



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6th DAY OF APRIL 2017

BEFORE

THE HON'BLE MR. JUSTICE A S BOPANNA

W.P.No.5353/2016 (GM-RES)

C/W

W.P.No.14186/2016, W.P.Nos.19470-471/2016,

W.P.No.32454/2016 AND W.P.No.40052/2016

(GM-RES)

W.P.No.5353/2016

BETWEEN:

MR. K.C. SHANKARE GOWDA
S/O CHIKKAMUNE GOWDA
AGED ABOUT 50 YEARS,
RESIDING AT KURUBOOR,
CHINTHAMANI TALUK,
CHIKKABALLAPURA DISTRICT
PIN CODE-563125.

... PETITIONER

(BY SRI. V LAKSHMINARAYANA, SR.COUNSEL FOR
SMT. SHILPA RANI, ADV.)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY,
VETERINARY AND FISHERIES
DEPARTMENT,
GOVERNMENT OF KARNATAKA,
DR. AMBEDKAR ROAD,
VIKASA SOUDHA,
BANGALORE-560001.
2. THE UNDER SECRETARY
VETERINARY AND FISHERIES DEPARTMENT,
GOVERNMENT OF KARNATAKA,

DR. AMBEDKAR ROAD,
VIKASA SOUDHA,
BANGALORE-560001.

3. THE REGISTRAR
KARNATAKA VETERINARY,
ANIMAL AND FISHERIES
SCIENCES UNIVERSITY,
POST BOX NO.6, NANDHINI NAGAR
BIDAR-585401.
4. SRI K S ASHOK KUMAR
S/O LATE DR.K V SADASHIVA RAO
AGED ABOUT 53 YEARS
R/A NO.83, CQA LAYOUT,
SHAKARANAGAR, BANGALORE 560092
5. SRI MALLIKARJUN BIRADAR
S/O SAGANBASAPPA
R/AT NO.9-8-476, KALIDASANAGAR,
BVB COLLEGE ROAD-585403
6. SRI NAGAPHUSAN KAMTHANE
S/O MADAPPA
AGED ABOUT 35 YEARS
R/AT NO.17-3-243/1,
'PARWATHI NIWAS',
GANDHINAGAR COLONY,
MAILOR ROAD, BIDAR 585403

... RESPONDENTS

(BY SRI. R B SATYANARAYANA SINGH, AGA. FOR R1 & 2
SRI. UDAYA HOLLA, SR.COUNSEL FOR
SRI. BRJESH PATIL, ADV. FOR IMPLEADING
APPLICANT FOR R4
SRI. KRISHNA, S.DIXIT, ADV. FOR R3
SRI. Y R SADASIVA REDDY, SR.COUNSEL FOR
SRI. V SANJAY KRISHNA, ADV. FOR IMPLEADING FOR R6
SRI. NATARAJA BALLAL, ADV. FOR IMPLEADING
APPLICANT ON I.A.No.5/16
SRI. R RAMESH, ADV. FOR IMPLEADING APPLICANT ON
I.A.No.5/16)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE
ORDER DTD:21.01.2016 (VIDE ANNEXURE-D) PASSED BY THE
RESPONDENT, THEREBY DECLARING THAT AND THE SAME IS
HIT BY PROVISIONS OF THE ARTICLE 14 OF THE
CONSTITUTION OF INDIA.

W.P.No.14186/2016**BETWEEN:**

MR. RITHESH SALIYAN
S/O SADANAND SRIYAN
AGED ABOUT 27 YEARS
RESIDING AT SALIAN NIVAS
SASHITHLU, MANGALORE TALUK,
DAKSHINA KANNADA DISTRICT
PIN CODE - 574146

... PETITIONER

(BY SRI. V LAKSHMINARAYANA, SR.COUNSEL FOR
SMT. SHILPA RANI, ADV.)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY
VETERINARY AND FISHERIES DEPARTMENT
GOVERNMENT OF KARNATAKA,
DR AMBEDKAR ROAD,
VIKASA SOUDHA
BANGALORE - 560001
2. THE UNDER SECRETARY
VETERINARY AND FISHERIES DEPARTMENT,
GOVERNMENT OF KARNATAKA,
DR AMBEDKAR ROAD,
VIKASA SOUDHA,
BANGALORE - 560001
3. THE REGISTRAR
KARATAKA VETERINARY
ANIMAL AND FISHERIES
SCIENCES UNIVERSITY,
BIDAR - 585401

... RESPONDENTS

(BY SRI. R.B. SATYANARAYANA SINGH, AGA. FOR R1 & 2
SRI. KRISHNA S DIXIT, ADV. FOR R3)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE
ORDER DTD:21.01.2016 (VIDE ANNEXURE-D) PASSED BY THE
RESPONDENT THEREBY DECLARING THAT AND THE SAME IS
HIT BY PROVISIONS OF THE ARTICLE 14 OF THE

CONSTITUTION OF INDIA AND IS IN VIOLATIONS OF NATURAL JUSTICE AND THE IMPUGNED ORDER IS WITHOUT JURISDICTION.

W.P.Nos.19470-19471/2016

BETWEEN:

1. MALLIKARJUN BIRADAR
S/O SANGANBASAPPA
AGED ABOUT 54 YEARS,
NO.9-8-476, KALIDASANAGAR
BVB COLLEGE ROAD 585 403
2. NAGABHUSAN KAMTHANE
S/O MADAPPA
AGED ABOUT 35 YEARS
NO.17-3-243/1, " PARWATHI NIWAS
GANDHINAGAR COLONY,
MAILLOOR ROAD
BIDAR 585403.

... PETITIONERS

(BY SRI.UDAYA HOLLA, SR.COUNSEL FOR
SRI. BRIJESH PATIL, ADV.)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY,
VETERINARY AND FISHERIES DEPARTMENT,
GOVERNMENT OF KARNATAKA,
DR. AMBEDKAR ROAD,
VIKASA SOUDHA,
BANGALORE-560001.
2. THE UNDER SECRETARY
VETERINARY AND FISHERIES DEPARTMENT,
GOVERNMENT OF KARNATAKA,
DR. AMBEDKAR ROAD,
VIKASA SOUDHA,
BANGALORE-560001.
3. THE REGISTRAR
KARNATAKA VETERINARY,
ANIMAL AND FISHERIES SCIENCES
UNIVERSITY, POST BOX NO.6
NANDHINI NAGAR
BIDAR-585401.

4. K.S. ASHOK KUMAR
S/O LATE DR. K.V. SADASHIVA RAO
AGED ABOUT 53 YEARS,
NO.83, CQA LAYOUT,
SAHAKARANAGAR,
BANGALORE.
5. K.C. SHANKARE GOWDA
S/O CHIKKAMUNE GOWDA
AGED 50 YEARS,
RESIDING AT KURUBOOR,
CHINTHAMANI TALUK,
CHIKKABALLAPURA DISTRICT,
PIN CODE-563125.
CHICKBALLAPUR.

... RESPONDENTS

(BY SRI. V LAKSHMINARAYANA, SR.COUNSEL FOR
SMT. SHILPA RANI, ADV. FOR C/R5
SRI. Y R SADASIVAREDDY, SR.COUNSEL FOR
SRI. V SANJAY KRISHNA, ADV. FOR C/R4
SRI. R.B. SATYANARAYANA SINGH, AGA. FOR R1 & 2
SRI. KRISHNA S DIXIT, ADV. FOR R3)

THESE PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE IMPUGNED GOVT. ORDER/NOTIFICATION DT.13.1.2016 VIDE ANNEX-D NOMINATING R-4 & 5 AS MEMBERS OF BOARD OF MANAGEMENT, KARNATAKA VETERINARY, ANIMAL AND FISHERIES SCIENCES, BIDAR IN PLACE AND CATEGORY UNDER WHICH PETITIONERS WERE NOMINATED EARLIER AS PER ANNEX-A AND ETC.

W.P.No.32454 OF 2016

BETWEEN:

SRI K S ASHOK KUMAR
S/O LATE DR. K. V. SADASHIVA RAO,
AGED ABOUT 53 YEARS
RESIDING AT NO 83,
CQAL LAYOUT
SAHARAKARANAGAR
BENGALURU - 560092

... PETITIONER

(BY SRI. Y R SADASIVA REDDY, SR.COUNSEL FOR
SRI. SANJAY KRISHNA V, ADV.)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY
VETERINARY AND FISHERIES DEPARTMENT
GOVERNMENT OF KARNATAKA
DR AMBEDKAR ROAD,
VIKASA SOUDHA
BENGALURU - 560001
2. THE UNDER SECRETARY
VETERINARY AND FISHERIES DEPARTMENT
GOVERNMENT OF KARNATAKA
DR. AMBEDKAR ROAD,
VIKASA SOUDHA
BENGALURU - 560001
3. THE REGISTRAR
KARNATAKA VETERINARY,
ANIMAL AND FISHERIES
SCIENCES UNIVERSITY ,
P B NO 6, NANDHINI NAGAR,
BIDAR - 585401
4. SRI K C SHANKARE GOWDA
S/O CHIKKAMUNE GOWDA
AGED ABOUT 50 YEARS
RESIDING AT KURUBOOR,
CHINTAMANI TALUK
CHIKKABALLAPURA DISTRICT - 563125
5. SRI MALLIKARUJUN BIRADAR
S/O SANGANBASAPPA,
AGED ABOUT 54 YEARS
RESIDING AT NO 9-8-476
KALIDASANAGAR
EVB COLLEGE ROAD,
BIDAR - 585403
6. SRI NAGABHUSAN KAMTHANE
S/O MADAPPA
AGED ABOUT 35 YEARS
NO 17-3-243/1, PARWATHI NIVAS,
GANDHINAGAR COLONY
MAILLOOR ROAD,
BIDAR - 585403

... RESPONDENTS

(BY SRI.R B SATYANARAYANA SINGH, AGA. FOR R1-3
R4 TO 6 ARE SERVED)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE ORDER DTD.21.01.2016 VIDE ANNEX-D PASSED BY THE RESPONDENT, THEREBY DECLARING THAT AND THE SAME IS HIT BY PROVISIONS OF THE ARTICLE 14 OF THE CONSTITUTION OF INDIA.

W.P.No.40052/ 2016

BETWEEN:

SRI SHRIKANT KONAPUR
S/O GUNDAPPA
AGED ABOUT 61 YEARS
R/AT DR.S.G.KONAPUR PLOT NO.16,
AKSHAY COLONY 1ST PHASE,
GOKUL ROAD
HUBLI-580 030

... PETITIONER

(BY SRI. SHARADKUMAR S, ADV.)

AND:

1. THE STATE OF KARNATAKA
REP. BY ITS PRINCIPAL SECRETARY
VETERINARY AND FISHERIES DEPARTMENT,
GOVERNMENT OF KARNATAKA
DR.AMBEDKAR ROAD
VIKASA SOUDHA
BANGALORE-560 001
2. THE UNDER SECRETARY
VETERINARY AND FISHERIES DEPARTMENT,
GOVERNMENT OF KARNATAKA
DR.AMBEDKAR ROAD
VIKASA SOUDHA
BANGALORE-560 001
3. THE REGISTRAR
KARNATAKA VETERINARY,
ANIMAL AND FISHERIES
SCIENCES UNIVERSITY
BIDAR-585 401

... RESPONDENTS

(BY SRI. R B SATYANARAYANA SINGH, AGA. FOR R1 & 2)

THIS PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, WITH A PRAYER TO QUASH THE ORDER DATED 21.01.2016 AT ANNEX-E PASSED BY R-2 THEREBY DECLARING THAT AND THE SAME IS HIT BY PROVISIONS OF THE ARTICLE 14 OF THE CONSTITUTION OF INDIA, WITHOUT JURISDICTION AND SAME IS IN VIOLATIONS OF NATURAL JUSTICE.

THESE WRIT PETITIONS HAVING BEEN RESERVED FOR ORDERS ON 28.03.2017, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING :

ORDER

The petitioners in W.P.No.5353/2016 (Sri K.C.Shankaregowda), W.P.No.14186/2016 (Sri Rithesh Saliyan), W.P.No.32454/2016 (Sri K.S.Ashok Kumar) and W.P.No.40052/2016 (Sri Srikant Konapur) are the members nominated to the Board of Management of Karnataka Veterinary Animal and Fisheries Sciences University, Bidar ('KVAFSU' for short) by the Government, through the notification dated 13.01.2016 issued by the respondent No.1. The said notification was withheld/kept in abeyance by the respondent No.1 through the subsequent notification dated 21.01.2016. The said petitioners therefore claiming to be aggrieved of being denied the benefit of the nomination dated

13.01.2016 in view of the subsequent notification dated 21.01.2016, have assailed the same in the said writ petitions.

2. The petitioners in W.P.Nos.19470-471/2016 (Sri Mallikarjun Biradar and Sri Nagabhushan Kamthane) who were nominated by an earlier notification dated 26.06.2014 for a period of three years with effect from 05.07.2014 by the Chancellor under the provision as contained at that point in time claim to be aggrieved by the notification dated 13.01.2016 whereunder Sri K.S.Ashok Kumar and Sri K.C.Shankaregowda the petitioners in W.P.No.32454/2016 and W.P.No.5353/2016 are nominated in their category whereby the right according to them to complete the period of three years for which they are nominated is interrupted. In that light they seek to sustain the notification dated 21.01.2016 whereunder the notification dated 13.01.2016 is withheld/kept in abeyance as that would facilitate them to complete the period of three years for which they claim to have been nominated.

3. The brief facts are that the KVAFSU was constituted under the Karnataka Act No.9/2004 ('the Act' for short). Among other provisions contained in the Act, Section 27 provides for the constitution of the Board of Management ('the Board' for short). The Board is to contain (A) Ex-officio members and (B) Other members. The nomination in issue in these petitions relate to the nominations of 'Other members' as contained in Section 27(2)(b)(ii),(iii) and (iv) of the Act. At the point when the petitioners in W.P.No.19470-471/2016 were nominated under the notification dated 26.06.2014 to the category of Progressive Livestock Farmer and Representative of Industries connected with Animal Husbandry or Fisheries and also the category of Progressive Fishermen, they were to be nominated by the Chancellor which accordingly was done.

4. By the amendment to the Act through Karnataka Act No.37/2015 which received the assent of the Governor on 05.09.2015, the nominations which were to be made to the Board from the '(B) Other

Members' category, more particularly 27(2)(B)(i)(ii)(iii) and (iv) which are relevant herein, the mode of nomination was changed to be made by the Government instead of by the Chancellor as it provided earlier. It is in that view the Government exercising the power of nomination as substituted by Act No.37/2015 has issued the notification dated 13.01.2016 which has interrupted the period for which the nomination was made by the Chancellor under the provision which existed prior to the coming into force of the Act No.37/2015. It is in that view the questions as raised have arisen in these writ petitions as per the brief reference that has been made above.

5. I have heard Sri Udaya Holla and Sri Jayakumar S.Patil, learned senior counsel along with Sri Brijesh Patil for the petitioners in W.P.Nos.19470-471/2016, Sri V.Lakshminarayan, learned senior counsel along with Ms.Shilpa Rani for the petitioners in W.P.Nos.5353/2016, 14186/2016. Sri Y.R.Sadashiva Reddy, learned senior counsel along with Sri V.Sanjay Krishna for the petitioner in

W.P.No.32454/2016, Sri Sharad Kumar S, learned counsel for the petitioner in W.P.No.40052/2016. The said learned senior counsel have also appeared for the respective parties as respondents in the connected petitions. Sri Krishna Dixit, learned counsel and Sri R.B.Satyanarayana Singh, learned Government Advocate were also heard on behalf of the official respondents in all the above petitions.

6. Though elaborate arguments have been advanced by the learned senior counsel and the other learned counsel on either side, the precise issue for consideration is as to whether the amendment made to Section 27 of the Act No.9 of 2004 through the Act No.37/2015 would relate back to the date of the original Act by substitution and if so, whether the nomination made by the Chancellor to the category of 'Other Members' through the notification dated 26.06.2014 would become redundant on the Act being amended or whether the benefit of the nomination made for three years would still be available even for the categories

where the mode of nomination is changed with the power being given to the Government by taking it away from the Chancellor or as to whether such power would be prospective without affecting the nominations which had been made earlier. Further, whether the nomination as made can be modified at any stage prior to the expiry of three years is also the issue for consideration.

7. The narration of the issues involved, sequence of events that have occurred and the contentions as urged will disclose that there is no controversy on the factual aspects but what requires determination is the legal aspect of the matter relating to the effect of the substitution of the provision relating to nomination and the effect of the earlier as well as the subsequent nominations made, in the background of the instant facts. The learned senior counsel on either side have referred to large number of decisions rendered both by this Court as also the Hon'ble Supreme Court to drive home their respective contentions. Hence, I find that it

will be appropriate to take note of the same at the outset as it would in such event place the matter in perspective.

8. Sri Udaya Holla and Sri Jayakumar S.Patil, the learned senior counsel in support of their contentions have relied on the following decisions:

(i) The case of ***M.Mahadevaiah -vs- The State of Karnataka, Department of Co-Operation and others (ILR 2013 Kar 5019)***, wherein a learned Judge of this Court has considered the effect of amendment made to Section 42 of APMC Act reducing the term of office of the Chairman and Vice-Chairman to twenty months whereby elections were sought to be held by curtailing the term which would have otherwise been available. The learned Judge has taken note of the decisions of the Hon'ble Supreme Court and the law relating to interpretation, wherein it is stated that a statute which effects substantive right is presumed to be prospective in operation, unless made retrospective either expressly or by necessary intendment. Every litigant has a vested

right in substantive law but no such right exists in procedural law. A statute which not only changes the procedure but also creates new right and liabilities shall be construed to be prospective in operation, unless otherwise provided either expressly or by necessary implication. The golden rule noticed is, 'the essential idea of legal system is that current law should govern current activities'. In that background, since under the said Act the term of Chairman and Vice-Chairman was available up to five years and there was nothing in the amendment to make it retrospective and curtail the period, it was held, though the word 'substituted' is used while making the amendment, the said expression cannot by itself ascribe retrospective operation to the amendment so as to effect the tenure of the duly elected Chairman and Vice-Chairman whose tenure under the un-amended Act had not yet expired and there is no intention on the part of the legislature to curtail, regulate or restrict the tenure.

(ii) The case of ***Bhagat Ram Sharma -vs- Union of India and others [1988(Supp) SCC 30]*** wherein the

Hon'ble Supreme Court on considering the purport of the term 'amendment' has held it to be a wider term which includes abrogation or deletion of a provision in an existing statute. It is stated that amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred. In that case it was held that the mere use of the word 'substitution' does not imply that Regulation 8(3) must relate back to the appointed day. In the case of executive instructions, the bare issue of a fresh instrument on the same subject would replace a previous instrument. But in the case of legislative enactment, there would be no repeal of an existing law unless the substituting Act or provision has been validly enacted with all the required formalities.

(iii) The case of ***Maharaja Chinthamani Saran Nath Shahdeo -vs- State of Bihar and others [(1999) 3 SCC 16]*** wherein the Hon'ble Supreme Court after referring to its earlier decisions has reiterated the position that as per the golden rule of interpretation, the mere use of the word 'substituted' does not mean it is

retrospective unless the clear intention of retrospective effect could be gathered.

(iv) The case of ***Prof. S.N.Hegde and another -vs- The Lokayuktha, Bangalore others (ILR 2004 Kar 3892)*** wherein a learned Judge of this Court while considering the effect of the amendment has held that purposive construction be adopted when the material words are capable of bearing two or more constructions. In such situation, the Courts must adopt that construction which will suppress the mischief and advance the remedy.

(Sri Sadashiva Reddy, learned senior counsel has also relied on the same decision in support of the counter argument)

(v) The case of ***Shyam Sunder and others -vs- Ram Kumar and another [(2001) 8 SCC 24]*** wherein the Hon'ble Supreme Court took note of the argument that the amending Act being retrospective had extinguished the right of the plaintiff which existed on the date of filing the suit. In that regard after referring

to its earlier decisions and the Rules of interpretation has held that the legal position is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a Court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of suit. However, the position of law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned, they remain unaffected by the amendment in the enactment. Hence it is held, where the repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect the substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment.

9. On the other hand Sri V.Lakshminarayana, learned senior counsel in support of the contrary contention has relied on the following decisions:

(i) The case of ***PTC India Limited -vs- Central Electricity Regulatory Commission [(2010) 4 SCC 603]*** wherein the Hon'ble Supreme Court while examining the jurisdiction of the Appellate Tribunal constituted under the amending Act had taken note that Section 121 of the original Act stood substituted by Amendment Act 57 of 2003. Hence, it was held that the substitution of a provision results in repeal of the earlier provision and its replacement by new provision. Substitution is a combination of repeal and fresh enactment.

(ii) The case of ***State of Tamil Nadu and others - vs- K. Shyam Sunder and others [(2011) 8 SCC 737]*** wherein while considering change in the pattern of education which was brought by the Amendment Act, the Hon'ble Supreme Court referred to its earlier decision wherein it was held that when the statute is

amended, the process of substitution of statutory provisions consists that the old rule is made to cease to exist and the new rule is brought into existence in its place. In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. Whenever an Act is repealed, it must be considered as if it never existed.

(iii) The case of ***State of Punjab -vs- Mohar Singh Pratap Singh (AIR 1955 SC 84)*** wherein it is held, whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless the section itself says, a different intention appears. In the case of simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the provisions of the new Act will have to be looked into for the purpose of determining whether it indicates a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but

whether it manifests an intention to destroy them. The compatibility or otherwise of the provisions would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

(iv) The case of ***Fibre Boards Private Limited, Bangalore -vs- Commissioner of Income Tax, Bangalore [(2015) 10 SCC 333]*** wherein it is held that the repeal can be by express omission. An implied repeal of a statute would fall within the expression 'repeal' in Section 6 of the General Clauses Act. Repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression 'repeal' in Section 6 of the General Clauses Act.

(v) The case of ***Jharkhand State Electricity Board and others -vs- Laxmi Business and Cement Company Private Limited and another [(2014) 5 SCC 236]*** wherein the earlier decision was relied to hold that whenever there is a repeal of an enactment, the consequence laid down in Section 6 of the General

Clauses Act will follow unless a different intention appears. When the repeal is followed by fresh legislation on the same subject, the provisions of the new Act will have to be looked into for the purpose of determining whether they indicate a different intention.

(vi) The case of ***Cheviti Venkanna Yadav -vs- State of Telangana and others*** [(2017) 1 SCC 283] wherein the Hon'ble Supreme Court was considering the Telangana(Agricultural Produce and Livestock) Markets Act amendment where under the term of the Chairman and Vice Chairman was also curtailed. The amendment itself was clear that the Amendment Act is deemed to have come into force with effect from 01-01-2012, though it received the assent of the Governor on 13.04.2015. It is held that the members were not elected and they were not appointed by any kind of selection. They were chosen by the Government from certain categories. The status of the members has been changed by amending the word 'nominated'. Thus the legislature has retrospectively changed the meaning.

Hence, by virtue of amendment, the term which has been reduced for the nominated member stands on a different footing. An earlier decision is referred wherein it is held that if an appointment has been made initially by nomination, 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 is because the nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. Such provision neither offends any article of the Constitution nor is the same against any public policy or democratic norms enshrined in the Constitution.

10. From the composite and cumulative perusal of the above decisions, what can be gathered is, merely because the word 'substituted' is used, while amending a provision in the enactment it cannot always be concluded that the amendment is with retrospective effect and would erase all accrued rights. When there is

a repeal and if the substituted enactment does not clarify the position relating the rights, Section 6 of the General Clauses Act will regulate the issue. If a provision in the enactment is amended and if the legislature does not specify that it is with retrospective effect and if such amendment is not just on the procedural aspect, but also affects the substantive right which accrued under the provision which existed prior to the amendment, such substantive accrued right will be saved and continue to exist unless the operation of the amended provision is expressly made retrospective. The case of ***Cheviti Venkanna Yadav*** (supra) was a case of such nature where the legislature had expressly given retrospective effect and curtailed the period. If it is not expressed in the amended provision but if the amended provision tends to take away the vested right, the Court will have to hold that the amendment is with prospective effect. The line of enquiry in that regard is held to be, not whether the new Act expressly keeps alive the old rights and liabilities, but there is a manifest intention in the amended provision to destroy

the right which existed under the old provision. Therefore, in the instant facts also, whether the right if any had vested under the un-amended substantive provision and whether there was an intention to destroy it, is to be examined so as to arrive at the conclusion since the mere use of the word 'substituted' in the amended provision in the instant case will not determine the issue.

11. To enable an appropriate consideration of the matter and for the purpose of clarity, the un-amended and the amended Section 27 of the KVAFSU Act is reproduced as hereunder,

“27. Constitution of the Board of Management.- (1) *The Chancellor shall, as soon as may, be after the first Vice-Chancellor is appointed under the second proviso to subsection (4) of section 13, take action to constitute the Board of management.*

(2) *The Board shall consist of the following members, namely:-*

(A) EX-OFFICIO MEMBERS

- (i) XXXXX
- (ii) XXXXX
- (iii) XXXXX
- (iv) XXXXX
- (v) XXXXX
- (vi) XXXXX
- (vii) XXXXX

(B) OTHER MEMBERS

- (i) *One Scientist having special knowledge or practical experience in research; teaching and extension education in the field of Veterinary and Animal and Fishery Sciences, nominated by the Chancellor;*
- (ii) *One Progressive livestock farmer nominated by the Chancellor;*
- (iii) *One Progressive fisherman nominated by the Chancellor;*
- (iv) *One representative of the industries connected with animal husbandry or fisheries nominated by the Chancellor;*
- (v) *One woman social worker nominated by the Chancellor;*
- (vi) *One educationist nominated by the Chancellor;*
- (vii) *One nominee of the Indian Council of Agricultural Research;*
- (viii) *President of the Karnataka Veterinary Council;*

Provided that no person who is in the employment of the State Government or the University shall be nominated under the category of "other Members".

(3) The term of office of the members of the Board other than Ex-officio members shall be three years;

Provided that the term of office of any member nominated to fill a casual vacancy shall be the residuary term of his predecessor:

Provided further that no person shall be nominated for a second term.

(4) Six members of the Board shall form the quorum for a meeting of the Board.

(5) The members of the Board shall not be entitled to receive any remuneration from the University except such daily and travelling allowances as may be prescribed.

(6) Every person who ceases to be a member of the Board by reason of the operation of this Act shall cease to be a member of the other authorities of the University of which he may happen to be a member by virtue of his membership of the Board.

(7) Any member nominated to the Board shall be liable to be removed from such membership at any time by the Chancellor on the ground of misbehavior, misconduct or otherwise after holding an enquiry.

(8) XXXXX

(9) XXXXX

(emphasis supplied)

Amended Section 27(B):

(B) OTHER MEMBERS

(i) One Scientist having special knowledge or practical experience in research; teaching and extension education in the field of Veterinary and Animal and Fishery Sciences, nominated by the Government;

(ii) One Progressive indigenous livestock farmer nominated by the Government;

(iii) One Progressive fisherman nominated by the Government;

(iv) One representative of the industries connected with animal husbandry or fisheries nominated by the Government;

(v) One woman rural social worker nominated by the Chancellor;

(vi) One rural educationist nominated by the Chancellor;

(vii) One nominee of the Indian Council of Agricultural Research, nominated by the Director General, ICAR, New Delhi;

(viii) The President of the Karnataka Veterinary Council;

(ix) One director of any other University nominated by the Vice-Chancellor;

(x) One dean of any other University nominated by the Vice-Chancellor.

(emphasis supplied)

12. From the amendment as made, it is seen that the category of the nominees in (i) to (iv) of 'Other members' remains to be the same but only the nominating authority is substituted with 'Government' instead of 'Chancellor' as it existed earlier which is clear from the words for which emphasis is supplied. Sub-section (3) which existed in the original Section 27 and continues to exist after the amendment also, which provides that the term of office of the members of the Board other than Ex-officio members shall be three years. This would mean that the 'Other Members' who were nominated by the Chancellor were assured the term of three years and the curtailment at pleasure is not indicated. As such the right has vested with such of those members who were nominated, to hold office as nominated members for a period of three years from the date of nomination unless the contingencies for removal as provided under Sub-section (7) to Section 27 had arisen and the procedure contemplated was followed.

13. The notification dated 26.06.2014 under which the subject nomination was initially made is also for a period of three years by specifying the starting date for computation of the period of three years as 05.07.2014. Hence, in the background of the legal position analysed above if the instant facts are taken note, a right has vested in the persons nominated under the notification dated 26.06.2014 under the substantive provision contained in the Act to remain on the Board for a period of three years. The amendment as has been made is only to substitute the name of the nominating authority from 'Chancellor' to that of the 'Government', which right is to be exercised prospectively when the nominations are to be made to the vacant positions in the Board of Management from the 'Other Members' category. Neither the status nor the qualification of the members to be nominated has been changed by the amendment so as to effect the existing right.

14. Sri. V. Lakshminarayana, learned senior counsel, despite the said position, in order to contend that a nominated member will hold office only during

the pleasure of the nominating authority and cannot claim to continue in office when the pleasure is withdrawn, has relied on the decision of this Court in the case of ***T. Krishnappa -vs- State of Karnataka and others [(2000) 7 Kant LJ 132]***. In that light, it is contended that by the notification dated 13.01.2016 the nomination of different persons has been made in substitution of the earlier nominees, by which the pleasure exercised earlier is withdrawn. In that view, it is contended that the subsequent notification/order dated 21.01.2016 withholding the notification dated 13.01.2016 is not sustainable. Though in that regard the Rules of Business and decisions are cited to contend that the nomination made by the Government cannot be kept in abeyance by a Secretary to the Government, the detailed consideration in that regard will be necessary only if the notification dated 13.01.2016 is held sustainable to supersede the notification dated 26.06.2014.

15. In this backdrop, I have carefully examined the contentions in the light of the decision in the case of

T.Krishnappa (supra). In that case, the right as claimed by the nominated member under Section 10 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 for the benefit of the extended period of one year arose for consideration therein. This Court in that context took note of the contents of Section 10(4)(a) of the Act which provides for nomination of the members of the first Committee for a period of two years from the date of notification under Sub-section (1) subject to 'pleasure' of the State Government and in that context held that the extended period of one year also under the proviso should be considered to be at the pleasure of the Government. The entire consideration therein was in the context of 'pleasure nominees'. The provision considered in that case reads thus,

“10. Constitution of the first market committee:-(4)(a) *Save as otherwise provided in this Act [but subject to the pleasure of the State Government] the members of the first market committee shall hold office for a period of two years from the date of notification under sub-section(1):*

Provided that the State Government may by notification extend the term of office of the members by such period or periods not exceeding [Two years] in the aggregates.”

(emphasis supplied)

16. On the other hand, in the instant case, though the nomination to be made prior to amendment was by the Chancellor and presently it is by the Government, the period for which the nomination is made is for three years and not at the pleasure of either of the nominating authority. The removal of a nominated member, as noticed is only in the manner as provided under Sub-section (7) to Section 27 of the KVAFSU Act on the ground of misbehavior, misconduct or otherwise after holding an enquiry. Despite no such contingency having arisen and the period of three years under the notification dated 26.06.2014 not having come to an end, another notification dated 13.01.2016 nominating persons to the same category will not be in terms of the provisions and scheme of the Act. Through the amendment in question the change made is only about

the authority to nominate and the scheme as such has remained the same. In such circumstance, when the notification dated 13.01.2016 is found to be not in accordance with law, the decision to keep it in abeyance through the notification/order dated 21.01.2016 cannot be found fault with nor is there need to interfere with the same as it would be open for the official respondents themselves to recall the same at the appropriate stage after the period of three years as required under the notification dated 26.06.2014 is spent and thereafter to bring the nomination under the notification dated 13.01.2016 into effect at that stage as a fresh nomination after the earlier period has elapsed. While computing the period of three years, the period, if any denied to the nominees under the notification dated 26.06.2014 due to the interruption caused in view of the present action shall also be noted and benefit of the lost period be provided to them to remain on the Board for the entire three years term. Keeping in view the interim orders that were passed during the pendency of these petitions, in order to save the actions taken it is

clarified that if the nominees under the notification dated 13.01.2016 have participated in any meetings of the Board, such decisions taken shall however remain valid for administration purposes.

17. In the result, the following:

ORDER

- i) The petitions in W.P.Nos.19470-471 of 2016 are allowed in part.
- ii) Though I do not find the need to quash the notification dated 13.01.2016, the official respondents are directed to withhold/keep it in abeyance till the period of three year elapses under the notification dated 26.06.2014.
- iii) Consequently, the petitions in W.P.No.5353 of 2016, W.P.No.14186 of

2016, W.P.No.32454 of 2016 and
W.P.No.40052 of 2016 stand dismissed.

- iv) All the pending applications stand
disposed of without any specific orders.
- v) Parties to bear their own costs.

**Sd/-
JUDGE**

akc/bms