

Kumar Varun Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Feb-02-1999

Judge : R.A. Sharma and N.N. Singh, JJ.

Appeal No. : C.W.J.C. No. 2721 of 1998 (R)

Appellant : Kumar Varun

Respondent : The State of Bihar and ors.

Disposition : Petition Allowed

Judgement :

R.A. Sharma, J.

1. Being aggrieved by the two orders of the same date i.e., 17.9.1998, passed by the State Government under Sub-section (7) of Section 23 of the Jharkhand Area Autonomous Council Act, 1994 (hereinafter referred to as the Act) removing the Chairman and the Vice-Chairman of the Interim Council and the Members of the Interim Executive Council, the petitioner, who claims to be the Spokes Person of the Jharkhand Mukti Morcha and a member of the said Interim Executive Council, has filed this Writ Petition. In the Writ Petition, the State of Bihar, Smt. Rabri Devi, the Chief Minister of the State, the Secretary to the Governor, the Chief Secretary, Govt. of Bihar, Shri M.P. Ajmera, Deputy Secretary, Planning and Development, Patna, and the Jharkhand Area Autonomous Council (hereinafter referred to as

the JAAC) have been impleaded as respondent Nos. 1 to 6, respectively.

2. Respondent Nos. 1, 2, 4, 5 and 6 have filed counter-affidavit sworn by Sri M.P. Ajmera, Deputy Secretary, Planning and Development, Govt. of Bihar, Patna (respondent No. 5). The respondent No. 3 has filed a separate counter-affidavit. The petitioner has filed the rejoinder affidavit in reply thereto. The petitioner has also filed supplementary affidavits. We have heard learned Counsel for the parties.

3. The learned Counsel for the petitioner has made the following submissions in support of the Writ Petition-

(i) Sub-section (7) of Section 23 is ultra vires as it confers unbridled, uncanalised, unguided and arbitrary powers on the Govt. to remove the Chairman, Vice-Chairman of the interim Council and the members of the Interim Executive Council;

(ii) The Act contemplates compliance of principles of natural justice before passing the order of removal, but the impugned orders have been passed in violation of those principles;

(iii) In any case the Impugned orders, read with counter-affidavit, case stigma and the same could not have been passed without giving a reasonable opportunity of being heard to the petitioner and other members;

(iv) The impugned orders have not been issued by or at the instance of the Governor of the State and they contain a wrong recital showing as if the Governor has passed them; and

(v) The impugned orders are malafide and the same have been passed on account of extraneous considerations.

4. The learned Advocate General and the Government Advocate have disputed the said submissions. The learned Advocate General has also submitted that the impugned, orders have been passed in terms of the Rules of Executive Business, framed by the Governor under Article 166(3) of the Constitution. It has further been submitted by him that as the Chairman, Vice-Chairman of the Interim Council

and the members of the Interim Executive Council hold their office during the pleasure of the State Govt., the Govt. has a right to remove them without giving them any notice or an opportunity of being heard and in such a case, the question of the orders being based on mala fide or extraneous consideration does not arise.

5. The Jharkhand Area within the State of Bihar consists of 18 districts. In view of the grievances raised by some of the parties of the Jharkhand Area, the Act was enacted by the State Legislature providing for establishment of an Autonomous Council giving it administrative and financial powers including the power of taxation in order to enable it to develop the area. In order to achieve the objective, the Act contains the detailed provisions providing independence to the Autonomous Council.

6. Section 3 of the Act requires the State Govt. to establish an Autonomous Council for the area consisting of not more than 162 directly elected members and not more than 18 nominated members. The Council so constituted shall be a body corporate with a perpetual succession and a common seal and also has right to acquire, hold and dispose off movable and immovable property. Section 4 deals with delimitation of the constituencies of the Council for election. Section 5 has laid down the qualifications of the members and Section 6 contains the ground on which a member can be disqualified. There is provision in Section 7 for the voters list for election to the Council. According to Section 11 the Council if not dissolved earlier shall continue for five years from the date appointed for its first meeting and no longer. Section 12 gives the power to the Governor to dissolve the Council, after giving a reasonable opportunity of being heard, if he is satisfied that the Council is unable to perform its functions or is functioning in such a manner that it may not be able to achieve its objectives. Section 13 deals with the nomination of the members of the Council. There is provision for oath or affirmation by the members under Section 14. Section 15 has laid down that the Council shall have a Chairman, who shall be a member of the Scheduled Tribes and such a Chairman shall be elected by the elected members of the Council from amongst them. There are also provisions dealing with resignation and removal of the Chairman, Vice Chairman and the members of the Autonomous Council. Section 23, which provides for constitution of Interim Council and Interim Executive Council for the

period till the Autonomous Council is established, is reproduced below-

23. Constitution of Interim Council and Interim Executive Council-

(1) The State Government before constitution of the Council under Section 3 may constitute an interim Council.

(2) The State Government shall nominate 50 percent members of the interim Council out of its total membership from the members of the Lok Sabha and the Legislative Assembly representing the constituency which lies wholly or mostly in the Area and from the members of the Rajya Sabha and Legislative Council, who are the inhabitants of the area and the remaining 50 percent members shall be nominated from amongst the persons who are inhabitants of the area and have Interest In its development.

(3) The State Government shall nominate/the Chairman and the Vice-Chairman of the Interim Council:

Provided that a member of the Scheduled Tribes can only be nominated as the Chairman:

(4) The State Government shall constitute an Interim Executive Council from amongst the members of the Interim Council;

(5) The Chairman and the Vice-Chairman of the Interim Council shall be the Ex-officio Councillor and Vice-Chief Executive Councillor;

(6) The duration of the Interim Council the Interim Executive Council shall be for 6 months or till the constitution of the Council under Section 3 whichever is earlier;

(7) The Chairman and the Vice-Chairman of the Interim Council and the members of the Interim Executive Council shall hold their office during the pleasure of the State Government.

7. Although the Act was enacted in 1994, but the State Government has not yet established the Autonomous Council. The State Government in exercise of the powers conferred on it under Section 23 has, however, constituted an Interim

Council with Chairman and Vice-Chairman and an Interim Executive Council, the life of which is six months or till the establishment of the Council under Section 3, whichever is earlier. Although six months period of the Interim Council and the Interim Executive Council have expired long ago, but even then the election for establishing an Autonomous Council has not been held by the State Government and only the period of the said Interim Councils have been extended from time to time. The last extended period of six months will come to an end on 8.2.1999. But by the impugned orders dated 17.9.1998, the Chairman, Vice-Chairman of the Interim Council and the members of the Interim Executive Council have been removed giving rise to this Writ Petition.

8. The first two submissions of the learned Counsel for the petitioner, being inter-linked, are being decided together as under.

9. The members of the Autonomous Council are directly elected, except not more than 18 nominated members. The Autonomous Council last for five years unless dissolved earlier and its members are entitled to continue till the Council last unless they or any of them are disqualified or resign earlier. The Act does not give right to the Government to remove them at its sweet will. However, the position with regard to the Chairman, the Vice-Chairman of the Interim Council and the members of the Interim Executive Council is different. These Interim Councils are constituted purely as an interim arrangement till the Autonomous Council is established. The life of such Interim Council is only six months or till the establishment of the Autonomous Council under Section 3, whichever is earlier. The Chairman, the Vice-Chairman and the members of the Interim Executive Council are not elected, but are nominated by the Government. Their appointment depends at the pleasure of the Govt. It is well settled that if a person is appointed at the pleasure of the Government, he has to go at its displeasure. Sub-section (7) of Section 23 contains such a provision saying that the Chairman, the Vice-Chairman and the members of the Interim Executive Council hold office during the pleasure of the Government. For the reasons given above, the Chairman, the Vice-Chairman and the members of the Interim Executive Council cannot claim the same status and security of tenure, which have been given by the Act to the members, the Chairman and the Vice-Chairman of the Autonomous Council.

There is no similarity between them. Sub-section (7) of Section 23 cannot be said to be violative of Article 14 or any other provisions of the Constitution. The Government while removing the Chairman, the Vice Chairman of the Interim Council and the member of the Interim Executive Council is also not required to give them an opportunity of being heard. They are appointed at the pleasure of the Government and, therefore, they are liable to go at its displeasure unless the exercise of displeasure is mala fide or is based on extraneous consideration.

10. In this connection reference may be made to *Om Narain Agarwal and Ors. v. Nagarpalika, Shahjahanpur and Ors.* : [1993]2SCR34 , wherein the fourth proviso to Section 9 of the U.P. Municipalities Act, which is in part materia with Section 27(7) of the Act, was upheld and the removal of the nominated members at the pleasure of the Government without notice was sustained by the Supreme Court. In this connection the Apex Court observed as under-.The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political consideration, 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 of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the legislature has provided the grounds in Section 40 of the Act under which the members could be removed. 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 fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

The Apex Court also turned down the plea of violation of Article 14 of the Constitution holding as under-

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.... ..
...

We are not impressed with the reasoning given by the High Court that the fourth proviso to Section 9 of the Act in any manner deprived the fundamental right of equality as enshrined in Article 14 of the Constitution. It is well established that the right of equality enshrined under Article 14 of the Constitution applies to equals and not to unequals. The nominated members of the Board fall in a different class and cannot claim equality with the elected members.

We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralise the nominated members in the discharge of their duties as a member in the Board....

11. The Division Bench of this Court in *Indian Union Muslim League v. The Union of India and Ors.* 1998 (3) PLJR 196, while dealing with the appointment and removal of the Governor, who holds office during the pleasure of the President of India, has also held that the Rule 'audi alteram partem' is not applicable to the removal or transfer of the Governor.

12. For the reasons given above, the first two submissions of the learned Counsel for the petitioner have got to be rejected.

13. As regard his third submission, it may be mentioned that the impugned orders do not contain any stigma. They are the orders simpliciter removing the Chairman, the Vice Chairman and the members. But the submission of the learned Counsel is based on Paragraph '9' of the counter-affidavit sworn by the Deputy Secretary (respondent No. 5) which is reproduced below-

9. That the State Govt. took the decision as contained in Annexures-1 & 1/A in the light of certain irregularities committed by the Interim Executive Council namely-

(a) the honorarium per month of the Members of the Executive Council and other Members of the Council was illegally increased in violation of Section 26 (1) of the Act;

(b) Several person were illegally appointed as against Class III and Class IV posts in violation of the proviso of Section 32(i)(d) of the Act and in violation of the policy as well as procedure laid down by the State Government and therefore, the Chairman, Vice Chairman and the 14 members of the Interim Executive Council were misusing their office and were acting without jurisdiction in most illegal manner.

The submission of the learned Counsel is that as the averments contained in paragraph '9' of the said counter affidavit cast as person on the conduct of the petitioner and the other members, the Government could not have passed the impugned orders without giving them a reasonable opportunity of being heard. This submission cannot be accepted. It is well settled that whenever a Government order is challenged in a Court of Law, it is a duty of the Government to defend it and to Justify it by placing the original record before the Court or by filing counter affidavit containing the reasons for passing it. The Government was, therefore, duty bound to disclose the reasons in support thereof. Such reasons cannot be said to cast aspersion/stigma. Whether the reasons disclosed by the Government in Paragraph '9' of its counter affidavit can sustain the impugned orders is not a relevant question while dealing with the third submission of the learned Counsel. Such a question can be considered while dealing with his last submission.

That apart, the Apex Court in *Om Narain Agarwal and Ors. v. Nagarpalika, Shahjahanpur and Ors. (supra)*, the relevant extracts of which have been reproduced herein above, has held that the removal of the members by the Government under the pleasure doctrine does not cast any stigma on their character or performance. This submission is also rejected.

14. The Fourth submission of the learned Counsel for the petitioner has two limbs, namely, (i) the impugned orders have not been expressed in the name of the Governor and there is thus non-compliance of Article 166(1) of the Constitution,

and (ii) the Rules of Executive Business framed by the Governor under Article 166(3) of the Constitution require such orders to be passed by the Governor or in any case after his consultation, but that has not been done. While dealing with the first limb of the argument, it may be mentioned that it has been admitted by the learned Advocate General that the impugned orders have not been passed by or at the instance of the Governor. It has also been stated in the counter affidavit filed by the Secretary to the Governor that the Governor was not aware of passing of the impugned orders till a representation was made on 18.9.1998 before him by the office bearers of the Jharkhand Mukti Morcha. The submission of the learned Advocate General, however, is that it is not necessary that the order for removal should be passed by the Governor because the functions of the State Govt. are carried on in accordance with the Rules of Business framed by the Governor under Article 166(3) of the Constitution. In this connection the learned Advocate General has placed before the Court the notification dated 25.1.1992 issued under Article 166 of the Constitution, the relevant extract of which is reproduced below-

(1) All orders or instruments made or executed by or on behalf of the Government of Bihar shall be expressed to be made or executed by order of the Governor of Bihar.

(2) Save in cases where an officer has been specially empowered to sign an order or instrument of the Government of Bihar, every such order or instrument shall be signed by either a Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary, an Assistant Secretary, a Budget Officer to the Government of Bihar or the Estate Officer of P.W.D. and such signature shall be deemed to be the proper authentication of such order or instruments.

15. Article 166 of the Constitution consists of three clauses, Clause (1) of which has laid down the mode of expression of the order, Clause (2) deals with the manner in which such order is to be authenticated. It has been settled by the Apex Court that if the order of the Government is not expressed in the name of the Governor and/or has not been authenticated in the manner prescribed, it will not become illegal and the only affect of failure to comply with the requirements of Article 166 of the Constitution is that the constitutional immunity of such orders

from challenge is taken away. But it will be open to the Government to prove by placing the relevant record before the Court or by filing affidavit that the order has, in fact, been legally passed. In this connection reference may be made to *R. Chitralekha v. State of Mysore and Ors.* : [1964]6SCR368 . In the instant case the impugned orders recite that the Govt. have removed the Chairman, Vice-Chairman and the members of the Interim Executive Council In exercise of its power conferred by Sub-section (7) of Section 23 of the Act. The order has been signed by the Deputy Secretary saying 'by order of the Governor'. It is true that the impugned orders have not been expressed in the name of the Governor, but they do State that the State Government has taken the decision of removal and they have been signed by the Deputy Secretary 'by order of the Governor.' In *State of Bombay v. Purushottam Jog Naik* : 1952 CriLJ1269 , the order of detention under the Preventive Detention Act, 1950 was not expressed In the name of the Governor, but it contained a recital about the decision with respect to the person detained having been taken by the State Government. At the end of the order it was mentioned 'by the order of the Governor of Bombay'. The said order was signed by the Secretary to the Government of Bombay, Home Department. The Apex Court upheld the order holding as under-

11. The short answer in this case is that the order under consideration 'is' 'expressed' to be made in the name of the Governor because it says 'By order of the Governor'. One of the meanings of 'expressed' is to make known the opinions or the feelings of a particular person and when a Secretary to Government apprehends a man and tells him in the order that this is being done under the orders of the Governor, he is in substance saying that he is acting in the name of the Governor and, on his behalf, is making known to the detenu the opinion and feelings and orders of the Governor. In our opinion, the Constitution does not require a magic incantation which can only be expressed in a set formula of words. What we have to see is whether the substance of the requirements is there.

The above decision of the Apex Court has been cited with approval in *R. Chitralekha v. State of Mysore* (supra). The impugned orders have substantially complied with the requirement of Article 166 of the Constitution. There is, therefore, no justification to interfere with them on this ground.

16. As regard the second limb of the fourth submission the learned Counsel for the petitioner has placed reliance on Rule 32(b)(iii) of the Rules of Executive Business framed by the Governor under Clause (3) of Article 166 of the Constitution, which is reproduced below-

32. (a) xx xx xx

(b) The following classes of cases shall be submitted by the Chief Minister to the Governor before the issue of orders-

xx xx xx

(iii) Cases which affect or are likely to affect the Interest of Scheduled Castes, Scheduled Tribes and Backward Classes.

xx xx xx

The learned Counsel submits that as the Chairman of the Interim Council has to be a member of the Scheduled Tribes, the matter relating to his removal should have been placed before the Governor by the Chief Minister under the said Rule before passing the Impugned orders because it affects likely to affect the interest of the Scheduled Tribes and Scheduled Castes. It is further contended that the same is the position with regard to the members of the Interim Executive Council because the Act is primarily for the benefit of the Scheduled Tribes, Scheduled Castes and Backward Classes of the Jharkhand Area. The learned Advocate General on the other hand submitted that the appointment and removal of the Chairman and the members under the Act cannot be brought within the purview of the said Rule, because if the Chairman or the members are removed, the new Chairman and members can be nominated by the Government and the interest of the Scheduled Tribes, Scheduled Castes and Backward Classes are thus not affected.

17. The Jharkhand Area was inhabited mainly by the Scheduled Tribes. With the passage of time, specially after establishment of various industries in the said area, the people of other caste and communities have also settled down over there. But inspite of the establishment of various industries, the conditions of the

Scheduled Tribes and Scheduled Castes have not improved much. This has given rise to demand for a separate Jharkhand State. To meet such demand, may be partly, the Act was enacted, providing for establishment of Autonomous Council consisting of elected members excepting few to be nominated by the Government with Chairman belonging to the Scheduled Tribes. But the members of the Interim Executive Council and the Chairman and the Vice-Chairman of the Interim Council are not elected; they are nominated by the State Govt. Till the Autonomous Council is established, the Interim Councils have to exercise administrative and financial powers for the well being of the people of the area, specially those of the Scheduled Tribes and the Scheduled Caste. It is, therefore, essential that not only the Chairman and the Vice-Chairman, but also the members of the Interim Executive Council should be men of integrity and of merit. A man of doubtful integrity will be more interested in his own welfare than the welfare of the people. The conduct and integrity of the person to be appointed as Chairman as well as of those to be nominated as members must be above board and they must also be men capable of discharging their duties effectively and impartially. The position of a man lacking merit is equally bad. An incompetent person cannot discharge his functions effectively. In a State where substantial section of population still does not have the basic requirement of life, the character and competence of those who control and run administration, organization or statutory undertaking/authority are important matters likely to affect the interest of the weaker sections, i.e. Schedule Tribes, Scheduled Castes and backward classes. The Chairman of the Interim Council has to be from the Scheduled Tribes. But who is the Chairman as well as the composition of the Interim Executive Council are the matters which are likely to affect the interest of the said weaker sections. It was, therefore, necessary to place the matter relating to removal of the Chairman and the members before the Governor before passing the impugned orders. But that was not done. The Impugned orders as such cannot be sustained.

18. Before dealing with the last submission of the learned Counsel for the petitioner, it is necessary to consider the submission of the learned Advocate General to the effect that when a person holds office during the pleasure of the Govt. it is the Government's absolute discretion to remove him at any time and the order of removal cannot be attacked on the ground of mala fide or extraneous

considerations. It is true that when a person holds the office during the pleasure of the Govt. he can be removed by it at any time if it so likes by withdrawing its pleasure. But no such order can be impugned from challenge in a Court of law unless otherwise provided by the Constitution of India. There is nothing like absolute power/discretion, the exercise of the which is beyond the judicial review unless excluded by the Constitution. In *A.K. Kaul and Anr. v. Union of India and Anr.* : [1995]3SCR469 , the Supreme Court, while making distinction between the judicial review and the justifiability of a particular action of the Govt. has held as under-. This power of judicial review is, therefore, implicit in a written constitution and unless expressly excluded by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution....

The Apex Court cited with approval the law laid down by it earlier holding that if the action is mala fide or is based on extraneous or irrelevant grounds the same can be examined by the Court if challenged.

19. Even where statute confers discretion without any limitation before exercising such a discretion, the Govt. or the concerned authority, as the case may be, has to decide the question as to whether to exercise or not to exercise it. For that purpose, they have to apply their mind to the facts situation. Article 14 of the Constitution is all pervasive and every Government's action is liable to be tested on the norms/Rules contained therein. It excludes arbitrariness in exercise of the power/discretion by the Government and the other State functionaries. In this connection reference may be made to *Smt. Maneka Gandhi v. Union of India and Anr.* AIR 1978 SC 597, wherein the Apex Court has laid down as under-

56...Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa v. State of Tamil Nadu* : (1974)ILLJ172SC namely, that 'from positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both

according to political logic and constitutional law and is, therefore, violative of Article 14.' Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

20. In *S. Partap Singh v. State of Punjab* : (1966)ILLJ458SC , the Apex Court in this connection has laid down as follows-

6. ...The second ground of attack on the orders may be viewed from two related aspects of ultra vires pure and simple and secondly as an infraction of the rule that every power vested in public body or authority has to be used honestly, bona fide and reasonably, though the two often slide into each other....

In this connection, the Supreme Court quoted with approval the following observations from *Short v. Poole Corporation* 1926 CH 66 at P. 85-

The appellants (represented before the Court by Maugham K.C.-afterwards Lord Maugham) do not contest the proposition that where an authority is constituted under statute to carry out statutory powers with which it is entrusted...if an attempt is made to exercise those powers corruptly as under the influence of bribery, or mala fides-for some improper purpose, such an attempt must fail. It is null and void : See *Reg v. Governors of Darlington School* (1844) 6 QB 682 at p. 715.

In the same case Warrington L.J. said-

No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be that of the body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.

21. Although the Government has absolute power under Sub-section (7) of Section 23 of the Act to remove the Chairman, Vice Chairman of the Interim Council and the members of the Interim Executive Council by withdrawing its pleasure, but if the pleasure has been withdrawn on mala fide or extraneous considerations, the order passed by the Government is liable to be struck down by the Court.

22. In Paragraph Nos. 3 to 6 of the Writ Petition, which are reproduced below, the petitioner has stated that the impugned orders have been passed on account of the withdrawal of the political support by the members of the Legislative Assembly belonging to Jharkhand Area from the ruling party of the State belonging to the Rastriya Janta Dal inspite of persistent pressure brought on them and the persistent threat meted out to them by the Chief Minister of Bihar and the President of Rastriya Janta Dal as well as the Chief Secretary of the State during the last week and the impugned orders have been passed as a measure of political vendata and retaliation on account of withdrawal of support by J.M.M. Party-

3. That on account of withdrawal of political support by the members of the legislative assembly of Jharkhand Mukti Morcha the existing Rastriya Janta Dal, Govt. of Bihar lost balance of majority for which there has been persistent pressure on the petitioner who is also the spokes person of Regional Political party, i.e., Jharkhand Mukti Morcha that in case of withdrawal of support by the J.M.M, party MLAs from the Government the members of the executive committee and the Chairman and Vice-Chairman shall be removed from the office.

4. That persistent threat was meted out to the petitioner and the Chairman and Vice-Chairman of J.A.A.C. who are also President and Vice-President of J.M.M. Party by the Chief Minister of Bihar and the President of R.J.D. as well as the Chief Secretary during the last one week but the petitioner and other office bearers of the J.M.M. Party remained unshaken which was resulted into issuance of mala fide, illegal and unconstitutional notification which smacks of foul play, vindictive attitude and arbitrary unconstitutional and mala fide approach of the respondents.

5. That it is a matter of great significance that without any show cause or notice and without any rational or reason and without any enquiry the impugned notifications has been surreptitiously issued by the Respondents which is against all cannons of justice.

6. That it has been engineered as a measure of political vendata and retaliation on account of withdrawal of support by J.M.M. party and the same has not even the remotest tinge of legality and constitutionality.

In the supplementary-affidavit filed by the petitioner some more particulars with regard to the averments made in the aforementioned paragraphs of the Writ Petition have been given. It has been stated therein that the petitioner, other members and the Chairman and the Vice-Chairman of the Interim Council were threatened with serious consequences on 15th, 16th and 17th September, 1998, by the Chief Minister Smt. Rabri Devi, Rastriya Janta Dal President Sri Laloo Prasad Yadav and the Chief Secretary of the State, so as to prevent them from withdrawing the support from the Rabri Devi's Government. It is also stated that on 17.9.1998 sixteen members of the Legislative Assembly of Bihar and the Members of Jharkhand Mukti Morcha resolved to withdraw their support from the Present Rabri Devi's Government and have written a letter to that effect to the Governor on the same date and it was on 17.9.1998 itself that the impugned orders were passed dismissing the Chairman, Vice Chairman and the members of the Interim Executive Council as a retaliation.

23. Although there are direct allegations in the Writ Petition against the Chief Minister of the State as well as the Chief Secretary, who are parties to it, but they have not filed their own affidavit denying those allegations. The Counter-affidavit, on the other hand, has been filed by Mr. M.P. Ajmera, Deputy Secretary. Planning and Development, Govt. of Bihar, Paragraph Nos. 12, 13, 14, 15 and 16 of the said counter-affidavit, which contains the reply of paragraph Nos. 3 to 6 to the Writ Petition, are reproduced below-

12. That with regard to the statements made in para 3 of the writ application, it is stated that the same are wrong and hereby denied. The Chairman, Vice-Chairman and the members of the Interim Executive Council have been terminated on the

basis of the material which are with the Government and the report of the irregularities committed by them including the report of the Regional Development Commissioner, Ranchi, who is the Chief Executive Officer of the Council, who reported the difficulties in the functioning of the Interim Executive Council in the absence of the Chairman.

13. That it will not be out of place to mention that the Government has won the confidence vote by a thumping majority on the Floor of the House inspite of withdrawal of support of the Jharkhand Mukti Morcha.

14. That with regard to the statements made in para 4 of the writ application, it is stated that the same are totally wrong and hereby vehemently denied. Not threat in whatsoever manner was meted to the petitioner or anybody by the Chief Minister of Bihar or the President of Rastriya Janta Dal or the Chief Secretary. The notification as contained in Annexures-1 and 1/A has been issued in public interest.

15. That with regard to the statements made in para 5 of the writ application, it is stated that the same are wrong and hereby denied. There is no provision or requirement in the Act to ask for show-cause before termination of membership under Section 23(7) of the Act.

16. That with regard to the statements made in para 6 of the writ application, it is stated that the same are totally wrong and hereby denied. The Notifications as contained in Annexures-1 and I/A has been issued with bona fide intention and in the larger interest of public.

The respondent. No. 5 has denied extending of any threat to or bringing pressure on the petitioner, other members of the Council, Chairman and the Vice-Chairman of the Interim Council by the Chief Minister and the President of Rastriya Janta Dal or even by the Chief Secretary of the State. The aforementioned paragraphs of the counter-affidavit have been sworn as true to his knowledge derived from the records of the case. What is the record on the basis of which such a knowledge has been derived has not been disclosed. The allegations, therefore, made in the writ petition against the Chief Minister and the Chief Secretary are liable to be

taken as correct in the absence of any counter-affidavit filed by them. It is well settled that if the allegations of bad faith and mala fide are made in a Writ Petition, against certain persons, it is the duty of those persons to deny them by filing their own counter affidavit, in absence of which the allegation so made can be taken as correct.

24. In paragraphs '9' of the counter-affidavit, which is again reproduced below, it has been stated that the impugned orders were passed for two reasons contained therein-

9. That the State Govt. took the decision as contained in Annexures-1 and 1/A in the light of certain irregularities committed by the Interim Executive Council, namely-

(a) the honorarium per month of the members of the Executive Council and other members of the Council was illegally increased in violation of Section 26(1) of the Act;

(b) Several persons were illegally appointed as against Class III and Class IV posts in violation of the proviso of Section 32(i)(d) of the Act and in violation of the policy as well as procedure laid down by the State Government and, therefore, the Chairman, Vice-Chairman and the 14 Members of the Interim Executive Council were misusing their office and were acting without jurisdiction in most illegal manner.

When was the monthly honorarium of the members of the Council increased has not been stated. Was it done before the last extension of the period of thereafter, has also not been disclosed. How many persons were appointed to Class III and IV posts and when were such appointments made, have also not been indicated. How such appointments are bad is also not demonstrated. That apart, it has not been shown as to how many members were parties to the decisions mentioned in paragraph '9' of the counter affidavit. The allegations contained in the said paragraphs No. '9' are vague lacking particulars. No reasonable person could have passed the impugned orders on the basis of the averments made in the said paragraph.

25. From the pleadings of the parties, it is apparent that the impugned orders were passed not for the reasons mentioned in paragraph '9' of the counter-affidavit, but on account of withdrawal of the support from the State Government by the members of the Legislative Assembly belonging to Jharkhand Area. The impugned orders are not bona fide and the same were passed on account of mala fide and extraneous considerations by way of retaliation.

26, The Writ Petition is, accordingly, allowed. The impugned orders, as contained in Annexures-1 and 1/A, are quashed. No cost.

N.N. Singh, J.

I agree.

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