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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.707 OF 2015

Dnyaneshwar Digamber Kamble,
Adult, Indian Inhabitant, presently
residing at B-60, HA Colony, Pimpri,
Pune-18.

..Petitioner.

V/s.

1. The State of Maharashtra,
through the Principal Secretary,
General Administrative
Department, Mantralaya,
Mumbai - 400 020.
 2. The Social Welfare and Special
Assistance Department, through
the Secretary, Vistaar Bhavan,
Mantralaya, Mumbai - 400 032.
 3. Sant Rohidas Leather Industries and
Charmakaar Development Corporation
Ltd., Having its office at Bombay Life
Building, 5th Floor, Veer Nariman Road,
Hutatma Chowk, Mumbai - 400 001.
- ..Respondents.

Dr.Ramdas Subban i/b. Mr.Subhash V. Gutte for the petitioner.

Mrs.M.P.Thakur, AGP for the respondent Nos.1 and 2.

Mr.Rohit Pramod Sakhadeo for the respondent No.3.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 6TH OCTOBER, 2015

ORAL JUDGMENT (PER A.S. OKA, J.)

1. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the third respondent and the learned AGP for first and second respondents. On the earlier date, the parties were put to notice that the petition will be taken up for final hearing at admission stage. Accordingly, the petition is heard for final disposal.

2. The petitioner was appointed on 5th September, 2014 by the State Government as a Director and the Chairman of the third respondent which is a State owned Corporation which is registered as a Company under the Companies Act, 1956. The third respondent is a Government company. The appointment was for a period of 3 years or till further orders, whichever is earlier.

3. By this petition under Article 226 of the Constitution of India, the petitioner has taken an exception to the order dated 12th December, 2014 passed by the State Government by which the appointment of the petitioner has been cancelled.

4. There is a reply filed by Shri Vasant Nivrutti Waghmare, the Managing Director of the third respondent on behalf of the State Government and on behalf of the third respondent. Another affidavit is filed by the same officer on 12th January, 2015.

5. The submission of the learned counsel appearing for the petitioner is that assuming that the doctrine of pleasure may have been invoked by the State Government for removing the petitioner, the affidavit-in-reply filed on behalf of the State Government shows that there are absolutely no reasons recorded for taking the drastic action of removing of the petitioner from the post of the Chairman. The learned counsel appearing for the petitioner relied upon the decision in the case of **B.P.Singhal V/s. Union of India & Anr.**¹ He relied upon the judgment and order dated 8th May, 2015² of this Court. He submitted that as no reasons whatsoever have been assigned either in the order or in the affidavit-in-reply or even in the proposal submitted before the Government for removal of the petitioner, the order of removal of the petitioner stands vitiated. The learned AGP appearing for the first and second respondents relied upon the Rules and Regulations of the third respondent. Her submission is that the Hon'ble Chief Minister and the Governor have absolute power to remove any Director, the Chairman and the Vice-chairman of the third respondent-

1 (2010) 6 SCC 331

2 Writ Petition no.326 of 2015(Jeewanrao Gore vs state of maharashtra and others) and other connected Petitions

Corporation at any time at their absolute discretion. The learned AGP further submitted that under the powers delegated by the Hon'ble Governor to the Government of Maharashtra, the decision was taken to cancel the appointment of the petitioner. The learned AGP relied upon Exhibit-4 to the reply which is a note dated 18th November, 2014 made by the Ministry of Social Justice and Special Assistant Department, the Government of Maharashtra under the direction of the Private Secretary to the Hon'ble Chief Minister. She urged that Writ Jurisdiction of this Court cannot be invoked for disturbing the discretionary order passed by the Government. Her further submission is that the order of appointment of the petitioner makes it clear that the duration of appointment will be for a period of three years or till the date of his removal, whichever is earlier and, therefore, the petitioner cannot claim any right of continuation for a period of three years. The learned counsel appearing for the third respondent relied upon the affidavit of Shri Vasant Nivrutti Waghmare and urged that the doctrine of pleasure has been rightly invoked. His submission is that while deciding Writ Petition No.326 of 2015 decided on 8th May, 2015, this Court has not properly considered the decision in the case of B.P.Singhal as the decision was applicable only to the appointments made under the Constitution of India. He, therefore, urged that the law laid down in the case of B.P.Singhal will have no application.

6. We have carefully considered the submissions. The State Government is relying on the Regulation No.80 of the third respondent Corporation. The said Regulation provides that the Hon'ble Governor will have power to remove any Directors including the Chairman and Vice-chairman at any time in his absolute discretion.

7. It is will be necessary to make a reference to the impugned order at this stage. The impugned order dated 12th December, 2014 does not record any reasons for removal of the petitioner. We have perused the noting dated 18th November, 2014 annexed to the affidavit of Shri Vasant Nivruttti Waghmare. The noting has been prepared by the Section Officer of the Special Assistance and Social Justice Department of the State Government. The first line of the noting records that the same was being submitted as per the directions of the Private Secretary to the Hon'ble the Chief Minister. It further records that the Hon'ble Governor has powers to remove the Chairman, the Vice-chairman and non Government Members of the third respondent by invoking the doctrine of pleasure at his discretion. The noting dated 18th November, 2014 does not record any reason as to why the petitioner should be removed. In fact there is no proposal in the noting to remove the petitioner from the post held by him. It only records that orders may be issued for the appointment of new

Chairman and non-government members. There is a noting made by the Hon'ble Minister of the Social Justice Department that "proposal to remove all administrative members be approved". There are signatures of the the Hon'ble Chief Minister and Hon'ble Governor below the said note written by the Hon'ble Minister. Going by the said noting and from the decision reflected from it , it is apparent that the power to remove the petitioner has been exercised without recording any reason whatsoever presumably by invoking the doctrine of pleasure. Even the affidavit dated 2nd February, 2015 of Shri Vasant Nivrutti Waghmare takes the same stand. He has not set out any reasons. Thus, on facts, it is an admitted position that there are no reasons recorded by the State Government or the Hon'ble Governor for the removal of the petitioner.

8. Now, we come to the decision of the Apex Court in the case of B.P.Singhal. In Writ Petition No.326 of 2015 and other connected matters decided by this Court on 8th May, 2015 to which one of us (A.S.Oka, J.) was a party, this Court has considered a case where the Chairman and Members of the Maharashtra State Road Transport Corporation were removed by the State Government by invoking the doctrine of pleasure. It may be that on facts, the Apex Court in the case of B.P.Singhal was considering the case of a Constitutional post. However, what is material is the ratio of the

decision. This Court in Writ Petition No.326 of 2015 and other connected petitions has considered the law laid down by the Apex Court in paragraphs 22, 23 and 34 of the decision in the case of B.P.Singhal. Paragraphs 19 to 21 of the decision of this Court in Writ Petition No.326 of 2015 read thus:-

“19. As far as the doctrine of pleasure is concerned, it will be necessary to make a reference to the decision of the Constitution Bench of the Apex Court in the case of the B.P. Singhal (Supra). In the said decision, the Apex Court has considered the scope of the doctrine of pleasure in the light of the provisions of the Constitution of India. In paragraph 22, the Apex Court has made a distinction between the doctrine of pleasure in a feudal set up and the doctrine of pleasure in a democracy governed by the Rule of law. Paragraph 22 of the decision of the Apex Court reads thus:

“22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by the rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has the right to do what it pleases. **The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered**

terms on any public authority will necessarily and obviously be exercised reasonably and for the public good.”

(emphasis added)

20. Thereafter in paragraph 23, the Apex Court relied upon a classic statement from the well known commentary on the Administrative Law by H.W.R. Wade. The said paragraph reads thus: “23. The following classic statement from Administrative Law (H.W.R. Wade & C.F. Forsyth, 9th Edn., pp. 354-55) is relevant in this context: “The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely—that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and meaning of the empowering Act. The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow

whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. ... The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good. There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed."

21. In paragraph 24 Apex Court held that the doctrine of pleasure in its absolute unrestricted application does not exist in India. Ultimately in paragraph 34 Apex Court held thus:

"34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. **The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons.**

(emphasis added)

9. After considering the law laid down by the Apex Court in paragraph 22, this Court has held thus :-

“Therefore, the law laid down by the Apex Court is that the withdrawal of pleasure cannot be at the fancy of the State Government. It can be only for valid reasons. In paragraph 22 of the decision, the Apex Court clearly held that the said power can be used reasonably and only for public good.”

10. Thus, the law laid down by the Apex Court is that the withdrawal of pleasure cannot be at the sweet will, whim and fancy of the State Government and it can only be for valid reasons. Moreover, the power of withdrawal of pleasure can be used reasonably and only for public good. We must note here that though the decision of this Court in Writ Petition No.326 of 2015 has been challenged by the State Government before the Apex Court, admittedly there is no ad-interim relief granted by the Apex Court.

11. Going back to the facts of the case, it is the specific stand of the State Government that for passing the impugned order, the doctrine of pleasure has been invoked. As held earlier, in the noting dated 18th November, 2014 as well as in the affidavit, no reason has been set out by the State Government for removing the petitioner. It is true that the order of appointment records that the tenure of the post will be for three years or till further orders,

whichever is earlier. When the admitted position is that the removal of the petitioner is on account of withdrawal of pleasure, the law laid down by the Apex Court will clearly apply to the facts of the case. We may note that in paragraph 34 of the judgment in the case of B.P.Singhal, the Apex Court held that the doctrine of pleasure in its absolute unrestricted application does not exist in India. Therefore, the petition must succeed and we pass the following order:-

- (i) The impugned order dated 12th December, 2014 is hereby quashed and set aside;
- (ii) We make it clear that the judgment and order will not preclude the State Government or the Hon'ble Governor from taking appropriate action of removal of the petitioner in accordance with law;
- (iii) We are informed that regular appointment of the Chairman of the third respondent has not been made and only a charge has been given to the Secretary of the Social Justice Department;
- (iv) We grant time of two months to the State Government to restore the charge of the post of the Chairman to the

petitioner;

- (v) The petition is allowed in the above terms. There will be no order as to costs.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)