

STATE OF MANIPUR AND ORS.

A

v.

CHANDAM MANIHAR SINGH

SEPTEMBER 23, 1999

[S.B. MAJMUDAR AND S.N. PHUKAN, JJ.]

B

Water (Prevention and Control of Pollution) Act, 1974 :

Ss. 4, 5(1), (3), (4), (6), 6(1) and (2)—State Pollution Control Board—Constitution and reconstitution of—Term of office of members of Board including Chairman—Determination of—Resignation of Chairman of Board—Nomination of respondent as Chairman to fill up casual vacancy—Subsequent removal from office—High Court setting aside removal and directing to continue respondent for full term of three years from the date of nomination—Validity of—Held, persons nominated to fill up casual vacancy, entitled to hold office only for the remainder of term of original member—High Court not justified in holding that respondent entitled to hold office for three years—Service Law.

C

D

S. 4(1) and (3)—State Pollution Control Board—Nomination of a new member of Board—Reconstitution of entire Board—Necessity of.

E

Pursuant to a Government Notification dated 5.5.1995, appellant State in exercise of its powers under S. 4 of the Water (Prevention and Control of Pollution) Act, 1974, reconstituted the State Pollution Control Board. Various officers including Chairman of the Board were nominated. Under S. 5(1) of the Act, the Chairman of the Board was entitled to hold office for a period of three years from the date of his appointment and for a further period till his successor was appointed. Respondent was appointed as Chairman of the Board on 16.10.1996 to fill up the vacancy occurred on the resignation of the erstwhile Chairman. However, respondent was removed from office by an Order dated 19.10.1998 after issuing a show cause notice. On challenge, High Court while setting aside the order of removal held that respondent was entitled to continue in office for a period of three years from the date of his appointment. Hence the present appeal.

F

G

On behalf of the appellant it was contended that in view of S. 5(6)

H

A of the Act, High Court was not justified in directing the appellants to continue the respondent as Chairman upto 15.10.1999 on the supposition that clear three years' time was available to him for continuing as Chairman.

B Allowing the appeal, the Court

HELD : 1.1. High Court was not justified in holding that respondent is entitled to continue in office for a period of three years from the date of his appointment. [199-A-B]

C 1.2. S. 5(1) of the Water (Prevention and Control of Pollution) Act, 1974, lays down that the term of office of a member of the Board, including Chairman would be three years from the date of nomination. He would also be entitled to continue to hold office beyond the permitted time till his successor enters upon his office. However, S. 5(6) of the Act lays down that a casual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member in whose place he was nominated was to hold his office. Casual vacancy in a Board may arise due to removal of any member by the Central Government or State Government, resignation of any member of the Board or due to disqualification of a member under S. 6(1) of the Act. [196-G; 197-A-B; G]

E 1.3. In the instnat case, the earlier Chairman was nominated on 5.5.1995 and his regular term of office was to expire on 4.5.1998. In the meantime, because of his resignation causal vacancy of Chairman occurred and the said vacancy was filled up by nomination of the respondent. Therefore, unexpired term of his tenure as substituted nominee Chairman would have continued only upto 4.5.1998 or till his successor was appointed to hold that office. Thus, High Court erred in holding that the tenure of the respondent as Chairman could have gone beyond 4.5.1998 or that there was no vacancy of Chairman from that date till expiry of 3 years from the date of nomination of the respondent as Chairman. However, the order of this Court will have no effect on final orders of High Court because respondent has less than a month to continue as Chairman and has no intention to continue beyond that period. [198-B-C; 199-B-C]

H 2. It is not necessary for the State Government to reconstitute the entire Board every time when new members are inducted or new Chairman

is inducted. In fact, sub-section (3) of S. 4 of the Act lays down that every State Board shall be a body corporate with the name specified by the State Government in the notification under sub-section (1), having perpetual succession and a common seal. [198-F-G] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5561 of 1999. B

From the Judgment and Order dated 10.6.99 of the Gauhati High Court in W.A. No. 63 of 1999.

Raju Ramachandran and K. Nobin Singh for the Appellants. C

Ashok Kumar Singh and Ms. Sultana Sanawar for the Respondent.

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. Leave granted. D

We have heard learned counsel for the parties finally in this appeal.

Learned senior counsel for the appellants made two-fold grievances in this appeal. In order to appreciate those grievances it would be necessary to note a few relevant facts. E

The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter to be referred to as 'the Act') was adopted by the Legislative Assembly, State of Manipur in pursuance to Clause (1) of Article 252 of the Constitution of India by its resolution no. 36 in its sitting held on 28.12.1987. As the Central Act was adopted and became applicable to the State of Manipur, the appellant No. 1 State of Manipur under Section 4 of the Act became empowered to constitute State Pollution Control Board (hereinafter to be referred to as 'the Board'). In exercise of its powers under Section 4 of the Act, the appellant No. 1-State Government by various notifications constituted/reconstituted the Board from time to time. F
G
What is relevant for the present purpose is the reconstitution of the Board by Government Notification dated 5.5.1995. Pursuant to the said notification, the Governor of Manipur reconstituted the Board as per Section 4 of the Act nominating various members including the Chairman who was the then Hon'ble Minister (STE), Manipur. The said Chairman H

- A became entitled to hold his Office for three years from the date of his nomination as laid down by Section 5(1) of the Act. He of course could continue to hold Office as Chairman even after expiry of the period of three years till his successor entered upon his Office. The said Chairman resigned on 10.7.1996. Thereupon, the present respondent was appointed
- B as Chairman of the Board to fill up the vacancy caused on the resignation of the erstwhile Chairman. The said order of nomination in favour of respondent was dated 16.10.1996. The said nomination was until further orders. It appears that thereafter the Board was reconstituted in exercise of the powers under Section 4 of the Act by the Governor of Manipur by
- C notification dated 26.5.1997 and in that reconstituted Board the respondent was shown as Chairman and the reconstituted Board was to continue until further orders. Then followed another order of the Governor, Manipur dated 28.10.1997 which recited that in supercession of the previous order issued and pursuant to sub-section (9) of Section 5 and sub-section (1) of Section 12 of the Act read with sub-rule (2) of Rule 11 of the Manipur
- D Water (Prevention and Control of Pollution) Rules, 1991, respondent's Office of Chairman was restricted for a period of three years from the date of his initial nomination i.e. from 16.10.1996 it was to continue up to 15.10.1999. We may also mention that in the meantime the Board was reconstituted by further notification dated 8.12.1997 under Section 4 of the
- E Act wherein the respondent was shown as the Chairman and he was to continue until further orders. After the aforesaid order dated 28.10.1997 read with further notification dated 8.12.1997 respondent's tenure as Chairman met with rough weather. Some allegations were made against him while functioning as Chairman invoking his disqualification alleging
- F that he had abused his position as Member so as to render his continuance as the Chairman of the Board detrimental to the interest of the general public as provided under Section 6(1)(g) of the Act.

- G It may be stated at this stage that the Chairman is also considered to be a Member of the Board as laid down by sub-section (2) of Section 4 of the Act which reads as follows :

“(2) A State Board shall consist of the following members, namely :

- H (a) a chairman.....”

Pursuant to the show cause notice issued to the respondent and after considering his reply, the Governor of Manipur in exercise of the powers under Section 5(3) read with Section 6(1)(g) of the Act by order dated 19.10.1998 directed that the respondent be removed from Office as Chairman of the Board. The respondent thereafter carried matter in a writ petition before the High Court of Assam, Imphal Bench. A learned Single Judge who heard his writ petition was pleased to allow the same on 30.4.1999. It may be noted that the leaned Single Judge had directed that the respondent shall continue to hold his Office as Chairman as his removal was being set aside and his tenure will end on 15.10.1999 counting three years from 16.10.1996 when he was appointed as Chairman of the Board pursuant to the earlier referred orders. The appellants carried the matter in appeal before the Division Bench and having failed to convince the appellate Court on the merits of their appeal, they are before us in the present appeal.

Learned senior counsel for the appellants raised two contention in support of this appeal, (i) that when the Court held that the respondent was given reasonable opportunity to meet the charges against him as mentioned in the show cause notice, the Court could not have sat as Court of appeal and could not have decided on merits and ought not to have held that the respondent was not guilty of any abuse of power as reasonable opportunity as required under Section 5(3) read with Section 6(2) was made available to him, and (ii) in any case, learned Single Judge was in error in directing the appellants to continue the respondent as Chairman up to 15.10.1999 on the supposition that clear three years' time was available to him for continuing as Chairman even if not removed from the Office in the meantime as if the term of 3 years was to run from the date of his order of nomination dated 16.10.1996. Learned senior counsel for the appellants in this connection heavily relied upon Section 5(6) of the Act.

Learned counsel for the respondent, on the other hand submitted that pursuant to the order of High Court respondent is already continuing as sitting Chairman of the Board and his tenure is almost coming to an end and he does not intend to continue as Chairman beyond 15.10.1999 and therefore, the first contention canvassed by learned senior counsel for the appellants on the merits of the controversy has almost become academic as no interim relief was granted by this Court against the order of the High Court nor any interim relief was granted pending appeal against the order of learned Single Judge by the Division Bench of the High Court.

A So far as the second contention is concerned, it was submitted by learned counsel for the respondent that pursuant to the reconstitution of the Board by order of the Governor of Manipur dated 26.5.1997, the respondent would have been entitled to continue even for three years from 26.5.1997 as laid down by Section 5(1) of the Act but as there was a later order of the Governor dated 28.10.1997 his tenure could extend to a period of three years from his initial nomination i.e. 16.10.1996 as clearly laid down by that order. The respondent does not intend to continue beyond 15.10.1999 as directed by the High Court and against which direction the respondent has not thought it fit to file any cross-appeal.

B
C Having given our anxious consideration to the rival contentions, we find that as the High Court's direction in favour of the respondent's tenure which is to expire on 15.10.1999 has almost worked itself out and less than a month remains for him to act as Chairman of the Board, the first grievance raised by learned senior counsel for the appellants in connection with the removal of the respondent by order dated 19.10.1998 has become of academic interest. We therefore, did not permit learned senior counsel for the appellants to canvass this point any further before us. That takes us to the consideration of the second point.

D
Section 5(1) of the Act lay down as follows :

E
"5. *Terms and conditions of service of members* : (1) 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 :

F
Provided that a member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office."

G It is therefore, obvious that the term of Office of a member of the Board which would include the Chairman as already noted earlier, as laid down by Section 4(2)(a) of the Act, would be three years from the date of his nomination. He would also be entitled to continue to hold Office beyond the permitted time till his successor enters upon his Office. However, if this provision would have stood by itself, the respondent would have been entitled to hold office effectively for a period of three years from the date, when he was nominated on 16.10.1996 as the Chairman. He would

H

have been then entitled to continue up to 15.10.1999 as Chairman and the vacancy of Chairman could not have arisen prior to that date. Consequently, there would have been no occasion for the State Government to resort to filling up of that vacancy earlier. However, sub-section (6) of Section 5 becomes relevant at this stage. It lays down that a casual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member in whose place he was nominated was to hold his office. We may also in this connection, refer to sub-sections (3) and (4) of Section 5 which read thus :

“(3) The Central Government or, as the case may be, the State Government may, if it thinks fit, remove any member of a Board before the expiry of his term of office, after giving him a reasonable opportunity of showing cause against the same.

(4) A member of a Board, other than the member- secretary, may at any time resign his office by writing under his hand addressed –

(a) in the case of the Chairman, to the Central Government or, as the case may be, the State Government, and

(b) in any other case, to the Chairman of the Board;

and the seat of the Chairman or such other member shall thereupon become vacant.”

It is obvious that if such removal takes place as per Section 5(3) the vacancy arising out of such termination cannot be anything but casual vacancy depending upon such a contingency. Another instance of casual vacancy is furnished by the provisions of sub-section (4) of Section 5 which deal with the resignation of the members of the Board, other than the member-secretary. If a member including Chairman resigns before his term is over, the seat of the Chairman or such other member thereupon shall become vacant. But that apart, Section 6(1) deals with disqualification of sitting members of the Board. If such disqualification is found to have been incurred by any member under sub-section (1) then under sub-section (2) of Section 6 after giving him reasonable opportunity he can be removed from his Office prior to the expiry of usual term of his office of three years.

- A That would be a third instance of casual vacancy. When such casual vacancies occur, sub-section (6) of Section 5 would start operating and if another member is nominated to fill up that vacancy, then his term of Office would be for the remainder of the unexpired term of the member in whose place he steps in by nomination. In the facts of the present case,
- B it is easy to visualise that as the earlier chairman resigned on 10.7.1996 and he was nominated as chairman on 5.5.1995, his regular term of Office would have expired on 4.5.1998. In the meantime, because of his resignation, casual vacancy of Chairman occurred and the said vacancy was filled up by nomination of the respondent on 16.10.1996. Therefore, unexpired term of his tenure as substituted nominee Chairman would have continued
- C only up to 4.5.1998. On that day, by the thrust of sub-section (6) of Section 5, vacancy of the Chairman could be said to have occurred and till that vacancy was filled up in accordance with law by the State authorities, the respondent could have continued to hold Office beyond 4.5.1998 till his successor was available to hold that Office. It is of course true that in the
- D meantime the appellants themselves thought that the respondent was liable to be removed from office and passed order on 19.10.1998. That appeared to have been on the assumption that the successor was not available to take charge from the respondent. Be that as it may, so far as the impugned direction of the High Court is concerned and to which exception is taken
- E by learned senior counsel for the appellants, it is to be stated on the correct interpretation of relevant provisions of the Act as mentioned earlier, that in case of any casual vacancy of any member of the Board duly constituted under Section 4, the successor nominee who fills up such vacancy will have only unexpired period of Office available in the light of the initial appointment of the original incumbent member vice whom he walks in to fill up
- F the vacancy. It may also be noted that it appears that whenever there is a vacancy which is filled up, the State authorities seem to be reconstituting the entire Board every time when new members are inducted or new Chairman is inducted. In fact, sub-section (3) of Section 4 does not seem to have been kept in view as it lays down that every State Board shall be
- G a body corporate with the name specified by the State Government in the notification under sub-section (1), having perpetual succession and a common seal. Under these circumstances, even though the State Government has authority to reconstitute the Board from time to time only because some casual vacancy occurred, it may not strictly be necessary for the
- H authorities to undertake the exercise of reconstituting the entire Board nor

could the said reconstitution be directed to continue until further orders, as the tenure of the members of the reconstituted Board also will be governed by sub-section (1) of Section 4. It must therefore, be held while accepting the second contention of the learned senior counsel for the appellant that the High Court with respect, was in error in taking the view that the tenure of the respondent as Chairman could have gone beyond 4.5.1998 or that there was no vacancy of Chairman from that date till expiry of 3 years from the date of nomination of the respondent as Chairman. However, the aforesaid conclusion of ours will have no effect on the final orders passed by the High Court in favour of the respondent as the respondent has only less than a month to continue as the Chairman of the Board and as fairly stated by his counsel he does not intend to continue beyond that date. Consequently, after 15.10.1999 it will be open to the appellant- authorities to fill up the vacancy of the Chairman in accordance with law. The appeal is allowed accordingly. No costs.

S.V.K.

Appeal allowed.