

# RAJASTHAN HIGH COURT

Yogesh Saini

Vs.

State of Rajasthan

Civil Writ Petn. No. 2921 of 2002

(K.S. Rathore, J.)

28.01.2003

## ORDER

**K. S. Rathore, J.**

1. The petitioner was appointed as member of the UIT Alwar on 4-3-2002 by the State of Rajasthan under Sections 9, 12 and 14 (Ka) of the UIT Act, 1959. Earlier the petitioner was Chairman of UIT, Alwar.
2. The State Government vide order dated 12-4-2002 withdrew the nomination of the petitioner and cancelled the appointment order of the petitioner dated 4-3-2002.
3. Aggrieved and dissatisfied with the order of cancellation dated 12-4-2002 the petitioner preferred this writ petition and assailed the order dated 12-4-2002 on the ground that the order dated 4-3-2002 cannot be cancelled without affording opportunity of being heard. Since no opportunity of being heard has been provided to the petitioner and the order dated 12-4-2002 has been passed by the State Government which is *per se* contrary to the principle of natural justice.
4. Learned Counsel for the petitioner further assailed the order dated 12-4-2002 on the ground that in the order no reason has been assigned for cancellation. Thus this order dated 12-4-2002 is a non-speaking and unreasoned order and no specific charge has been spelled in the order, therefore, liable to be quashed and set aside.
5. He further submits that this order dated 12-4-2002 passed by the respondent is also against the law. As per sub-section (4) of Section 15, the Trustee who is being removed by the State Government must have been given an opportunity of explanation and when such action is taken, the reason therefor shall be placed on record and communicated to the petitioner in writing. Without following due process of law as

stipulated under sub-section (4) of Section 15 the order dated 12-4-2002 has been passed by the State Government.

6. Learned Counsel for the petitioner further referred Section 15 of the Urban Improvement Trust Act, 1959 wherein a Trustee can be removed from the Trust on the following Grounds which are reproduced as under:

15. Removal of Trustees-

(1) The State Government may remove from the Trust any Trustee.

(a) refused to act, or becomes incapable of acting or absents himself for more than three consecutive months from the meetings of the Trust or of any committee of which he is a member and is unable to explain such absence to the satisfaction of the Trust, or

(b) is an undercharged insolvent or has compounded with his creditors, or

(c) has been convicted by a criminal court of an offence involving moral turpitude, such conviction not having subsequently been set aside, or

(d) has knowingly acquired or continued to hold without the permission in writing for the State Government, directly or indirectly or by a partner, any share of interest in any contract or employment with, by or on behalf of the Trust or

(e) has knowingly acted as a Trustee in a matter other than a matter referred to in clause (c) of sub-section (2) in which he or a partner had directly or indirectly, a personal interest, or in which he was professionally interested on behalf of a principal or other persons, or

(f) has acted in contravention of Section 23, or

(g) being a legal practitioner, in any suit or other proceedings acts or appears on behalf of any other person against the trust, or acts or appears on behalf of any other person in any criminal proceedings instituted by or on behalf of the Trust.

(2) A person shall not be deemed for the purpose of sub-section (1) to acquire, or continue to have, any share or interest in a contract of employment by reason only of

(a) having a share or interest in any lease, sale or purchase of land or building or

in any agreement for the same provided that such share or interest was acquired before he became a Trustee, or

(b) having a share or interest in a newspaper in which an advertisement relating to the affairs of the Trust is inserted, or

(c) holding a debenture or otherwise being interested in loan raised by or on behalf of the Trust, or

(d) having a share or interest in the occasional sale or an article, in which he regularly trades, to the trust to a value not exceeding, in any one year, such amount as the Trust, with the sanction of the State Government, may fix in this behalf.

(3) The State Government may remove from the Trust a Trustee who in its opinion has so flagrantly abused in any manner his position as a Trustee as to render his continuance as a Trustee detrimental to the public interest.

(4) When the State Government proposes to take action under the foregoing provisions of this section an opportunity of explanation shall be given to the Trustee concerned, and, when such action is taken, the reason there for shall be placed on record and communicated to him in writing.

7. Learned Counsel for the petitioner does not dispute this fact that the State Government has power to remove the trustee but only after due compliance of the law and after affording opportunity of hearing. Petitioner's case does not fall in any of the categories mentioned in Section 15 of the UIT Act, therefore, the action of the respondents is *per se* illegal and same is liable to be quashed and set aside.

8. On behalf of the respondents learned AAG Mr. Mohd. Rafiq has also denied that the petitioner during the tenure of Sabhapati of UIT, Alwar bears a fair and clear image in the public at large. Learned AAG further submits that number of criminal cases are lodged against the petitioner which shows that the petitioner does not bear a good character and he has no fair and clear image in the public at large. He has also given the details of the criminal cases lodged against the petitioner.

Sr. No. FIR No. Offences Under Sections

1. 386/1979 452 and 323 IPC
2. 553/1989 4/7 Protection of Civi lRights Act.

3. 324/1991 332, 353, 341 and 504 IPC
4. 215/1992 147, 447, 323 and 379 IPC
5. 577/1995 147, 323, 341 and 427 IPC
6. 261/2000 147, 323, 341 and 336 IPC
7. 380/2001 332 and 353 Indian Penal Code

9. Mr. Mohd Rafiq AAG further submits that prior to nomination of the petitioner it had not been brought to the notice of the Government that number of criminal cases are pending against the petitioner and State Government was also not aware that the petitioner bears quarrelsome nature and in the first meeting which was held on 17-3-2002 the petitioner created a scene during the meeting. The Chairman, UIT, Alwar complained that he had abused and misbehaved with him and conduct of the petitioner was contrary to the meeting of the Trust. Along with his complaint copies of F.I.R. have been enclosed.

10. After perusal of the complaint and FIR lodged against the petitioner, the State Government while exercising the power under Section 14-A of Rajasthan Urban Improvement Trust Act, 1959 read with Section 18 of Rajasthan General Clauses Act, 1955, rescinded the order dated 4-3-2002, under which the petitioner was appointed as Trustee of the UIT, Alwar.

11. It is also disputed by learned Counsel for respondents that order of rescinding the order dated 4-3-2002, which was published in the newspaper, was passed on 22-4-2002 and not on 12-4-2002.

12. Mr. Rafiq AAG further submits that Section 15 of the Rajasthan Urban Improvement Trust Act is not attracted in the present matter and the case of the petitioner does, not fall within the purview of Section 15 of the Act as is evident by order itself that the order has been passed under Section 14-A of the Act read with Section 18 of General Clauses Act, 1955.

S. No.FIR No.Offences (IPC)Status of the case

1.386/1999454 and 343Compromised on 25-3-98 in the Court of the Judicial Magistrate No. 1, Alwar.

2.553/19894/7, Protection of Civil Right Act later on charge U/s. 353 Indian Penal

Code was framed. Acquitted on 7-6-1989 by the competent Court of Law.

3.324/1991332, 353, 341 and 504 Probation was extended with fine Rs. 250 on 25-9-1999 by A.C.J.M. No. 1, Alwar which was further confirmed on 9-7-2002 by the Additional Sessions Judge, Alwar.

4.215/1992147, 447, 323 and 379 Compromised on 30-8-2000

5.577/1995147, 323, 341 Case for misbehaviour in a meeting was re-and 427 gistered by non-petitioner; 1 out of 11 acc-used compromise proceedings are undergoing/pending.

6.261/2000147, 323, 341 and 336 IPC. Name was given in FIR but later on after investigation police did not file challan against the petitioner.

7.380/2001332 and 353 FIR was registered for theft of electricity but challan was filed U/s 343 IPC. which is not sustainable/pending.

13. Mr. Rafiq AAG further submits that since the Government possesses the power to appoint a person as a member has also got the power only to rescind by the recourse of Section 14-A of Rajasthan Urban Improvement Trust Act, 1959 read with Section 18 of Rajasthan General Clauses Act, 1955. The question of opportunity of hearing does not arise in such a situation.

14. In support of his contentions learned Counsel for the respondents Mr. Mohd. Rafiq AAG has referred the judgments of *Om Narain Agarwal v. Nagar Palika Shahjahanpur*,<sup>1</sup> *Dr. S. D. Kapoor v. Chancellor, Jai Narain Vyas University Jodhpur*,<sup>2</sup> and *Rajasthan Pharmacy Council Jaipur v. State of Rajasthan*,<sup>3</sup>

15. In rejoinder to the reply with regard to cases referred by learned AAG, it is given out that in case No. 386/99 a compromise on 25-3-98 in the Court of Judicial Magistrate No. 1, Alwar has been arisen.

16. The present status of cases are as under:

17. It is also submitted by learned Counsel for the petitioner that the complaint which was filed against the petitioner has been made without any documentary evidence in support of the allegations and it clearly indicates that the Chairman of the U.I.T. is having some personal grudge against the petitioner. The Chairman by way of suspension of the petitioner is bent upon to get rid of him. So far as the application of the General Clauses Act is concerned, it is submitted that it has nowhere been

mentioned that General Clauses Act is applicable to the matter and provisions of General Clauses Act only came into force when there is no clear provision in the Act itself. Provision of Section 14-A as referred by respondents is also not applicable to the instant case and case of the petitioner only falls within the purview of Section 15 of the UIT Act, 1959.

18. Heard rival submissions of learned Counsel for the respective parties and carefully examined the material available on record as well as relevant provisions of U.I.T. Act 1959 and General Clauses Act, 1955 and also perused the judgments referred by learned AAG.

19. To resolve present controversy, I have examined Section 15 of U.I.T. Act as referred by learned Counsel for the petitioner. Section 15 provides the power to the State Government to remove any trustee from the trust in case he refused to act, or becomes incapable of acting or absents himself for more than three consecutive months from the meetings of the Trust and can be removed as reason mentioned in Section 15.

20. By bare perusal of conditions as stipulated in Section 15 of the Trust Act reveals that the case of the petitioner does not fall within the ambit of Section 15, thus, the arguments advanced on behalf of the petitioner that provisions of Section 15 are applicable to the instant case is not tenable.

21. Now I would like to refer Section 14-A of the U.I.T. Act, 1959 which reads as under:

14-A : Termination of appointment and reconstitution.- Notwithstanding anything contained in Sections 11, 12 or 15, the State Government may, if it thinks fit in public interest so to do, terminate the appointment of Chairman or any trustee of a Trust or reconstitute the same at any time.

22. By bare perusal of Section 14-A reveals that the Government is empowered to terminate the appointment of trustee if the Government thinks it proper in public interest.

23. Section 18 of Rajasthan General Clauses Act, 1955 reads as under :

18. Power to appoint includes power to suspend, remove or dismiss :- Where, by any Rajasthan law, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to

make the appointment shall also have power to suspend, remove or dismiss any person appointed by itself or any other authority in exercise of that power.

24. This deals that Government of Rajasthan is also having power to suspend, remove or dismiss any person appointed by itself or any other authority in exercise of that power. It is not disputed that the State Government has power to appoint and to remove any person but the main contention of the petitioner is that before passing any order for removal from the Trust the State Government should have provided the opportunity of being heard or show cause as to why his membership may not be terminated. Such opportunity of being heard has not been provided under Section 14-A of the U.I.T. Act, 1959. It only gives the power to the State Government to remove the trustee and reconstitute the same at any time.

25. Since the complaint is made against the petitioner with regard to criminal cases pending against him, for this purpose the petitioner ought to have been given show cause notice to submit his explanation with regard to the criminal cases against him and this fact is only lacking in the matter and only on this count alone the petitioner has assailed the order of termination. So far as the power conferred with the State Government is concerned, it is not disputed and certainly the State Government has power to appoint the trustee and also having the power of removal of the trustee as stated hereinabove.

26. In the interest of justice, I deem it proper to direct the State Government to issue show cause notice to call for explanation with regard to complaint submitted by the complainant against the petitioner and after having explanation from the petitioner and after considering such explanation submitted by the petitioner, the Government is at liberty to pass a fresh order in accordance with the provisions of law. Petitioner is also advised to give the reply to this show cause notice within the period as stipulated by the State Government failing which the State Government is at liberty to proceed further and shall pass the order in accordance with the provisions of law.

27. With these observations, the termination order dated 12-4-2002 is herewith set aside and writ petition stands allowed.

Petition allowed.

Cases Referred.

1. AIR 1993 SC 1440
2. AIR 1997 Raj 217

3. 2001 (1) WLC 722