

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3016 OF 2015

Tushar Kashinathrao Shisode .. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri S. S. Thombre, Advocate for the Petitioner.

Shri V. J. Dixit, Senior Counsel (Special Counsel) for the
Respondent No. 1.

Shri S. V. Adwant, Advocate for the Respondent No. 2.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

Closed for Orders on : 24.02.2017

Order Pronounced on : 31.03.2017

O R D E R (Per S. V. Gangapurwala, J.) :-

. The petitioner was nominated as a non government independent director of the respondent No. 2/Maharashtra State Road Transport Corporation, Mumbai under Government order dated 05th September, 2014. The said appointment of the petitioner is cancelled by Government Resolution dated 30th January, 2015. The same is assailed in the present petition.

2. Mr. Thombre, the learned counsel for the petitioner states that, the petitioner was appointed as a Director of the

respondent No. 2/company. The respondent No. 2 is a Government company. Once the petitioner was appointed as a director of the company, the provisions of the Companies Act would apply. The petitioner cannot be removed without following the provisions of the Companies Act, more particularly Sec. 169 of the Companies Act. The learned counsel submits that, the procedure as laid down U/Sec. 169 of the Companies Act is not followed. Because of the non observance of the said provisions, the impugned order removing the petitioner as a director is illegal.

3. The learned counsel further submits that, the State Government does not have power to terminate or cancel the directorship of the petitioner, who is appointed as an independent director. The impugned order is without jurisdiction. The impugned order is also violative of principles of natural justice and deserves to be set aside. The learned counsel submits that, the reliance placed by respondents on the *doctrine of pleasure* is erroneous. Moreover, the said *doctrine of pleasure* does not give the State unfettered powers. No cause existed for the respondents to remove the petitioner. In absence of the same, the removal of the petitioner is illegal. The learned counsel relies on the judgment of the Apex Court in a case of **B. P. Singhal Vs. Union of India and another** reported in (2010) 6 SCC 331. The learned counsel further relies on the judgment of the Division Bench of this Court in **Writ Petition**

No. 326 of 2015 with other connected writ petitions decided on ***08th May, 2015*** at the principal seat at Bombay, so also judgment of the Division Bench of this Court in **Writ Petition No. 2949 of 2015** with other connected writ petitions decided on ***06th May 2016*** at Aurangabad.

4. Mr. V. J. Dixit, the learned senior advocate appearing as a special counsel for the respondent No. 1 submits that, the appointment of the petitioner was at the pleasure of the Government. The removal also is at the pleasure of the Government. The Act does not lay down any fixed tenure of an independent director. In absence thereof, the petitioner cannot claim any right to be continued as Director in perpetuity. The learned senior advocate submits that, the State has rightly exercised its powers and has legitimately passed the order removing the petitioner as an independent director. The same would not be subject matter of judicial review. For the re-organization of the respondent No. 2 and for its efficient functioning the State exercised its pleasure and has removed the petitioner. The same is permissible. The learned senior counsel relies on the judgment of the Division Bench of this Court in a case of **Hakim Abdul Munaf Abdul Jabbar Vs. State of Maharashtra** reported in ***2015(6) Mh.L.J. 176.***

5. Mr. Adwant, the learned counsel for the respondent No. 2

submits that, the respondent No. 2 is a Government company. The matter is governed by the memorandum and article of association of the company incorporated under the Companies Act. The appointment of the petitioner was purely on political consideration. The appointment and termination of the petitioner is in the realm of private law and company's internal management. The action taken by the company is administrative action. The scope of judicial review of administrative action is very limited and the Court would not normally interfere with the discretion of the executive. The learned counsel relies on the judgment of the Division Bench of the Delhi High Court in a case of Amarjeet Kaur Vs. Union of India and others reported in 43(1991) DLT 262. So also another judgment of the learned Single Judge of the Delhi High Court in a case of M. L. Sondhi Vs. Union of India reported in 2002 CJ (Del) 829. The learned counsel submits that, even in absence of order of removal of a director, Government's power to appoint a person in place of present director is unfettered. The learned counsel relies on the judgment of the learned Single Judge of Gujrat High Court in a case of Dattaji Chirandas Vs. State of Gujrat and another reported in AIR 1999 Gujrat 48.

6. The learned counsel further submits that, under the notification dated 05th June, 2015 various provisions of the Companies Act 2013 have been exempted from its applicability

to the Government companies.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The respondent No. 2 is a 100% Government owned company. It is a fact that, vide the notification published in the Gazette by exercising powers U/Sec. 462 Sub Sec. 1 of the Companies Act, various provisions of the Companies Act are exempted from its operation to the Government companies. The notification lays down that provisions of Sub-Sec. 5 of Section 152 of the Companies Act shall not apply where the appointment of such director is done by the Central or State Government. So also it exempts operation of provisions of Sec. 152 (6) and (7), Sec. 160, Sec. 163, Sec. 170, Sec. 171, Sec. 177(4), Sec. 178(3) and (4), Sec. 188, Sec. 196 (4) and (5), Sec. 197, Sec. 203 (2), (3) and (4), Sec. 439(2) of the Companies Act.

9. In the present case, the petitioner was nominated as a director by the State Government under its resolution dated 05th September, 2014. The appointment of the petitioner was not through any selection process, nor was by the company in its meeting of Board of Directors. The said appointment appears to be on purely political consideration. The removal of the petitioner as a director is vide G. R. dated 30th January, 2015. The appointment of the petitioner was at the pleasure of

the Government. Articles of Association of the respondent No. 2, nor the provisions of the Companies Act lay down a fix tenure of such a director appointed by the Government. When the petitioner was appointed at the pleasure of the Government, the removal also is at the pleasure of the Government. The principle enunciated in the *doctrine of pleasure* would apply in the present case. Once it is held that the removal of the petitioner is at the pleasure of the Government, the State Government is not required to adhere to the principles of natural justice. Once the *doctrine of pleasure* is applicable, then neither principles of natural justice would step in, nor any question of giving an opportunity before removal would arise. The Government has the discretion to remove a person appointed as a director at its discretion. No doubt, the discretion cannot be arbitrary, unregulated or unbridled discretion. The same has to be exercised fairly. Reference can be had to the judgment of the Apex Court in a case of **B. P. Singhal Vs. Union of India and another** referred to supra.

10. The scope of judicial review of withdrawal of pleasure is virtually nil in such cases. The Court would exercise its power of judicial review in such cases, if the aggrieved person demonstrates *prima facie* that his removal was either arbitrary, malafide or whimsical. The order of removal need not state the cause, nor it is necessary to assign reason. But the cause must exist. In the present case, the respondent No. 1 has placed on

record the copy of the proceedings adopted while removing the petitioner. It is stated that, to reorganize the Board of Directors of the respondent No. 2, the decision is taken to remove the petitioner. So to revamp board of directors, such a cause would be valid as is held by the Division Bench of this Court in a case of Hakim Abdul Munaf Abdul Jabbar Vs. State of Maharashtra referred to supra.

11. The present matter has another facet. After the Government had passed an order on 30th September, 2015 removing the petitioner as a director, the respondent No. 2 passed a resolution on or about 27th March 2015. The Board of Directors of the respondent No. 2 in its meeting dated 27th March, 2015 retired the petitioner as an independent director with effect from 30.01.2015. The said resolution passed by the respondent No. 2 in its board meeting dated 27.03.2015 is not assailed by the petitioner. The petitioner has only assailed the order of the Government dated 30.01.2015 cancelling the appointment of the petitioner as an independent director. Pursuant to the said order passed by the respondent No. 1, the Board of Directors of the respondent No. 2 have further passed a resolution dated 27th March, 2015 retiring the petitioner as an independent director. The same has become final. Even otherwise, the petitioner stands retired. The said resolution retiring the petitioner has not been assailed by the petitioner.

12. Considering the aforesaid aspects of the matter, no case for interference is made out. The writ petition is dismissed. No costs.

[K. L. WADANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 17