

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA**

DATED THIS THE 30TH DAY OF NOVEMBER 2011

PRESENT

THE HON'BLE DR. JUSTICE K.BHAKTHAVATSALA

AND

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

WRIT APPEAL NO.624/2008 (GM-RES)

C/w.WRIT APPEAL NO.422/2008 (GM-RES)

WRIT APPEAL NO.624/2008

BETWEEN

1. D.S.Patil,
S/o.Shankhara Gowda Patil,
Aged about 55 years,
President,
Bijapur Urban Development
Authority,
C/o.Ashirwad Nilaya,
Sadashivanagar,
Solapur Road,
Bijapur.
2. Aravindgoud M.Biradar,
S/o.Mallikarjuna Biradar,
Aged about 38 years,
The Member,
Bijapur Urban
Development Authority,
At Post: Atharga-586 112,
Taluk: Indi, Dist: Bijapur.
3. Subasa Basavaraj Mamadapur,
S/o.Basavaraj Mamadapur,
Aged about 25 years,
The Member,

Bijapur Urban
Development Authority,
At Post: Savanahalli,
Taluk & Dist: Bijapur.

...APPELLANTS

(By Sri.Basavaraj Poojar.S, Adv.(ABSENT))

AND

1. The Chief Secretary,
Government of Karnataka,
Vidhana Soudha,
Bangalore-560 001.
2. The State of Karnataka,
Rep. by its Prl. Secretary,
Town & Urban Development
Dept., Vikasa Soudha,
Bangalore-560 001.
3. The Deputy Commissioner,
Bijapur Dist.,
Bijapur.
4. The Urban Development Authority,
Bijapur Dist.,
By its Commissioner.
5. The Joint Secretary to
Government,
Urban Development Dept.,
Vidhana Soudha,
Bangalore-560 001.

...RESPONDENTS

(By Smt.B.G.Namitha Mahesh, Adv. for R-4,
Sri.Manvendra Reddy, AGA for R-1 to 3 & R-5)

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This Writ Appeal is filed under Section 4 of the Karnataka High Court Act, 1961, praying to set aside the Order passed in the Writ Petition No.20448/2007 dt.20.3.2008.

WRIT APPEAL NO.422/2008

BETWEEN:

Syed Mudir Agha,
S/o.Syed Ahmed Agha,
59 years,
Chairman,
Karnatak State Minorities
Commission,
Visveshwaraiah Centre,
Vidhana Veedhi,
Bangalore-560 001.

...APPELLANT

(By Sri.Prabhuling K.Navadgi, Adv.)

AND:

1. The State of Karnataka,
Rep. by Principal Secretary
To Government,
Social Welfare Department,
(Minority Welfare),
M.S.Buildings,
Bangalore-560 001.
2. Karnataka State Minorities
Commission,
Constituted under Act 31 of
1994 with its office at
5th Floor,
Visveswaraiah Centre,
Vidhana Veedhi,
Bangalore-1,
Rep. by the Secretary thereof.
3. The Chief Secretary to
Government of Karnataka,
Vidhana Soudha,
Bangalore-560 001.

...RESPONDENTS

(Sri.Manvendra Reddy, AGA for R-1 to 3)

This Writ Appeal is filed u/s.4 of the Karnataka High Court Act, praying to set aside the order passed in the Writ Petition No.16631/2007 dat.25.02.2008.

These Appeals coming on for dictating Judgment, this day, Dr. Bhakthavatsala, J., delivered the following:

JUDGMENT


Appellants in Writ Appeal No.624/2008 are the petitioners in Writ Petition No.20448/2007. They have filed the Writ Appeal praying to set aside the Order dated 20.03.2011 made in Writ Petition No.20448/2007 and grant the following reliefs:

- a) to quash the impugned Order dt.15.12.07 issued by Respondent No.3 in No.Nae 565 Apra 2007, as per Annexure-G, by issue of writ in the nature of certiorari or any other writ, order, direction as the case may be;
 - b) Direct the respondents herein not to enforce the impugned Circular vide Annexure-A dated 7.11.2007 in No.UDD 565 Apra 2007 issued by 5th respondent and consequential letter dt.23.10.07, issued by R-3 in No.Kam V/Busu/CR/54/2007-08, as per Annexure-F, in so far as it relates to the petitioners.
 - c) Issue a writ in the nature of Prohibition directing the respondents herein not to remove the petitioners from the post of Chairman and Members, Urban Development Authority, Bijapur for a period of 3 years as provided under Section 3(3) & (1) of the Karnataka Town Development Authority Act, 1987.
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2. Appellant in Writ Appeal No.422/2008 is the petitioner in Writ Petition No.16631/2007. He has filed the Writ Appeal praying to set aside the Order dated 25.02.2008 made in Writ Petition No.16631/2007 and grant the following reliefs:

- a) declare that Section 4(1) of the Karnataka State Minorities Commission Act, 1994 to the extent that it incorporates the expression "Subject to the pleasure of the Government" is void and unconstitutional and also to declare that the said expression is invalid and unconstitutional and be treated as non-est;
- b) issue a writ of mandamus or any other appropriate writ or order, directing the respondents to refrain from taking any steps in pursuance of the Note dated 12.10.2007 (Annexure B) and from taking any other action to disturb the petitioner from his present position as Chairman of the Karnataka State Minorities Commission and to quash the said Note dated 12.10.2007 (Annexure-B) in so far as it applies to the Commission and the Petitioner.

3. Writ Petition in No.20448/2007 was dismissed as it was covered by the order dated 25.02.2008 ^{made} in Writ Petition No.16631/2007. Hence, both the writ appeals were clubbed.



4. Both the appeals were heard on 14.07.2008 and an order was dictated by Hon'ble Mr. Justice V. Gopala Gowda who headed the bench with Hon'ble Mr. Justice Arali Nagaraj, and dismissed both the appeals, but the autograph was not signed. Therefore, the Registry put up the file before the Hon'ble Acting Chief Justice for orders, for listing the appeals before the roster bench. Accordingly, on 28.10.2011, Hon'ble Acting Chief Justice ordered to post both the appeals before the Division Bench having roster. That is how these two appeals have been listed for hearing.

5. There is no representation for the appellants.

6. The case of the appellant/Syed Mudir Agha in Writ Appeal No.422/2008 as pleaded in Writ Petition No.16631/2007 is that by Order dated 05.10.2007, he was appointed as Chairman of the Karnataka State Minorities Commission under Section 4 of the Karnataka State Minorities Commission Act, 1994 (in short 'the Commission Act') for a period of three years from the date of assumption of office. On 09.10.2007, the President of India promulgated President's rule in the State of Karnataka under Article 356 of the Constitution of India. After the promulgation of the President's rule, Chief Secretary of the State of Karnataka issued a note dated 12.10.2007 instructing all the Secretaries to Government to request the non-official Chairman of Corporation/bodies to resign

and surrender the official vehicles attached to them immediately. Subsequently, by letter dated 17.10.2007, the Secretary to Govt., Minorities Welfare (Social Welfare) Department, Bangalore, sent to the Secretary of Karnataka State Minorities Commission to take action pursuant to the Chief Secretary letter dated 12.10.2007. It is contended that the petitioner is neither ~~the~~ Chairman of the Corporation nor Board, but Chairman of the Commission under the statute and he cannot be removed from the post by the Chief Secretary/Secretary to Government except under Section 5 of the Commission Act. Learned single Judge rejected the writ petition.

7. The case of the appellants in Writ Appeal No.624/2008 as pleaded in Writ Petition No.20448/2007 is that on 20.07.2007, the Appellant No.1 was appointed as President of Bijapur Development Authority (in short 'BDA'). Whereas the appellants 2 and 3 were nominated as members of the BDA on 23.07.2007 and 04.04.2007 for a period of three years. But the Chief Secretary or other Secretaries to Government have no authority to compel them to resign as the President/Member of the BDA as the case may be. Learned single Judge, following the Order dated 25.02.2008 made in Writ Petition No.16631/2007, dismissed the writ petition.

8. According to the appellants, they were appointed/nominated during the year 2007 for the posts mentioned above, for a period of

three years. The period of three years have elapsed. Hence, the writ appeal become infructuous and it is not necessary to dwell upon the merits of the case.

9. Accordingly, both the Writ Appeals are disposed off as having become infructuous.

Sri.Manvendra Reddy is granted three weeks time to file memo of appearance.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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