

Arvind Nath, Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-09-2004

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Judge : Jagdish Bhalla and ;P.K. Chatterji, JJ.

Acts : Uttar Pradesh Water Supply Sewerage Act, 1975 - Sections 4 and 6(3);
Uttar Pradesh Nigam (Procedure for Selection to the post of Managing Director)
Rules, 2002 - Rule 6(3); [Constitution of India](#) - Article 14 and 16

Appeal No. : Writ Petition Nos. 1309(SB) of 2003 and 452 [SB] and 468 [SB] of 2004

Appellant : Arvind Nath, ; Devendra Pal Sharma and anr. and Atul Krishna

Respondent : State of U.P. and ors.

Advocate for Def. : S.K. Kalia, ;Prashant Chandra, ;P.K. Khare and ;Upendra Mishra, Advs. and ;Kapil Dev, CSC

Judgement :

1. By the impugned order dated 26th September, 2003 [Annexure-1] the State Government in exercise of powers conferred under Section 6(3) of the U.P. Water Supply Sewerage Act, 1975 cancelled the order dated 26.7.2002 by means of which the State Government took a policy decision of fixing three years tenure for the post of Managing Director of U.P. Jal Nigam with effect from the date of its

publication in the official Gazette. On the same day i.e. 26.9.2003 the Secretary to the Government in Urban Development issued an order [Annexure-2] communicating the Chairman of the U.P. Jal Nigam and other authorities that period of three years fixed for the post of Managing Director has been cancelled and in the process the petitioner is relieved from the post of Managing Director of U.P. Jal Nigam with immediate effect. On the very same day i.e. 26.9.2003, the Chairman of the U.P. Jal Nigam issued an office memorandum [Annexure-3] mentioning therein that the petitioner has been relieved from the post of Managing Director in pursuance of the order no. 4092/Nau-3-2003-18C/91 and the Chairman himself took the charge of the post of Managing Director till further orders. On the next day i.e. 27.9.2003, the Chairman issued an office memorandum by which one Sri Ramesh Chandra Asthana, Chief Engineer, Level-I was given the additional charge of the post of the Managing Director, U.P. Jal Nigam.

2. The aforesaid orders have been challenged by the petitioner Arvind Nath in writ petition no. 1309/SB/2004; primarily on the ground that the authorities have acted arbitrarily and malafidly while passing the impugned orders which have been passed just to give undue advantage to the opposite party no.5 and in total disregard of the principles of natural justice. Writ Petition No. 452/SB/2004 has been filed by Sri Devendra Pal Sharma and Sri Rajendra Kumar Khanna being aggrieved by the action of the opposite parties 1 to 3 in not making regular selection on the post of Managing Director of the U.P. Jal Nigam according to the procedure prescribed by U.P. Jal Nigam (Procedure for Selection to the post of Managing Director) Rules, 2002 [hereinafter referred to as the Rules, 2002] and allowing the junior most Chief Engineer [Level-I], namely, Atul Krishna- [opposite party no.4] to officiate as Managing Director by an authority, who is incompetent to pass such an order.

3. Sri Atul Krishna, Chief Engineer Level-I has also filed a writ petition no. 468/SB/2004 for quashing the order dated 20th October 2003 and the order dated 22nd October 2003 whereby the order appointing the petitioner on the post of Managing Director has been kept in abeyance till further orders by the State Government.

4. Since in all the writ petitions, the controversy relates to the appointment on the post of Managing Director, all these writ petitions have been clubbed together and are being decided by a common judgment. According to the learned counsel appearing for petitioner- Atul Krishna, the petitioner after retirement of Sri Ramesh Chandra Asthana, was the only Chief Engineer, Level-I and he was fully eligible for being appointed on the post of the Managing Director. It is in this background that State Government issued the order dated 30.9.2003 directing that the petitioner shall look after the work of the post of Managing Director. The contention of the petitioner is that he was appointed on the post of Managing Director by the competent authority after following the due procedure of law and he took charge of the said post on 19th October, 2003 and there was no impediment or restriction in the appointment of the petitioner as such there was no power to keep the order in abeyance. We would like to clarify here that the State Government while issuing the order of appointment dated 19th October, 2003 mentioned that the appointment of Sri Atul Krishna would be subject to the orders passed by the High Court in Writ Petition no.1309/SB/2003. Subsequently, the State Government issued another order dated 22nd October, 2003 stating therein that the matter regarding his continuance on the post of Managing Director was reconsidered and decided to keep the same in abeyance till further orders.

5. Sri S.K. Kalia, Senior Advocate with Sri Upendra Nath Misra, Advocates submitted that earlier a policy decision was taken by the State Government to provide stability of tenure to the incumbent who is to be appointed as Managing Director of the Jal Nigam. The purpose behind it was to give sufficient time to an incumbent to improve the working of the Jal Nigam and to complete various projects relating to essential public amenities like water and sewerage system which in past could not be completed on account of short tenure of an incumbent as Managing Director. With this view and object a Government Order dated 26.7.2002 was issued prescribing tenure posting for a period of three years. Consequently, the State Government decided to make special provisions for the selection on the post of Managing Director U.P. and section 4 of the U.P. Water Supply and Sewerage Act 1975 was amended and a separate rules for selection to the post of Managing Director were framed. These rules are known as 'U.P. Jal Nigam (Procedure for Selection to the Post of Managing Director) Rules 2002' and

were published in the Notification dated 2.7.2002.

6. It has been brought to our knowledge by the petitioner's counsel that the process for selection on the post of Managing Director started in June/July 2002. Selection on the criteria of merit was held in which petitioner -Arvind Nath along with other Chief Engineer of Level-I appeared before the Selection Committee and the petitioner's name was recommended. Consequently, the petitioner was appointed on the post of Managing Director of the Jal Nigam on 11.7.2002 and on the same day the petitioner took charge of the post. The appointment order of the petitioner provides that he will continue on the post till he attains the age of superannuation or otherwise determined under Section 6(3) of the Act. Subsequently, in exercise of powers vested in it by Section 6(3) of the Act, the State Government issued an order on 26th July, 2002 [Annexure-8] fixing a tenure of three years for the post of Managing Director. As a consequence of the aforesaid order dated 26th July, 2002, the orders dated 30.9.2002 and 23.10.2002 were issued by the State Government and the Agriculture Production Commissioner clarifying therein that attaining the age of 58 years will not have any effect on the appointment of petitioner as it would be deemed that the petitioner has been appointed for a period of three years on coming into force of the order dated 26th July, 2002. Learned Counsel for the first petitioner has contended that the impugned order with respect to removal of the petitioner-Arvind Nath from the post of Managing Director have been passed with mala fide intention because of change of Government as would be evident from the fact that the then Chief Secretary, who had earlier held the post of Chairman of the Jal Nigam, submitted a proposal to the Chief Minister on his own on 26.9.2003 indicating that Sri Arvind Nath is continuing on the post of Managing Director even after attaining the age of superannuation. As a consequence whereof the first impugned order dated 26.9.2003 was passed canceling the order dated 26.8.2002 which prescribes a fixed tenure of three years for the post of Managing Director. This order was issued in the name of the Government though there was no necessary approval of the Chief Minister regarding cancellation/curtailment/abolition of tenure of the Managing Director. Learned Counsel for the petitioner [Arvind Nath] has further argued that all the orders impugned in the present writ petition have been passed in blatant disregard of the relevant Rules and further no opportunity in any manner was

afforded to the petitioner before passing the impugned order. The attitude and bias action of the authorities is established from the fact that the authorities took all the actions at lightning pace as the orders contained in Annexures 1 to 3 to the writ petition were passed on the same day i.e. firstly an order was passed canceling the earlier notification which prescribed three years terms for the post of Managing Director, on the same day by another order the petitioner was relieved from the post of Managing Director with immediate effect without there being any authorization for the same by the State Government in the name of Governor and thirdly by another order passed on the same day the Chairman assumed the Charge of the post of Managing Director.

7. These acts reflect the arbitrary, illegal and colourable exercise of power. No cogent reasons have been given for the curtailment of tenure when the Government has taken a stand in earlier writ petition filed by one R.C. Asthana [Writ Petition No. 1101/SB/02; Ramesh Chandra Asthana State of U.P. and Ors.] that in view of the working and interest of the Nigam, a policy decision was taken for fixing 3 years tenure for the post of Managing Director to enable the incumbent to get sufficient time to work and improve the working of the Nigam in implementing its programmes for longer period. This Court upheld the stand of the State Government and now the present Government, in order to circumvent the judicial verdict has passed the impugned order under the garb of change of policy.

8. On the strength of decisions of the Hon'ble Supreme Court in Swaran Singh v. State of U.P.; 1998(4) SCC 75, Ugar Sugar Mills v. Delhi Administration; 2001(3) SCC 635, State of Rajasthan v. Sewa Nivrat Karnataka Karmchari Samiti; 1995(2) SCC 117, Association of Industrial and Electricity Users v. State of Andhra Pradesh and Ors.; 2002(2) SCC 711, Zipper Karmchari Union v. Union of India and Ors.; 2001(10) SCC 619, Narmada Bachao Andolan v. Union of India and Ors.; 2000(10) SCC 664 and Consumer Education and Research Society v. Union of India and Ors.; 2000(2) SCC 599, Sri S.K. Kalia argued that the Court is fully competent to interfere with the policy decision, if it is unreasonable, unfair, arbitrary and against the public interest. Moreover, the impugned order no. 4092 dated 26.9.2003 cannot be said to be a policy decision as no necessary approval of the competent authority was sought by the respondents while taking the impugned

decision. Sri A.P. Singh while holding the Post of Chairman and Agriculture Production Commissioner had himself mooted the proposal for a fixed tenure of 3 years. Later on, when Sri A.P. Singh, I.A.S. became the Chief Secretary on coming into power of a new Government, he on his own proposed otherwise and wrongly stated that the petitioner is continuing on the post of Managing Director even after his retirement.

9. Thus, the main question involved in these writ petitions is whether the order no.4092/Nau-3-2003-18C/91 dated 26th September, 2003 cancelling the order no.2206/9-3-02-18C/91 TC dated 26th July, 2002 by which three year term was fixed for the post of Managing Director, is a policy decision and whether the decision dated 26th September, 2003 is unreasonable, mala fide, arbitrary and against the public interest.

10. Learned Chief Standing Counsel stated that the State Government is fully competent to pass the impugned order in view of Rule 6(3) of the Uttar Pradesh Jal Nigam [Procedure for Selection to the post of Managing Director] Rules, 2002 which provides that a member shall hold office on such terms and conditions as the State Government, may by order, specify. Moreover, the State Government while appointing the petitioner, Arvind Nath on the post of Managing Director in exercise of powers conferred under Section 4(2)(a) has clearly mentioned that his appointment shall, unless by order issued under Section 6(3) of the Act is not otherwise, will be till his attaining the age of retirement. Little later, an order dated 26.7.2002 was issued by the State Government providing therein that the Managing Director of Uttar Pradesh Jal Nigam will hold office for a period of three years unless his tenure is terminated by the Government Notification. Thus the petitioner-Sri Arvind Nath has no right to hold the post after attaining the age of superannuation and no illegality or wrong has been committed by the State Government while issuing order no.4092/9-3-2003 18C/91 dated 26.9.2003 as it was issued by the Governor in exercise of powers conferred under Section 6(3) of the Act and the same was within the competence of the Governor in view of provisions contained in Section 14 of the U.P. General Clauses Act.

11. Learned Chief Standing Counsel next argued that power to appoint includes power to terminate the tenure of the office in view of Section 16 of the U.P. General Clauses Act which clearly lays down that the authority having power to make appointment shall also have the power to suspend, dismiss, remove or otherwise terminate the tenure of office of any person appointed, whether by itself or any other authority, in exercise of that power. Therefore, it cannot be said that the impugned order was issued with mala fide intention and ulterior motives.

12. As regard the change of policy dated 26.7.2002 by which three year tenure was fixed for the post of Managing Director, learned State Counsel submitted that the State Government reconsidered the aforesaid policy as it was noticed by the State Government that in all Government Corporation the age of superannuation of the Managing Director along with other employees is fixed at 58 years and the only exception was the Managing Director of the U.P. Jal Nigam. Therefore, the State Government took a decision to bring overall uniformity for all Corporations in the State of Uttar Pradesh and it was also decided that Managing Director of the U.P. Jal Nigam will also retire from the post on attaining the age of superannuation fixed for the Nigam.

13. While denying the allegations of mala fide the learned State Counsel added that opposite party no.5 was given the additional charge of the post of Managing Director on account of administrative exigency and on retirement of opposite party no.3 on 30.9.2003 at the age of 58 years, Sri Atul Krishna [petitioner in writ petition no. 468/SB/2004] was given the additional charge of the post of Managing Director for the time being vide order of the Chairmandated 30.9.2003. Therefore, it is wrong to say that impugned order was passed to give advantage to any particular person.

14. Sri Kapil Dev, Advocate appearing for the U.P. Jal Nigam argued that the validity of the Government Order dated 26.9.2003 cannot be challenged because the same is based on the policy decision taken by the State Government in the interest of the Corporation as well as general public. The State Government while reconsidering the matter found that it is neither in public interest nor in the interest of the Corporation to continue with the three years term of Managing Director and,

therefore, passed the impugned order as a result thereof the petitioner was relieved vide order dated 26.9.2003. Further, no order was issued allowing Sri Arvind Nath to continue on the post of Managing Director for three years.

15. Elaborating further, Sri Kapil Dev invited our attention to paragraph 3 of the Counter Affidavit wherein it has been indicated that the Chairman of the U.P. Jal Nigam was the new incumbent and there was problem of water logging and other related problem and as such, the Chairman issued the order dated 27.9.2003 whereby Sri Ramesh Chandra Asthana, senior most Chief Engineer was given the additional charge of the post of Managing Director. Later on, when the post became vacant on account of retirement of Sri Ramesh Chandra Asthana, petitioner of writ petition no. 468/SB/04 Sri Atul Krishna, being the senior most Chief Engineer, Level-I was given the charge. According to him, the Chairman was fully competent to issue consequential orders in pursuance of the order dated 26.9.2003 issued by the State Government cancelling the tenure of three years for the post of Managing Director. Much has been said by the learned State Counsel as also by Sri Kapil Dev, Counsel for the Jal Nigam, that the impugned decision is a policy decision and as such this Court is not competent to interfere in the policy decision in view of the proposition of law laid down by the Hon'ble Supreme Court in umpteen decisions. We, therefore, deem it appropriate to refer the meaning of word 'Policy' and 'Public Policy' as defined in various pronouncements by the Hon'ble Supreme Court:-

16. In *Gherulal Parakh v. Mahadeodas Malya*, AIR 1959 SC 781 the Supreme Court while defining the word 'Public Policy' or the Policy of the Law' has held as under:-

'Public policy or the policy of the law is an illusive concept; it has been described as 'untrustworthy guide', 'variable quality', 'uncertain one', 'unruly horse', etc. The primary duty of a Court of Law is to enforce a promise which the parties have made and to uphold the sanctity of contract which form the basis of society, but in certain cases, the Court may relieve them of their duty on a rule founded on what is called the public policy; for want of better words Lord Atkin describes that something done contrary to public policy is a harmful thing, but the doctrine is

extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, and just like any other branch of common law it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public.'

In *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*, (1986) 3 SCC 156 the Apex Court observed as under:-

'Public policy is not the policy of a particular government. It connotes some matter, which concerns the public good and the public interest. The principles governing public policy must be and are capable, on proper occasion, of expansion or modification. If there is no head of public policy, which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any cases, which may not be covered by authority, Courts should be guided by the Preamble to the Constitution and the Principles underlying the Fundamental Rights and the Directive Principles.

17. In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, AIR 1991 SC 101 while observing that there is no well recognized head of public policy, the Supreme Court held as under:-

' This Court also angulated the question from the perspective of public policy or contract being opposed to public policy. The phrases ' public policy', ' opposed to public policy' or ' contrary to public policy' are incapable of precise definition. It is valued to meet the public good or the public interest. What is public good or in the public interest or what would be injurious or harmful to the public good or the public interest vary from time to time with the change of the circumstances. New concepts take place of old ones. The transactions, which were considered at one time as against public policy, were held by the courts to be in public interest and were found to be enforceable. Therefore, this Court held in *Brojo Nath* case that ' there has been no well recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not

even flinched from inventing a new head of public policy.'

18. Thus it is clear that the term public policy however does not admit of any definition and it cannot easily be explained. It may vary as the habits, opinions, and welfare of a people may vary, and what may be a policy of one State may not be so in another State. The expression public policy is a very certain one and it should not be carelessly extended to any case for what is the policy of the public at one time may not be a sound public policy later on. One of the eminent Judges in England has defined the Public Policy as an unruly horse, and there are series of decisions divergent in character where the Court sometimes refused and on different occasions enforced an agreement.

19. The impugned order dated 26.9.2003 abolishing the period of three years, which is alleged to be a policy decision is to be scrutinized in light of the aforesaid principles.

20. The State Government on 26.7.2002 took a policy decision in exercise of powers under sub section 3 of Section 6 of the U.P. Water Supply and Sewerage act, 1975 fixing the tenure of appointment of the Managing Director of U.P. Jal Nigam for a period of three years in general. One Ramesh Chandra Asthana questioned the validity of this order by filing a writ petition no. 1118/SB/2002 before this Hon'ble Court. In this writ petition, a supplementary affidavit was filed by one Sri Suresh Kumar Sharma, Under Secretary, Nagar Vikas, on behalf of the State Government in which a definite stand was taken to the effect that the policy decision was taken in view of giving sufficient time to an incumbent to work for the betterment of the Nigam and in implementing the long term policy decisions in the interest of Nigam. Paragraph 8 and 9 of the affidavit filed by the State Government in writ petition no. 1118/SB/2002 reads as under:-

'8. That the State Government taken a policy decision in exercise of powers under sub Section 3 of Section 6 of the Act in the interest of Nigam and has fixed the tenure of Managing Director for a period of three years, so that any appointee may get a tenure of three years and he may get sufficient time to work for the betterment of the Nigam as well as it will help him in taking and implementing the long term policy decisions in the interest of the Nigam.

9. That the state Government while taking into consideration the fact that the U.P. Jal Nigam is an important corporation with respect to the Water and Sewerage system of the Urban Development and if, the appointments are made for short terms then it will adversely affect the various projects and Nigam will not be able to work with the expected speed as well as achieve the desired targets/goals and accordingly, it was decided to make appointment on the post of Managing Director for a term of three years as that of ex-officio Chairman of the Nigam.'

21. This Court while declining to interfere with the policy decision dismissed the writ petition and approved the stand of the State Government that fixing of 3 years tenure would be in the interest of the Corporation as it deals with the essential public amenities. The judgment and order dated 25th July 2003 passed by this Court dismissing the writ petition of Sri Ramesh Chandra Asthana, was challenged before the Hon'ble Supreme Court in S.L.P. No. 14978 of 2003 but the same was also dismissed.

22. It would be necessary to mention that the proposal for prescribing fixed tenure for the post of Managing Director was initiated by Sri A.P. Singh, who at that time was holding the post of Chairman, U.P. Jal Nigam. In his proposal/letter dated 13.6.2002 indicated that persons who are appointed on the post of Managing Director for a very short period and now when it has been decided that an incumbent would be appointed on the basis of merit as such it would be appropriate that a three years period is fixed as has been decided in respect of State Livestock Board. In this letter it was also indicated that in the past this system was adopted while appointing Sri K.N. Dwivedi as Managing Director. The proposal made by Sri A.P. Singh, Chairman was considered and accepted by the State Government and consequently a policy decision dated 26.7.2002 has been taken prescribing three years term unless otherwise terminated by the State Government by publishing it in the official gazette.

23. It is in this background that the petitioner was appointed on 11.7.2002 as Managing Director. It was indicated in the order that the petitioner shall continue to work as Managing Director till the period as determined by the State Government while exercising the powers conferred under Section 6(3) of the Act, or else till the

age of his superannuation. Thereafter the Secretary to the Government wrote a letter dated 30.9.2002 to the Chairman of the U.P. Jal Nigam indicating therein that order no.2206/9-3-02-8C/9TC dated 26th July,2002 is applicable on Sri Arvind Nath and there is no need of issuing any separate order regarding his tenure of three years. Consequent to the Order dated 11.7.2002, the then Chairman of U.P. Jal Nigam /Agriculture Production Commissioner wrote a letter clarifying therein that in view of the Government Orders it is clear that Sri Arvind Nath has been appointed for a period of three years from the date of taking over charge. It has also been indicated in the order that completion of 58 years age by Sri Arvind Nath would not have any effect on his appointment. The fact aforesaid falsifies the contention of Sri Kapil Dev that no order was issued allowing Sri Arvind Nath to continue on the post of Managing Director for three years.

24. In *Dr L.P. Agarwal v. Union of India and Ors.* [AIR 1992 SC1872] the question for consideration before the Hon'ble Supreme Court was that whether an incumbent can be prematurely retired before the completion of his tenure? The Hon'ble Supreme Court while holding that appellant could not have been prematurely retired and that too without being put on any notice whatsoever, observed as under:-

Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed lifespan. The appellant could not therefore, have been prematurely retired and that too without being put on any notice whatsoever.

25. We are conscious of the fact that Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of the legislature or the executive provided these authorities do not transgress their constitutional limits or

statutory powers i.e. do not act ultra vires. Further, there is no bar in changing the policy formulated earlier if there are good and weighty reasons for doing so. The authorities may stick to the earlier policy or give it up but if it does change its policy it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily. Needless to say that whatever policy is made subsequently should be done fairly and made known to those concerned. Keeping in mind the aforesaid facts, we are of the considered view that there is no blanket ban upon the courts in interfering with the policy decision taken by the Government. It is trite that it is mandatory upon the decision-making body to act fairly, in accordance with law and it should be free from any influence. This Court can also show interference when it finds that the powers are not exercised in accordance with the mandate of the legislature and the court by such interference helps the good governance by constantly reminding the Government and its officers that they should act within the four corners of the statute. Even the policy decision taken by the State Government has to pass the test of Articles 14 and 16 as held in *Kailash Chandra Sharma v. State of Rajasthan and Ors.*, AIR 2002 SC 2877. Their Lordships observed in paragraph-12 as under;

'There can be little doubt that the impugned circular is the product of the policy-decision taken by the State Government. Even then, as rightly pointed out by the High Court, such decision has to pass the test of Arts. 14 & 16 of the Constitution. If the policy-decision, which in the present case has the undoubted effect of deviating from the normal and salutary rule of selection based on merit is subversive of the doctrine of equality, it cannot sustain. It should be free from the vice of arbitrariness and conform to the well settled norms both positive and negative underlying Arts. 14 and 16, which together with Art. 15 form part of the constitutional Code of equality.'

26. Lastly, it has been also argued by the learned Counsel for the petitioner-Arvind Nath that before passing the impugned order dated 26.9.2003 cancelling the tenure of three years and before relieving no opportunity of any kind was given to him as such the impugned order apart from being unreasonable and arbitrary, is also against the principles of natural justice. In *D.K. Yadav v. J.M.A. Industries Ltd.* (1993) 3 SCC 259 the Hon'ble Supreme Court articulated that an order involving civil consequences must be made consistently with the rules of natural justice but

in the instant case it is an admitted fact that no opportunity whatsoever was given by the respondent before issuing the order dated 8th March, 1994.

27. In *National Building Construction Corporation v. S. Raghunathan*; (1998) 7 SCC 66 it was observed by the Apex Court that a person is entitled to judicial review, if he is able to show that the decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he is informed the reasons for withdrawal and the opportunity to comment on such reasons. It is settled position of law that an order involving civil consequences must be made consistently with the rules of natural justice and that they have a duty to proceed in a manner which is free from even the appearance of arbitrariness, unreasonableness or unfairness. (See: *D.K. Yadav v. J.M. A. Industries Ltd.* 1993(3) SCC 259). From the records of this case, it clearly emerges out that no opportunity of any kind was given to Sri Arvind Nath while terminating his tenure. On account of his appointment for an assured period of three years, some rights having civil consequences did accrue to Petitioner [Arvind Nath] as such the respondent sought to have given minimum opportunity prior to passing of the impugned order. In *K.C. Arora*; AIR 1987 SC 1858 it has been held that vested rights acquired under existing laws cannot be taken arbitrarily so as to contravene fundamental rights. In the case of *Dr. L.P. Agarwal* (supra) the Hon'ble Supreme Court reiterated that giving notice to the person aggrieved is necessary. Therefore, the contention of the State Counsel that there was no necessity of affording any opportunity to the petitioner [Arvind Nath] as the impugned order is a policy decision has no substance and is rejected. Furthermore, we are of the considered opinion that whenever an incumbent is appointed for assured tenure and time limit is prescribed by the State Government in the back ground of public interest through a Government Policy, then the tenure can only be curtailed on justifiable grounds as laid down in *Dr L.P. Agarwal's* case [supra].

28. It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant facts relating to such expectation. Thus it was incumbent upon the

authority, which proposes to defeat a person's legitimate expectation to afford an opportunity to make representations in the matter, which the respondents did not follow in the present case. Counsel for the respondents have failed to establish that any opportunity or show cause was ever given to the petitioner before passing the impugned order and on this ground too, the writ petition deserves to succeed. At this juncture, we deem it necessary to mention here that doctrine of promissory estoppel or equitable estoppel will also play a role in the present case as the basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party and has in fact been so acted upon by the other party, such promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it. This doctrine is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. In the case at hand, the petitioner was appointed on the post of Managing Director of the Jal Nigam on 11.7.2002. By the order dated 26th July, 2002 the state Government fixed a tenure of three years for the post of Managing Director. Consequently, the State Government and the Agriculture Production Commissioner/Chairman, Jal Nigam issued the orders dated 30.9.2003 and 23.10.2002 clarifying therein that attaining the age of 58 years will not have any effect on the appointment of the petitioner. Thus the State Government cannot be permitted to go back and say that since the petitioner has attained the age of 58 years as such he is relieved from the post of Managing Director. Before concluding, we would like to refer recent decision of Hon'ble Supreme Court in Onkar Lal Bajaj V.. Union of India, (2003) 2 SCC 673, wherein the Hon'ble Supreme Court has laid emphasis that equity and fair play are the essential ingredients of the principle of governance. The relevant paragraph of the aforesaid judgement reads as under:

' The role model for governance and decision taken thereon should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to be based on transparency but also must create an impression that the decision-making was motivated on the consideration of probity.

The government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it the decision may look legitimate but as a matter of fact the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.'

29. We are unable to understand as to what prompted the Chief Secretary to write an office note stating therein that petitioner [Arvind Nath] is continuing even after attaining the age of 58 years, when while acting as Chairman of the U.P. Jal Nigam/Agriculture Production Commissioner, he himself has proposed for fixing three years terms and has strongly recommended for the same in the interest of the Corporation. Thereafter the State Government considering the public interest and significance of the Corporation decided to fix tenure of three years for the post of Managing Director. Not only this, as Chairman of the Jal Nigam, he himself had recommended in his letter dated 23.10.2002 that completion of 58 years by Petitioner- Arvind Nath would not be an impediment in his continuance as Managing Director because he has been appointed for three years. We also have an opportunity to examine the record produced by the State Government, and we are of the view that learned Chief Standing Counsel has wrongly projected the impugned executive order to be a policy decision as no plausible reasons are available on record for deviating from the earlier policy decision which was taken looking to the working and importance of the projects of the Corporation. Further, from the records it clearly comes out that no opportunity was given prior to the passing of the order dated 26.9.2003 and the subsequent orders.

30. Taking the holistic view of the matter, we have no hesitation in saying that the impugned order is not a policy decision but is the result of colourable exercise of power and has been passed under the garb of the policy decision so as to prevent the Court from interfering the matter. Needless to say that all executive orders cannot be termed as a policy decision. Since we have come to a conclusion that the impugned order is an executive order and is not an order passed in furtherance

of the Government Policy, the petitioner is protected by the Doctrine of Assured Tenure and as such the petitioner has a right to work as Managing Director for the remaining period of his fixed tenure. For the reasons aforesaid, the writ petition no.1309/SB/2003 is allowed. The impugned order dated 26.9.2003 cancelling the policy decision dated 26.7.2002 prescribing the fixed tenure for the post of Managing Director, and the consequential orders dated 26.9.2003 relieving the petitioner from the post of Managing Director are hereby quashed. The petitioner- Arvind Nath shall be allowed to function as Managing Director of the Jal Nigam for the remaining period of his tenure.

31. Writ Petition No. 452[SB] 2004; Devendra Pal Sharma and Anr. v. State of U.P. and Ors. and the Writ Petition No. 468[SB]2004; Atul Krishna v. State of U.P. and Ors. stand decided accordingly.

Dated: 9.9.2004

HM/

32. we find in the present case, under the garb of policy decision, the authority have acted arbitrarily and have failed to give cogent and reasonable reasons for altering the earlier policy decision which was implemented a year ago for the reasons enumerated hereinabove.

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