

**Sangappa Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Aug-06-1986

**Reported in :** ILR1987KAR1555

**Judge :** Puttaswamy and ;Mahendra, JJ.

**Acts :** Karnataka Improvement Boards Act, 1976 - Sections 5, 5(1), 7 and 8

**Appeal No. :** W.P. No. 19702 of 1985

**Appellant :** Sangappa

**Respondent :** State of Karnataka

**Advocate for Def. :** M.R. Achar, Government Adv. for R-1 and 2, ;S. Mahesh and ;R.N. Narasimha Murthy, Adv. for R-3, ;V.C. Brahmarayappa, Adv. for R-4 and 7, ;G. Gangi Reddy, Adv. for R-8 and ;M.S. Subbarayappa, Adv. for

**Advocate for Pet/Ap. :** B.S. Keshava Iyengar, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Puttaswamy, J.**

1. On a reference made by Murlidher Rao, J., this case is posted before us for disposal.

2. For the all-round development of the Urban area of Davangere City of Chitradurga District, the Karnataka Improvement Boards Act, 1976 (Karnataka Act 11 of 1976) ('the Act'), inter alia, provides for the establishment of an Improvement Board named after that City called 'The Improvement Board, Davangere' (Board) from 1-11-1975 (vide Section 1(3) of the Act) which is functioning ever since then with a Chairman and other Members appointed from time to time.

3. In exercise of the powers conferred by Section 4 of the Act, Government in Notification No. HUD 245 MIB 83 dated 15-12-1983 (Annexure'A'), inter alia, appointed Respon-dent-8 as the Chairman of that Board, the petitioner and three others non-officials, as the Members of that Board without, however, specifying their term of appointment. That notification which is material reads thus :

#### ' NOTIFICATION

In exercise of the powers conferred by Section 4 of the Karnataka Improvement Boards Act, 1976, the Government of Karnataka hereby appoint the following persons as members of the Improvement Board, Davangere with immediate effect :

1.

Sri T. G. Shivayogappa, Davangere.

..

Chairman

2.

Sri H. K. Ramachandrappa, Former Vice-President, Municipality,Davangere

..

Member

3.

Smt. Syed Unnisa Begaum, W/o Syed Pakeer Sabi, Davangere Town

..

Member

4.

Sri K. Chandrappa, Gandhinagar, Davangere

..

Member

5.

Sri D Sangappa Bin Sharanappa, Labour Leader, Davangere

..

Member

Sri T. G. Shivayogappa is appointed as Chairman of the said Improvement Board.

The appointment of the Dy Commissioner, Chitradurga, as Chairman of Improvement Board, Davangere, is cancelled.

By order & in the name of the Governor

of Karnataka

Sd/- xx xx

Under Secretary to Government,

H.U.D.'

On the basis of this notification, Respondent No. 8, the petitioner and three other non-officials were functioning in their respective capacities, however, expecting that their continuance was for a period of three years under Section 5 of the Act.

4. But, Government in supersession of the aforesaid notification dated 15-12-1983 by its Notification No. HUD 167 MIB 85 dated 14-11-1985 (Annexure 'B'), nominated Respondent 3 and Respondent Nos. 4 to 7 as the Chairman and as the members of the Board respectively. On a representation or so, Government by its Notification No. HUD 167 MIB 85 dated 6-12-1985 (Annexure 'E') continued the term of those appointed on 15-12-1983 till 31-12-1985. In that very Notification, Government also reconstituted the Board from 1-1-1986 by appointing those appointed in its Notification dated 14-11-1985 as the Chairman and its members from that day. That Notification which is material reads thus :

#### 'NOTIFICATION

In exercise of the powers conferred under Sections 3 and 4 of the Karnataka Improvement Boards Act, 1976, the Government of Karnataka hereby reconstitute the Improvement Board, Davangere, with the following with immediate effect and until 31-12-1985.

1.

Sri T. G. Shivayogappa, Davangere

..

Chairman

2.

Sri H. K. Ramachandrappa, Former Vice-President, Municipality, Davangere

..

Member

3.

Smt. Syed Unnisa Begaum, W/o Syed Pakeer Sabi, Davangere Town

..

Member

4

Sri K. Chandrappa, Gandhinagar, Davangere

..

Member

5.

Sri D. Sangappa Bin Sharanappa, Labour Leader, Ashok Road, Davangere

..

Member

2 The Improvement Board Davangere, will be further reconstituted with the following with effect from 1-1-1986 and until further orders ;

1.

Sri H.M.Somanathaiah Hiremath, Kayipet, Davangere-1

..

Chairman

2.

Sri P.J.S.Mahadevappa, No. 55/1, Gali Narasarajpet, Davangere-1

..

Member

3.

Smt. B.S.Sabithadevi, D/o Sri Shankaramurthiah, No. 830 1, Davangapet,  
Davangere-1

..

Member

4.

Sri BellaryKadappa, Gandhinagar, Davangere-1

..

Member

5

Sri Shaikh SileimanSait, 1st Main Road, 2nd Cross, Azad Nagar, Davangere-1

..

Member

By Order and in the name of the Governor of Karnataka.

Sd/- G.C. Bhagavanth Gupta,

Under Secretary to Government,

Housing & Urban Dev. Department.

In this Petition under Article 226 of the Constitution, presented on 17-12-1985, the petitioner challenging the Notifications dated 14-11-1985 and 6-12-1985 had sought for their stay.

5. On 18-12-1985 Murlidher Rao, J., issued rule nisi but declined to grant stay on 23-12-1985 which order was challenged by the petitioner in W.A.No. 2809 of 1985. On 1-1-1986 a Division Bench of this Court has disposed of the said appeal modifying the order made by Murlidher Rao, J. As a result of that order, the Dy. Commissioner of the District is exercising the powers of the Board from 1-1-1986.

6. Among others, the petitioner had urged that he was entitled to continue as a member of the Board for a period of three years from 15-12-1983 or for the same term from 6-12-1985, treating his appointment made on that day as a fresh appointment under the Act. The petitioner had urged that the two notifications were Vitiated by mala fides.

7. In justification of the impugned notifications Government had filed its return in which it had denied the imputation of mala fides attributed by the petitioner.

8. As the principal question urged by the petitioner was directly concluded by a Division Bench ruling of this Court consisting of Jagannatha Shetty,J., (as His lordship then was) and Chandrakantaraj Urs., J. in B.S.Siddappa v. State of Karnataka& Ors., 1979 (2) KLJ 238, the petitioner urged for its reconsideration on several grounds which has found favour with Murlidher Rao., J. and that is how this case has come up for disposal before us.

9. Sri B.S. Keshava lyengar, learned Counsel for the petitioner, reiterating what had been urged before Murlidher Rao, J. had urged for doubting the ruling in Siddappa's case, 1979 (2) KLJ 238 and refer the case to a Full Bench of this Court for overruling the same.

10. Sri M.R. Achar, learned Government Advocate appearing for respondents 1 and 2, Sri R.N. Narasimha Murthy, learned Senior Advocate, appearing for respon-dent-3 and Sri V.C.Brahmarayappa, learned Advocate appearing for respondents 4 and 7 have naturally urged for not doubting Siddappa's case, 1979 (2) KLJ 238 and not to make a reference to a Full Bench.

11. We first consider it useful to ascertain the true scope and ambit of Section 5 (1) of the Act on which Siddappa's case, 1979 (2) KLJ 238 is not a direct authority

That Section reads thus:

'5(l) : Term of Office :- (1) Subject to the pleasure of the Government, the Chairman and other members appointed by the Government shall hold office for a period of three years :

Provided that the term of office of the representative of the local authority shall come to an end when he ceases to be a councillor or member or when the local authority is superseded.'

This Section regulates the term of the Chairman and other members appointed by Government. The term of those appointed by Government subject to its pleasure of Government is for three years. The term of three years is not absolute and unqualified but is subject to the pleasure of Government. The continuance of a Chairman and other non-official members for a period of three years is always subject to the pleasure of Government. The term of three years is always controlled by the pleasure of Government. The pleasure of Government is not controlled by the term stipulated in the last part of the Section. Sections 7 and 8 of the Act that deal with disqualifications and removals for a 'cause' as pointed out in Siddappa's case, 1979 (2) KLJ 238 do not restrict, (sic) or cut down the sweep and ambit of Section 5 of the Act. We are of the view that the acceptance of the contrary construction suggested by Sri Iyengar really results in rewriting the Section in the thin guise of interpretation which is impermissible. We have therefore, no hesitation to reject the construction suggested by Sri Iyengar.

12. In Siddappa's case, 1979 (2) KLJ 238 the facts were these: Siddappa had been appointed by Government on 27-1-1976 without specifying any term as the Chairman of the Improvement Board of Shimoga under the Act. On 19-1-1978 Government terminated his appointment with immediate effect and appointed the Deputy Commissioner of the District as the Chairman of the Board. Siddappa challenged the validity of Section 5 of the Act and the order of Government that was founded on the doctrine of pleasure as a relic of feudal past and violative of Article 14 of the Constitution and the principle of audi alteram partem, one of the basic components, of the principle of natural justice. The Division Bench rejected all of them and upheld the order of Government, which is also similar to the



impugned orders. On the (sic) pleasure incorporated in Section 5 of the Act, with which only we are concerned, the Division Bench expressed thus ;

'He was apparently removed at the pleasure of the Government. Section 5 provides that the Chairman and other members appointed shall hold office for a period of three years subject to the pleasure of the Government. Lord Reid in *Malloch v. Aberdeen Corporation* (1) said 'acting at pleasure means that there is no obligation to formulate reasons'. The power to appoint includes the power to remove; or the power to remove is implicit in the power to appoint. Further, 'removal at pleasure' is quite distinct from removal 'for cause'. In the latter there is an obligation to give reasons, but there is no such obligation in the former.'

XXX XXX XXX'The appointment at pleasure is not an arbitrary appointment Article 156(1) of the Constitution provides that the Governor shall hold office during the pleasure of the President. Article 165(3) provides that the Advocate General shall hold office during the pleasure of the Governor Under Article 76(4) the Attorney General shall hold office during the pleasure of the President. These familiar patterns are not the relics of the arbitrary power of absolute monarchs of the past.'

On these principles, the challenge of the petitioner to the two notifications can hardly merit any examination. But, it is urged that those very principles enunciated by the Division Bench in *Siddappa's case*, 1979 (2) KLJ 238 are wrong and call for a reconsideration.

13. We have carefully read the Division Bench ruling in *Siddappa's case*, 1979 (2) KLJ 238 and the order of reference made by Murlidher Rao, J. With great respect to Murlidher Rao, J., we are of the view that every one of the reasons on which his Lordship had doubted the correctness of the Division Bench Ruling in *Siddappa's case*, 1979 (2) KLJ 238, do not appeal to us. We will briefly examine those reasons which were again highlighted by Sri Iyengar.

14. Sri Iyengar contends that the Division Bench in *Siddappa's case*, 1979 (2) KLJ 238 in noticing and relying on one sentence of the opinion rendered by Lord Reid in *Malloch v. Aberdeen Corporation*, (1971) 2 All. E.R 1278 at 1282 had not noticed the very succeeding sentence which according to him justifies us to doubt

the correctness of the same. The sentence on which this Court placed reliance and the entire passage in which that sentence also occurs relied by Sri Iyengar reads thus :

'Then it was said that it is inconsistent that a body should be entitled to act at pleasure but nevertheless bound to hear the teacher before acting. I can see no inconsistency. Acting at pleasure means that there is no obligation to formulate reasons. Formal reasons might lead to legal difficulties. But, it seems to me perfectly sensible for Parliament to say to a public body 'you need not give formal reasons but you must hear the man before you dismiss him.' In my view, that is what Parliament did say in the 1882 Act.'

We have carefully read this passage and the other passages of other learned Law Lords that concurred with the opinion of Lord Reid. We are of the view that the Division Bench had only placed reliance on what was relevant and had not ignored any other passage in that ruling. Even otherwise the other observations made in the context of legislation that provided for a notice before termination, do not really bear on the precise question and do not even justify us to doubt Siddappa's case, 1979 (2) KLJ 238.

15. In Siddappa's case, 1979 (2) KLJ 238 the Division Bench had not noticed the observations of Lord Atkin in *Reilly v. Regem*, 1933 All. E.R. 179. But, that is hardly a ground for us to doubt the correctness of the ruling in Siddappa's case, 1979 (2) KLJ 238. We will however, examine whether that would have made any real difference.

16. In *Reilly's case*, 1933 All. E.R. 179 the facts were these; Reilly a practising member of the Bar had been appointed as a Chairman of Pensions Tribunal for a term constituted under an enactment of Canada. The post held by Reddy was abolished and with that his services also stood terminated. Reilly unsuccessfully challenged his termination before the Canadian Courts and then came in appeal before the Privy Council which also affirmed them however observing thus :

'If the term of the appointment definitely prescribe a term and expressly provide for a power to determine 'for cause' it appears necessarily to follow that any

implication of a power to dismiss at pleasure is excluded.'

We are of the view that these observations even assuming them to be correct and had been brought to the notice of this Court in Siddappa's case, 1979 (2) KLJ 238, would not have made any difference on the doctrine of pleasure at all. We are also of the view that these observations do not really bear on the termination 'at pleasure' that is not controlled by law or removal before the expiry of the term for a 'cause'.

17. What we said so far is also true of the reliance placed by Murlidher Rao, J. in Parshotam Lal Dhingra v. Union of India, : (1958)ILLJ544SC and Kedarnath Pandey v. State of U.P. & anr., : (1968)ILLJ6All . We are of the view that these rulings do not justify us to doubt the correctness of Siddappa's case, 1979 (2) KLJ 238 at all.

18. We are of the view that what is expressed in Siddappa's case, 1979 (2) KLJ 238 is in accord with the true doctrine of pleasure or its latin term 'durante bene placito' explained by the Supreme Court in State of Bihar v. Abdul Majid, : (1954)ILLJ678SC and the majority in Union of India and anr. v. Tulsiram Patel, : (1985)ILLJ206SC .

19. In Abdul Majid's case, : (1954)ILLJ678SC a Constitution Bench of the Supreme Court speaking through Mahajan, C.J. explained the doctrine of pleasure or its latin term 'durante bene placito' (during pleasure') in these words :

'The rule that a civil servant holds office at the pleasure of the Crown has its origin in the Latin phrase 'durante bench plactio' ('during pleasure') meaning that the tenure of office of a civil servant, except where it is otherwise provided by statute, can be terminated at any time without cause assigned. The true scope and effect of this expression is that even if a special contract has been made with the civil servant the Crown is not bound thereby. In other words, civil servants are liable to dismissal without notice and there is no right of action for wrongful dismissal, that is, that they cannot claim damages for premature termination of their services.'

In *Tulsiram Patel's case*, : (1985) IILLJ206SC Madon, J., speaking for the majority had explained the same in these words :

'The Pleasure Doctrine :

The concept of civil service is not new or of recent origin. Governments - whether monarchical, dictatorial or republican - have to function ; and for carrying on the administration and the varied functions of the government a large number of persons are required and have always been required, whether they are constituted in the form of a civil service or not. Every kingdom and country of the world throughout history had a group of persons who helped the ruler to administer the land, whether according to modern notions we may call that group a civil service or not, because it is not possible for one man by himself to rule and govern the land and look after and supervise all the details of administration. As it was throughout history so it has been in England and in India.

In England, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown and their services can be terminated at will without assigning any cause. By the expression 'the pleasure doctrine' is conveyed this right of the Crown. This right is, however, subject to what may be provided otherwise by legislation passed by Parliament because in the United Kingdom Parliament has legislative sovereignty.

The foundations of modern European civil services were laid in Prussia in the late seventeenth and eighteenth centuries and by Napoleon's development of a highly organized hierarchy (a model copied by many countries in the nineteenth century) ; and other are the basis of modern European civil services. In England civil servants were originally the monarch's personal servants and members of the King's household. Clive's creation from 1765 of a civil service to govern such parts of India as were under the dominion of the East India Company and Macaulay's report on recruitment to the Indian Civil Service provided the inspiration for the report of 1854 on the organization of the permanent civil service in Britain which recommended recruitment by open competitive examination, the selection of higher civil servants on the basis of general intellectual attainment, and the establishment of a Civil Service Commission to ensure proper recruitment.

In the United Kingdom, until about the middle of November 1981, the Civil Service Department, which was set up in 1968 with the Prime Minister, as Minister for the Civil Service, as its Head, looked after the management and personnel functions in connection with the Civil Service which were until then being looked after by the treasury. These functions included the organization and conduct of the Civil Service and the remuneration, conditions of service, expenses and allowances of persons serving in it ; mode of recruitment of persons to the Civil Service ; the pay and allowances of, and the charges payable by, members of the armed forces ; with certain exceptions, superannuation and injury payments, compensation for loss of employment or loss or diminution of emoluments or pension rights applicable to civil servants and others in the public sector and to members of the armed forces ; the exercise by other persons and bodies of powers to determine, subject to the minister's sanction, the pay or conditions of service of members of public bodies (excluding judicial bodies), or the numbers, pay or conditions of service of staff employed by such bodies or by the holders of certain non-judicial offices ; and the appointment or employment and the remuneration, conditions of service, personal expenses or allowances of judges and judicial staff (See Halsbury's Laws of England, Fourth Edition, Vol. 8.

x x x xIn India, the pleasure doctrine has received constitutional sanction by being enacted in Article 410(1). Unlike in the United Kingdom, in India it is not subject to any law made by Parliament but is subject only to what is expressly provided by the Constitution.

The pleasure doctrine relates to the tenure of a government servant. 'Tenure' means 'manner, conditions or term of holding something' according to Webster's Third New International Dictionary, and 'terms of holding ; title ; authority' according to the Oxford English Dictionary. It, therefore, means the period for which an incumbent of office holds it. It is for this reason that the statement of law relating to the pleasure doctrine in England is given in Halsbury's Laws of England, Fourth Edition, Volume 8, para 1106, under the heading 'Tenure of office'.

The first time that a statute-relating to the Government of India provided that civil servants hold office during His Majesty's pleasure was the Government of India

Act of 1919 in Section 96B of that Act. The marginal note to Section 96B did not, however, refer to the tenure of civil servants but stated 'The Civil Services in India'. This was because Section 96B in addition to dealing with the tenure of civil servants also dealt with matters relating to their recruitment, conditions of service, pay, allowances, pensions, etc. The marginal note to Section 240 of the Government of India Act, 1935 however, was 'Tenure of office of persons employed in civil capacities in India'. The marginal note to Article 410 of the Constitution also refers to 'tenure' and states 'Tenure of office of persons serving the Union or a State'. Thus, it is the tenure of government servants which Article 410(1) makes subject to the pleasure of the President or the Governor of a State, except as expressly provided by the Constitution.

While it was vehemently contended on behalf of the government servants that the pleasure doctrine is a relic of the feudal age a part of the special prerogative of the Crown which was imposed upon India by an Imperial power and thus is an anachronism in this democratic, socialist age and must, therefore, be confined within the narrowest limits, it was submitted on behalf of the Union of India that this doctrine was matter of public policy, and it was in public interest and for public good that the right to dismiss at pleasure a government servant who has made himself unfit to continue in office, albeit subject to certain safeguards, should exist and be exercisable in the Constitutional sense by the Crown in England and by the President or the Governor of a State in India. It is not possible to accept the arguments advanced on behalf of the government servants for all the authoritative judicial dicta are to the contrary. As pointed out by Lord Hobhouse in *Shenton v. Smith*, 1895 AC 229, the pleasure doctrine is founded upon the principle that the difficulty which would otherwise be experienced in dismissing those whose continuance in office is detrimental to the State would be such as seriously to impede the working of the public service. In *Dunn v. The Queen* (1896) 1 QB 116 ; SC : (1895-96) 73 LT 695 and sub nomine *Dunn v. Regem* in (1895-1899). All E.R. Rep. 907 the Court of Appeal in England held that it was an implied term of every contract of service that servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law hold their offices only during the pleasure of the Crown. In that case Lord Herschell observed (pages 119-120) :

'It seems to me that it is the public interest which has led to the term which I have mentioned being imported into contracts for employment in the service of the Crown. The cases cited show that, such employment being for the good of the public, it is essential for the public good that it should be capable of being determined at the pleasure of the Crown, except in certain exceptional cases where it has been deemed to be more for the public good that some restrictions should be imposed on the power of the Crown to dismiss its servants'.

In the same case *Kay*, L. J. said (Page 120):

'It seems to me that the continued employment of a civil servant might in many cases be as detrimental to the interests of the State as the continued employment of a military officer'.

In this case as reported in the Law Times Reports series the judgments of the three learned judges who decided the case (Lord Esher, M.R., being the third judge), though in substance the same, are given in very different language and the passages extracted above do not appear in that report. The report of the case in the All England Law Reports Reprint series is with very minor variations the same as the report in the Times Law Reports series but somewhat abridged. This is because the All England Law Reports Reprint series is a revised and annotated reprint of a selection from the Law Times Reports for the years 1843 to 1935. The reports from which the above extracts are given is the one in the Law Reports series published by the Incorporated Council of Law Reporting which was established in 1865 and which report, is, therefore, more authoritative-

XX XX XXThe position that the pleasure doctrine is not based upon any special prerogative of the Crown but upon public policy has been accepted by this Court in *State of Uttar Pradesh v. Babu Ram Upadhyaya* : 1961 CriLJ773 and *Moti Ram Deka v. General Manager, N.E.F. Railways, Maligaon, Pandu*, : (1964) IILLJ467SC '.

On these principles that are apposite, there is hardly any ground for us to doubt the correctness of the ruling in *Siddappa's case*, 1979 (2) KLJ 238.

20. Sri Iyengar, however, sought to distinguish these rulings relying on Sections 7 and 8 of the Act and observations of Madon, J. on the second sentence at para 35.

21. We are of the view that Sections 7 and 8 of the Act which deal with cases of removals for a 'cause' as also held in Siddappa's case, 1979 (2) KLJ 238, do not bear on the doctrine of pleasure or removal at pleasure. Whether there is any misuse of that pleasure in any case is altogether a different question. But, that cannot whittle down the true doctrine of pleasure and its exercise for purposes of Section 5 of the Act bona fide.

22. The petitioner had attacked the two notifications as vitiated by mala fides which are denied by Government.

23. Every one of the allegations of mala fides made by the petitioner are general, vague and do not even justify us to allude and examine them in any detail. We see no merit in this challenge of the petitioner and reject the same.

24. On the foregoing discussion, it follows that there are no grounds to interfere with the impugned Notifications. We, therefore, dismiss this Writ Petition and discharge the rule issued in the case. But, in the circumstances of the case, we direct the parties to bear their own costs.