

IN THE HIGH COURT OF KARNATAKA AT BANGALOREDATED THIS THE 21ST DAY OF JANUARY, 2014,**: PRESENT :****THE HON'BLE MR. JUSTICE N.K. PATIL****AND****THE HON'BLE MRS. JUSTICE RATHNAKALA**WRIT APPEAL NOS. 6742-54 OF 2013 (LB-RES)Between:

1. Sri. B. V. Ramakrishna,
S/o. Late B.R. Venkataramaiah,
Aged about 75 years,
R/at. No 44, Srinidhi, 13th Main Road,
R.K. Layout, 3rd Stage, Padmanagara,
Bangalore-70.
Nominated Corporator Padmanabhanagara
Assembly Constituency.
2. Sri. N.G. Krishnareddy,
S/o. K. Nanjaiah,
Aged about 57 years,
R/at. No.5(530) A-T-Street,
V.V. Puram, Bangalore-4.
Nominated Corporator Chikkapet
Assembly Constituency.
3. Sri. V. Chennagiriappa,
S/o. Venkataramappa,
Aged about 55 years,
R/at. No.57, 5th Main Road,
Jai Bheema Nagar,
BTM Layout, I Stage,
Bangalore-68.

Nominated Corporator Jayanagar
Assembly Constituency.

4. Sri. G. GopalKrishna,
S/o. Late Gangaiah Naidu,
Aged about 57 years,
R/at. No.12/G, 5th Cross Road,
Girinagar I Stage, Bangalore-85.
Nominated Corporator Basavanagudi
Assembly Constituency.
5. Sri. L. Srinivas,
S/o. Linganna,
Aged about 49 years,
R/at. No.181, CBI Road,
2nd Main, 9th Cross,
SGH Layout, Ganganagar,
Bangalore-78.
Nominated Corporator Hebbal
Assembly Constituency.
6. Sri. K.C. Venkatesh,
S/o. Late Chikkavenkatappa,
Aged about 50 years,
R/at. No.283, Sapthagiri Nivasa,
Kammagondanahalli,
12th Cross, Jalahalli Cross,
Bangalore-15.
Nominated Corporator Dasarahalli
Assembly Constituency.
7. Sri. D. Ramesh,
S/o. Basavaradhya,
Aged about 54 years,
R/at. No.688, Chennakeshava
Swami Temple Road,
Begur Post, Bangalore-68.
Nominated Corporator Bangalore South
Assembly Constituency.

8. Sri. Srinivas,
S/o. Nagappa,
Aged about 42 years,
R/at. Kalkere, Kanakadasa Road,
Bangalore-43.
Nominated Corporator K.R. Puram
Assembly Constituency.
9. Smt. Gowramma,
W/o. Venkatesh,
Aged about 65 years,
R/at. No.149/1, Akkipet Main Road,
Bangalore-53.
Nominated Corporator Assembly Constituency.
- 10 Sri. C. Nagaraj,
S/o. J. Channappa,
Aged about 46 years,
R/at. No.71, 5th Main Road,
Dommalur Layout,
Bangalore-71.
Nominated Corporator
Assembly Constituency.
- 11 Sri. Prakash.K,
S/o. Krishnaswamy,
Aged about 55 years,
R/at No.1/2, Kausthuba
Vidyaranyaपुरa
Ramachandrapura Main Road,
Bangalore-97.
Nominated Corporator
Assembly Constituency.
- 12 Smt. Latha Mallya,
W/o. K. Sadananda Mallya,
Aged about 57 years,
R/at. No.438, 7th Cross Road,
10th Main Road, H.B.R. Layout,
Hennur Cross, Bangalore-43.

Nominated Corporator
Assembly Constituency.

- 13 Sri. Srinivas,
S/o. M. Narayanswamy,
Aged about 41 years,
R/at. No.816, 4th Cross,
Chennakeshavanagara,
Chimsandra, Electronic City Post,
Bangalore-560 100.

... Appellants

(By Shri. D.N. Nanjunda Reddy, Senior Counsel
for Shri. Shanmukhappa, Kesvy & Co.,)

And:

1. The State of Karnataka,
Represented by its Principal Secretary,
Department of Personnel and
Administrative Reforms,
Vidhana Soudha, Ambedkar Veedhi,
Bangalore-1.
2. The State of Karnataka,
Rep. by the Secretary,
Department of Urban Development,
Vikasa Soudha,
Bangalore-1.
3. Bruhat Bangalore Mahanagara Palike,
N.R. Square, J.C. Road,
Bangalore-2,
By its Commissioner.

... Respondents

(By Shri. B. Veerappa, AGA for R1 & R2)

These Writ Appeals are filed under Section 4 of the Karnataka High Court Act, praying to set aside the Order passed by the learned Single Judge in Writ Petition Nos.32823-835/2013 dated 18/11/2013.

These Writ Appeals coming on for Preliminary Hearing, this day, **N.K. Patil J.**, delivered the following:

J U D G M E N T

The appellants, questioning the correctness or otherwise of the order impugned passed by the learned Single Judge, in Writ Petition Nos.32823-835/2013 dated 18th November 2013, have presented these writ appeals. In the said writ petitions, the appellants herein had sought for quashing the Notification dated 15th July, 2013 issued by second respondent vide Annexure A to the writ petitions, as without authority of law.

2. The said writ petitions were dismissed, following the order passed by the learned Single Judge dated 15th July 2013 in Writ Petition Nos.25964-967/2013. Being aggrieved by the dismissal of the writ petitions by the learned Single Judge, the appellants

have presented these appeals seeking appropriate reliefs, as stated above.

3. Brief facts leading upto the filing of these appeals are, the appellants herein were the nominated Councilors of the Bruhat Bangalore Mahanagara Palike (BBMP), Bangalore as per Notification dated 21st June 2012 bearing No.NAA AA E 373 MNY 2010 issued by second respondent and they had been discharging their duties as Councilors. Be that as it may, without any justification, in view of change of Government, a Notification came to be issued by the second respondent on 15th July 2013 bearing No.NA AA EE 373 MNY 2010 vide Annexure A to the writ petitions, whereby the membership of these appellants, who were Councilors nominated by the Government to the Bruhat Bangalore Mahanagara Palike, has been cancelled with immediate effect, by invoking the powers conferred under Section 8 (1)(ii) of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as the 'Act' for brevity).

Being aggrieved by the said cancellation of membership, the appellants approached the learned Single by filing writ petitions. The said writ petitions came up before the learned Single Judge and the learned Single Judge dismissed the said writ petitions, observing that there is no error of law apparent on the face of the said Notification. Being aggrieved by the dismissal of writ petitions, the appellants have presented these appeals, seeking appropriate reliefs, as stated supra.

4. The principal submission canvassed by learned senior counsel appearing for appellants at the outset is that, the impugned Notification dated 21st June 2012 bearing No.NA AA EE 373 MNY 2010 vide Annexure A to the writ petitions, cannot be sustained and is liable to vitiate at the threshold. To substantiate the said submission, he is quick to point out and rely upon the relevant provision of Section 8(1)(ii) of the Act, 1976, wherein it is mentioned that the term of office of the Councilors nominated by Government under clause (b)

of sub-Section (1) of Section 7 of the Act shall, subject to the pleasure of the Government, be five years. But, before the expiry of five years, the membership of these appellants as Councilors has been cancelled, without assigning any valid reasons and therefore, the said Notification cannot be sustained and is liable to be vitiated, as the same is contrary to the statutory provisions of the Act and that the order of the learned Single Judge, dismissing the writ petitions filed by these appellants also cannot be sustained and liable to be set aside.

5. As against this, learned Additional Government Advocate appearing for respondents 1 and 2, inter alia sought to substantiate the Notification issued by the second respondent as also the order passed by the learned Single Judge, stating that the same are in consonance with the statutory provisions of the Act and the learned Single Judge is justified in dismissing the

writ petitions filed by these appellants. Therefore, interference in the same is uncalled for.

Further, he submitted that, clause (ii) of sub-Section (1) of Section 8 of the Act is amply clear that the term of office of Councilors nominated by Government shall, subject to the pleasure of the Government, be five years. The very meaning of the said provision is that the term of office of the Councilors would be subject to the pleasure of the Government and can be terminated or cancelled at any stage, according to its will and wish. Therefore, the appeals filed by appellants are liable to be dismissed, confirming the order passed by the learned Single Judge.

6. After careful consideration of the submission of the learned senior counsel appearing for the appellants and learned Additional Government Advocate appearing for respondents 1 and 2 and after perusal of the impugned order passed by the learned Single Judge and also the Notification dated 21st June 2012, appointing

the appellants and others as Councilors and Notification dated 15th July 2013 vide Annexure A to the writ petitions, cancelling their membership, it is manifest on the face of the same that, there is no error or material irregularity, resulting in any miscarriage of justice, inasmuch as the learned Single Judge is justified in dismissing the writ petitions filed by these appellants, placing reliance on the order passed by the learned Single Judge in W.P.Nos.25964-967/2013 and connected matters.

7. It is significant to note that, the learned Single Judge in W.P.Nos.25964-967/2013 and connected matters, has disposed of the said writ petitions on 15th July 2013, relying upon the ratio of law laid down by the Hon'ble Apex Court in the case of ***Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others (AIR 1993 SUPREME COURT 1440)***, wherein it is held that the nominated members of a Municipal Board fall in a different class and that therefore, they

cannot claim equality with the elected members. Further, the learned Single Judge in the above referred cases observed that, the petitioners therein have no legally vested right to demand that they be continued as the members of the Syndicate for fixed period of three years as they are neither elected nor appointed, but are only nominated and that they would hold the office so long as the Government does not withdraw its pleasure. It is also observed that the petitioners therein, having accepted the earlier order or Notification nominating them as Councilors, with their eyes wide open, cannot turn around and say that they have a fixed term of office of three years in the said case.

8. The learned Single Judge, in the impugned writ petitions, after following the order passed by the learned Single Judge, as referred supra, observed that though the said order was passed in the context of withdrawing nominations of members to the syndicates of the two Universities established under the Karnataka State

Universities Act, 2000, the law explained therein and quoted therein applies to the present case also and accordingly dismissed the writ petitions. The said reasoning given by the learned Single Judge is just and proper and interference in the same is uncalled for.

9. Further, It is worthwhile to extract the relevant provision of Section 8(1)(ii) of the Act, as follows:

*“ 8. Term of Office of Councillors: (1)
Save as otherwise provided in this Act, the term of office of Councilors -
(i) *directly elected at a general election shall be five years;*
(ii) *nominated by the Government under clause (b) of sub-Section (1) of Section 7 shall, subject to the pleasure of the Government, be five years.”*
(underlining by us)*

It would also be relevant to note the exact meaning of the word ‘pleasure’. As per Oxford English Reference Dictionary, the word ‘pleasure’ means feeling

of satisfaction or joy, enjoyment or source of pleasure or gratification. The formal meaning of the word 'pleasure' is, a person's will or desire.

Further, if we look at the meaning of the word 'pleasure' in Black's Law Dictionary, it takes us through the word 'pleasure appointment', which is extracted as under:

"Pleasure Appointment: The assignment of someone to employment that can be taken away at any time with no requirement for cause, notice or a hearing."

In the case on hand, admittedly, the appellants are neither directly elected at a General election nor appointed, but are only nominated by Government by exercising powers under clause (b) of Sub-Section (1) of Section 7 of the Act, wherein it is stated in an unambiguous manner that, the term of office of the nominated Councilors shall, subject to the pleasure of the Government, be five years. Which means, they can

be terminated or their membership cancelled at any time, within five years, subject to the pleasure of the Government. They are entitled to continue as long as there is pleasure or will or desire of Government and once the pleasure or desire is withdrawn, they are not entitled to continue. Therefore we do not find any error on the face of the said Notification or the order passed by learned Single Judge.

10. Further, it is significant to note that, the appellants, having accepted the Notification dated 21st June 2012, nominating them as Councilors to the Bruhat Bangalore Mahanagara Palike, without any murmur, cannot now turn around and say that the Notification dated 15th July 2013 vide Annexure A to the writ petitions, cancelling the membership of these appellants as Councilors is bad and cannot be sustained. If the appellants had been directly elected at a General election, then the term of office would have been five years, without any rider. But, since the

appellants are only nominated, with a rider that their term of office is for a period of five years, subject to the pleasure of Government, they cannot claim it as a matter of right, but the same is at the pleasure or will of Government. Therefore, in view of change in the interest or will or desire of the administration, the membership of these appellants has been cancelled by issuing the Notification at Annexure A to the writ petitions. The appellants cannot find fault with the same. Therefore, the submission of the learned senior counsel appearing for appellants cannot be accepted nor it has got substance to substantiate the prayer sought in the writ appeals.

11. Therefore, having regard to the totality of the case on hand and in the light of the relevant provision extracted above, coupled with the ratio of law laid down by the Hon'ble Apex Court in ***Om Narain Agarwal's case (supra)***, we are of the firm opinion that the appeals filed by appellants, cannot under any

circumstances be entertained and are accordingly dismissed.

12. In view of disposal of appeals, I.A.II/2013 for stay does not survive for consideration and is accordingly disposed of as having become infructuous.

Learned Additional Government Advocate is permitted to file memo of appearance on behalf of respondents 1 and 2, within four weeks from today.

SD/-
JUDGE

SD/-
JUDGE

BMV*