for Transaction of Business) Rules and the Water (Prevention and Control of Pollution) Rules, 1976 the terms and conditions of his appointment were stipulated. In so far as the period of appointment is concerned what is contained in the notification dated 12.5.2004 was reiterated. The petitioner took charge on 27.2.2004. This appointment was made by the Government before the General Elections of 2004.

2. After the Elections new Government took over. They took a decision to seek resignation of all the Directors and Chairmen of various Corporations and Boards who were appointed by the previous Government. In terms of the aforesaid decision some of the Chairmen and Directors of the Board submitted their resignation. Some appear to have

refused to tender the resignations. Therefore, instructions were issued by the Chief Minister on 22.7.2005 as per Annexure-F calling upon the Chief Secretary to take steps to receive the resignations from those Chairmen and Directors who have not yet submitted their resignations and in the event they refused to do so they are to be relieved and the Secretaries of those departments should take charge. On coming to know of this decision, the petitioner wrote a letter to the Chief Minister bringing to his notice that though he was appointed by the previous Government, it was under the provisions of the Act and he wanted to know whether their decision applies to him also. He received no reply. A similar letter addressed to the Secretary to the Government, Department of Ecology and Environment also did not elicit any reply. However, on 22.7.2005 the Secretary to the Department of Ecology and Environment took charge from the petitioner. The petitioner addressed one more letter to the Chief Minister and sought his intervention for his continuation as Chairman of the Board. When he received no reply he has preferred this petition seeking a declaration that the circular dated 22.7.2005 as per

Annexure-F is contrary to the Act and a writ of mandamus directing the respondents not to interfere with his functioning as the Chairman of the Board and for restoration of all facilities and for other consequential reliefs.

3. After service of notice the respondents have entered appearance and have filed a detailed counter. Firstly they contend when once petitioner has voluntarily handed over the charge and he is relieved from duty, he cannot have any grievance against the respondents. Secondly, they contend having handed over charge in pursuance of the circular which is impugned, the petitioner is estopped from challenging the circular. Thirdly it was contended, the previous incumbent Sri.J.Alexander was appointed on 28.12.2002 and he resigned before his term came to an end and the petitioner was appointed in a casual vacancy and, therefore, notwithstanding the term in the appointment order the petitioner cannot claim tenure of three years from the date of notification. He is entitled to the remaining period which comes to an end on 27.12.2005. Fourthly it was contended, when persons are

nominated by the Government, the Government has the power to withdraw, cancel or modify the said appointment. As is clear from the appointment order he was appointed for a period of three years or until further orders. Therefore, the term of the office of the petitioner could be curtailed at any time and he cannot insist for three years term. It was also contended only a person having special knowledge of practical experience was entitled to be appointed as Chairman which qualification the petitioner did not possess and, therefore, his appointment is contrary to law. Therefore, it was contended that the petition is liable to be dismissed.

4. Sri. A.N.Jayaram, the learned senior counsel appearing for the petitioner, took me through the various provisions of the Act and points out that, as is clear from the appointment order the tenure of the petitioner was fixed as three years, as such the appointment is not at the pleasure of the Government. He could be removed only in a manner stipulated in the Act and a casual vacancy arises only on account of removal, resignation, disqualification which is not

the case and, therefore, the termination of the petitioner is contrary to law and it is a clear case of high handedness on the part of the Government in forcing the petitioner to hand over the charge.

5. The learned Advocate General submitted though three years period is prescribed in the order of appointment the very same order shows three years or until further orders. Therefore, even before expiry of three years period it is open to the Government to terminate the services of the petitioner. In the instant case the new Government took a decision to terminate the services of all the Chairmen and Directors of various Boards and Corporations and accordingly the petitioner is relieved. Secondly, it was contended the petitioner was appointed in a casual vacancy which arose on account of the resignation of the previous incumbent and the balance period to which he was appointed expires on 27.12.2005, as such he is not entitled to any relief. Though in the statement of objections other grounds were urged they were not urged at the time of the arguments.

6. After considering the various reports of the committee and the law passed by the various legislatures in respect of protecting the environment, the Parliament found an urgent need for introducing a comprehensive legislation which would establish unitary agencies in the Centre and States to provide for the prevention, abatement and control of pollution of rivers and streams, for maintaining or restoring wholesomeness of such watercourse and for controlling the existing and new discharges of domestic and industrial wastes and with this object in view has passed the Act. Section 4 of the Act deals with Constitution of State Boards. The State Governments have been vested with the power to constitute the Board consisting of a Chairman, five nominated official members, five nominated members of the local authority, three nominated members representing agriculture, fishery or industry or trade, two persons representing the companies or corporations and a full time member secretary possessing the requisite qualification. Section 5 provides for terms and conditions of service of members. Section 5(1) categorically states that, save as otherwise provided by or under this Act, a member of a

Board, other than a member-secretary, shall hold office for a term of three years from the date of his nomination. The proviso to the said section makes it clear notwithstanding the expiration of his term such a member continue to hold office until his successor enters upon his office. Therefore, it is clear that the term of the office of a member which includes the Chairman is statutorily fixed as three years, and it would not automatically come to end with the expiration of the period fixed. He do not hold office at the pleasure of the Government. Section 5 also provides for office of the member becoming vacant by resignation, removal and absence. Section 6 provides for disqualification of members on account of which the casual vacancy would arise. How the said casual vacancy has to be filled up is also provided for.

7. Under the scheme of the Act the State Government may if it thinks fit may remove any member of the Board before the expiry of his term of office, after giving him a reasonable opportunity of showing cause against the same. Therefore, removal of a member is also statutorily provided under the Act.

It is in this back ground we have to see whether the removal of the petitioner from the office of the Chairmanship of the Board is in accordance with law.

8. Admittedly, no notice has been issued to the petitioner as contemplated under Section 5(3) of the Act. It is nobody's case that it is a removal under Section 5(3) of the Act. On the contrary the contention is that the petitioner has voluntarily resigned and handed over charge. Under Section 5(4) of the Act, the resignation has to be in writing and in his hand addressed to the State Government. The documents produced along with the Writ Petition referred to supra clearly demonstrates that the petitioner has not submitted his resignation for the Chairmanship of the Board at all. On the contrary on the basis of the instructions issued by the Chief Minister to the Chief Secretary and other Secretaries, the petitioner was forced to hand over the charge. The documents evidencing handing over of the charge specifically refers to the letter dated 22.7.2005 where under the Chief Minister has directed the Chief Secretary and other Secretaries to obtain

resignations immediately from those Directors and Chairmen of the Boards and Corporations who have not yet tendered the resignation and in the event of they refusing, to relieve them from their respective posts and take over the charge. This document dated 22.7.2005 is not disputed. It is not a voluntary act on the part of the petitioner. Therefore, the petitioner has not tendered his resignation as contemplated under sub-section (4) of Section 5. The seat of the Chairman has not become vacant.

9. It was also contended that the appointment is for a period of three years or until further orders, as such he is not entitled to the term of three years. Even if the phrase 'until further orders' is to be so construed, admittedly no further order is passed restricting the term of three years or removing the petitioner before the expiry of three years period. The case is not of removal at all. On the contrary the specific defence pleaded is one of resignation and the period coming to an end resulting in casual vacancy. Therefore, there is no substance in that contention.

10. In so far as the contention that the petitioner was appointed in place of casual vacancy is concerned, the express terms in the order of appointment negatives such contention. Though in the first notification it is mentioned that the petitioner is appointed in place of J.Alexander it did not mention that his term of office would expire with the term of the office of the previous incumbent. On the contrary it specifically stated that the terms and conditions of the petitioner would be notified separately. When the separate notification was issued on 12.5.2004 they have not referred to any casual vacancy and they have not referred to any balance period left out by the previous incumbent resigning from the office. On the contrary it has been stated that the petitioner shall be the Chairman for a period of three years with effect from 26.2.2004, the date on which the notification was issued nominating him as the Chairman or until further orders. Though in law, if this period of office had not been expressly mentioned, the petitioner could have continued only for the remaining unexpired period. In view of the express words used in the notification dated 12.5.2004 it is not open to the

respondents to contend that the appointment is against a casual vacancy and his period should expire with the term of three years of the previous incumbent. Even after the expiry of the three years period, no vacancy arise. The proviso to subsection (1) of Section 5 categorically states that, a member shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office. The period of the Chairman or the member is not co-terminus with the period for which they are appointed. Their term would come to an end only when their successor enters upon his office. That is not the case here. Assuming for the argument sake that the petitioner was appointed in the casual vacancy which arose on account of the resignation of the previous Chairman, the term would come to an end only on 27.12.2005. Notwithstanding the expiration of his term, he continues to hold office until his successor enters upon his office. Seen from any angle, the removal of the petitioner as Chairman of the Board is contrary to law, illegal and cannot be sustained.

11. It is distressing to note how responsible qualified persons appointed to posts of cabinet rank in terms of statute by the Government are treated after the formation of new Government. Probably keeping in mind these tendencies, the Parliament has taken care to prescribe a fixed tenure for the post of Chairman and member of the Board. In fact for the Chairman qualification is prescribed. It is not a political appointment. The person to be appointed as the Chairman should possess special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with matters aforesaid to be nominated by the State Government. In the instant case it is not in dispute the petitioner possess a post graduate qualification in engineering from UVCE and the Yale University, USA. He has worked in a U.S. consulting company engaged in green belt and forestry project in Washington State, USA. He has been a consultant to many paper mills and advised them on treatment of waste material and planning for environmental as per Euro standards. He was involved in the design and installation of

the State of art of effluent treatment and pollution control systems adopting appropriate technology to treat organic and inorganic substances. He has designed and installed control equipment for pollution by recovery and clean technological process, waste water and contamination treatment. He has also involved in the design and installation of Air Pollution Control equipment to control the emission from chimneys to maintain ambient air quality including the monitoring of suspended particulate matter, sulphur dioxide and hydrates of sulphur. If the Government of the day after considering his qualifications prescribed under the statute found fit to make his appointment, extend him the cabinet rank, keeping in mind the public interest, the change of Government after elections should not make any difference. As is clear from the decision of the Government and the instructions issued, it gives an impression that all political appointments made by the Government appointing Chairmen and Directors to various Boards and Organizations was sought to be cancelled. If those appointments are purely political in nature the only criteria being loyalty to the party in power, they may be justified in

removing such persons from office. That rule cannot be applied to statutory appointments made based on qualification in public interest. Obviously, the Government of the day and the Chief Minister have not applied their mind in the case of the petitioner. As a general rule they have removed all Chairmen who were appointed during the previous regime. Therefore, the action of the Government cannot be upheld.

12. The petitioner has not been removed from his office in a manner known to law under the provisions of the Act and as is clear from the language employed in Section 5 even after the expiry of the period he continues to hold office, till another person is appointed in that place. Mere handing over of the charge in the circumstances stated above would not render the office of the Chairman vacant. He is deemed to be holding the office of the Chairman. In the circumstances, the appropriate order to be passed is to direct the Government not to interfere with his functioning as the Chairman and to extend him all the benefits to which he was entitled to under the notification

dated 14.7.2004 which he was enjoying before he was forced to hand over charge. Hence, I pass the following order :-

- (a) Writ Petition is allowed.
- (b) It is declared that the office of the Chairman of the Board never became vacant, by the petitioner handing over charge to the Secretary and petitioner continues to be the Chairman of the Board and he is entitled to all the benefits flowing therefrom.
- (c) Respondents are restrained from interfering with his functioning as Chairman.
- (d) No costs.

Sd/-
Judge

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