IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO. 26135 OF 2017

Atul V. Borikar … Petitioner
Vs.
The Provident Investment Company Ltd.
& Ors. … Respondents

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Mr.G. S. Godbole i/b. Mr. Mahindra B. Deshmukh for the Petitioner.
Mr. Ashutosh A. Kumbhakoni, Advocate General i/b. Mr. Akshay Shinde for Respondent Nos. 2 and 3.
Mr. Shardul Singh i/b. Mr. Sarthak Diwan for Respondent Nos. 1 and 4.

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CORAM : S. C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : NOVEMBER 28, 2017.

P.C. :

1. This Petition under Article 226 of the Constitution of India seeks the following reliefs:

> *(a) That this Hon'ble Court be pleased to issue a Writ/ Order or Direction thereby holding and declaring that the Respondent No.3 had no power to pass the impugned Order dated 01.09.2017 (**Exhibit-F**) thereby appointing a Managing Director of Respondent No.1 Company and/or any other orders dealing with the affairs of the Respondent No.1 company;*

(b) *That this Hon'ble Court be pleased to issue Writ of Certiorari or any other Writ, Order or Direction in the nature of Certiorari to quash and setting aside the impugned Order dated 01.09.2017 (**Exhibit-F**) passed by the Respondent No.3 whereby the Respondent No.4 has been illegally appointed as Managing Director.*

2. When this Petition was placed before us for admission, on a preliminary objection raised by the respondents, we inquired Mr. Godbole, learned counsel appearing for the petitioner as to why the petitioner cannot approach the competent Civil Court and avail of the remedies under ordinary law of the land or take recourse to such of the forums that are available to him under the Companies Act, 2013, Mr. Godbole would submit that the said remedies are not equally efficacious.

3. Mr. Godbole's arguments proceed on the footing that the petitioner has raised a challenge to the authority, power and jurisdiction of the Secretary in the Department of Finance, Government of Madhya Pradesh issuing a direction and order directing one Smt. Sumitra Mayur to be appointed as Managing Director. That supersedes the earlier directions and orders

particularly the Resolutions of the Board of Directors of the Company dated 13th April, 2016 and 20th April, 2016.

4. The precise contention of Mr. Godbole is that the Provident Investment Company Limited is a Government of Madhya Pradesh undertaking. Nonetheless, it is incorporated and registered as a Company under the Companies Act, 2013 and its predecessor legislation the Indian Companies Act, 1956. Therefore, the Government of Madhya Pradesh may claim to be a majority shareholder, yet, it cannot take over any of the affairs, much less the powers of the independent Board of Directors of this Company. It is a limited Company. It is governed entirely by the Companies Act, 2013. There are articles of association and equally the legal provisions guiding the Board of Directors to manage its affairs. It is in accordance with these powers that the petitioner was inducted in the Company. He was employed not because he was holding a post in the Government of Madhya Pradesh. In other words, the petitioner has no privity of contract with the Government of Madhya Pradesh. He is not an employee holding a civil post under that State. He has neither been sent on

deputation, nor has been otherwise posted by the State of Madhya Pradesh in this Company. He has grown in this Company and risen to the position of a Manager. His challenge is that, once these two Resolutions are in the field, the Government of Madhya Pradesh could not have interjected their operation. The Resolutions bind all. However, the Secretary has taken over and usurped the authority of this independent Board and sought to do away with the petitioner's appointment as Manager. That is contrary to the scheme of the Companies Act, 2013. It is such a challenge which has been raised and a writ would go squarely against the said Company, for it is claimed by the Government of Madhya Pradesh to be its undertaking. Then, it is not out of the purview of this Court's writ jurisdiction or beyond the powers of judicial review vesting in this Court. It is in these circumstances that Mr. Godbole would submit that we must entertain this Petition and reject the preliminary objection raised by Mr. Kumbhakoni, learned Advocate General appearing for the respondents.

5. On a careful perusal of the Petition and all its annexures, so also the submissions of Mr. Godbole, we are unable to agree with him.

6. We are of the firm opinion that the Government of Madhya Pradesh may claim to be a majority shareholder. We agree with Mr. Godbole that the matter concerns the affairs of the Provident Investment Company Limited which is incorporated and registered as a Company under the Indian Companies Act, 1956 and the Companies Act, 2013. While it is true that the said Company has on its Board of Directors a Chairman who is the Hon'ble Finance Minister of the Government of Madhya Pradesh, the Additional Chief Secretary, Government of Madhya Pradesh, but it has, according to Mr. Godbole himself, two independent Directors Mr. S. N. Kulkarni and Mr. Dhiraj Shah. Together, all of them constitute the Board. According to the petitioner himself, it is this Board which passed a Resolution and that Resolution, copy of which is annexed to this Petition, states that on 13rd April, 2016, it was resolved that the petitioner be appointed as Manager with effect from 1st May, 2016. The Resolutions and consequential to

the main one, therefore, according to Mr. Godbole himself, put in place the petitioner as a Manager. Equally, there is the order of the Company itself, copy of which is at page 45 of the paper book. It is in these circumstances, what is questioned are the proceedings of the Company itself, in the sense, the petitioner puts in issue the fact that there was a meeting of the Board of Directors and which erroneously records that the petitioner was working under the superintendence of the earlier General Manager Mr. K. D. Menon and that the petitioner was not appointed as Manager under Section 196 read with Section 2(53) of the Companies Act, 2013. It is the petitioner who puts in issue the fact that the Company seeks to resile from its earlier stand and instead, adopts a contrary one on the position and status of the petitioner in the Company. It is therefore clear from the proceedings, as understood by the petitioner, that there is a version of the petitioner on the Resolution of the Board of Directors, the appointment order in furtherance thereof and the subsequent developments. It is common ground that by that subsequent development, the Government has sought to then appoint Smt. Sumitra Mayur, Finance Controller of Devi Ahilyabai Holkar

Vishwa Vidyalay, Indore, as Managing Director of the Provident Investment Company Limited. That order dated 1st September, 2017 is thus questioned by the petitioner and challenged on various grounds, including that the Company was being managed by the Board of Directors, it passed a Resolution pursuant to which an appointment order was issued, and now usurping the authority of that Board, the Government of Madhya Pradesh through its Finance Secretary has sought to set everything at naught. That is contrary, according to the petitioner, because the Company has always understood the earlier decisions as culminating into the petitioner's appointment as Manager to be in accordance the Companies Act, but the colour or version now given to its proceedings and decisions by the State would defeat not only the mandate of the Companies Act, but equally Article 14 of the Constitution of India.

7. By itself, we do not think that such an argument would allow the petitioner to invoke the writ jurisdiction of this Court given the dispute essentially raised on facts. Assuming that the Company functions as such and is governed by the provisions of

the Companies Act, 2013, still it will not be possible for us in our limited jurisdiction to decide as to whether the Board of Directors contemplated earlier appointing the petitioner as Manager and that appointment is equivalent to that of a Managing Director of the said Company. Secondly, we do not think that we will be able to decide in our limited jurisdiction that though designated and nominated as Manager, the petitioner was not assigned such powers and particularly as General Manager, but was styled as an acting General Manager and reporting to somebody higher in authority. All these matters, which are also raised by the petitioner in his additional affidavit and at pages 63 and 64 of the paper book, therefore, would raise a disputed question of fact. Ordinarily therefore, the Petition could have been entertained on the footing that the Government of Madhya Pradesh is the majority shareholder in the said Company, but given the above nature of the dispute, the matters can be conveniently resolved by either approaching a forum under the Companies Act or an ordinary Civil Court, we decline to entertain this Writ Petition. In our writ jurisdiction, we would not be able to probe in the matters of internal governance any deeper, particularly by testing the rival versions as that may require leading of oral and documentary evidence. In these circumstances, by keeping open all versions and contentions, we decline to entertain this Writ Petition. The remedies which we have referred above are equally efficacious and can be availed of by the petitioner even now. We keep open the contentions on merits as well, and of both sides. The Writ Petition is accordingly disposed of.

8. At this stage, Mr. Godbole would submit that since the Petition is disposed of without adjudication on merits and on the preliminary ground, interest of justice would demand that we continue the order passed in this Petition on 26th September, 2017. That order reads as under:

> *"1 Issue notice to respondents. The learned counsel Shri. Sarthak Diwan waives service for respondent no. 1. The learned senior counsel Shri. Kumbhakoni waives service for respondent nos. 2 & 3.*
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> *2 The learned senior counsel appearing for the petitioner submitted that order passed by respondent no.3 is contrary to the section 196(1) of the Companies Act, 2013. It is submitted that the petitioner is discharging his duty as manager of respondent no.1. It is prayed that petitioner be permitted to discharge his duties accordingly.*

> *3 The learned senior counsel Shri. Kumbhakoni submitted a letter dated 06/09/2017 and submits that Sumitra Mayur took charge as Managing Director. This statement is disputed by the learned counsel for the petitioner.*
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> *4 The learned counsel Shri. Kumbhakoni seeks accommodation for taking further instructions and calling reply, if any.*
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> *5 Stand over to 09/10/2017.*
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> *6 Parties to maintain status quo till the next date."*

9. Mr. Kumbhakoni, learned Advocate General appearing for respondent nos. 2 and 3 (the contesting respondents) would submit that there are subsequent developments and which have been placed on record by respondent nos. 2 and 3. He would, in that regard, invite our attention to the additional affidavit-in-reply at page 109 of the paper book.

10. After hearing both sides on this limited point, we are of the opinion that once we have disposed of the Writ Petition on the ground of availability of alternate and equally efficacious remedy, then, all such reliefs as are prayed can be obtained by approaching the forums either under the Companies Act or the ordinary law,

namely, the competent Civil Court. We do not think that in disputed areas we should continue any such arrangement and which was entirely *ad hoc* and temporary and pending the adjudication on the preliminary issue of maintainability of the Petition. Hence, the request of Mr. Godbole to continue this order further is refused.

(SMT. BHARATI H. DANGRE, J.) **(S. C. DHARMADHIKARI, J.)**