

(1992) 03 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. Nos. 2744, 2838, 2926, 3024, 3180, 3338, 3347, 3351, 3385, 3481. 3610, 3762, 3763, 3782 of 1990

Ambika Prasad, Bharat Prasad, Brij Mohan Singh, Kailash Bihari Sharma, Kumund Ranjan Jha, Baldyanath Jha, Prof. Chandrika Prasad Yadav, Ehsanul Haque, Acquil Haider, Amarandra Mishra, Vishwanath Rishi, Rishikesh Mahto and Jagnarain Trivedi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-03-1992

Acts Referred:

Citation : (1992) 03 PAT CK 0005

Judgement

B.P. Singh, J.—In this batch of writ petitions the petitioners have challenge their removal from the office of Chairman/Vice Chairman/Member of Various Authorities/Corporations/Boards which have been constituted under various Acts, or have been incorporated under the provisions of the Companies Act. Different statutory provisions fall for consideration in this batch of writ petitions, and I shall, therefore, deal with the cases separately so that the relevant statutory provisions are not missed. Broadly speaking, the cases can be classified under two heads, firstly those which relate to Authorities or Boards constituted under a Statute, and secondly those which have been incorporated under the Companies Act and are really Government Companies, by whatever name called.

2. I shall first take up the three writ petitions wherein the removal of the Chairman of three Regional Development Authorities is challenged. Under the Bihar Regional Development Authority Act, 1981, the State Government has been empowered to constitute an authority to be called as Regional Development Authority bearing the name of that region.

C.W.J.C.Nos. 3385, 3338 and 3024 of 1990 :

In the instant cases, we are concerned with the Chairman of the Patna, Darbhanga and Muzaffarpur Regional Development Authorities. C.W.J.C. No.

3385 of 1990 has been filed by Shri Aquil Haider, who was nominated as Chairman of the Patna Regional Development Authority by notification Annexure 1 dated 5-10-1989. The case of the petitioner is that he was earlier a member of the Legislative Assembly belonging to the Congress-I Party. By notification Annexure 1 dated 5-10-1989 the State Government in exercise of its powers u/s 3(3)(a) of the Act nominated the petitioner as the Chairman of the Patna Regional Development Authority. According to the petitioner a Chairman nominated under the Act holds office for the statutory term of three years. His term would have, therefore, expired in normal course on 4-10-1992. In February, 1990 elections to the Legislative Assembly of the State took place and the Janta Dal Party came in power and formed the Government replacing the previous Congress I Government. The Chief Minister of the State repeatedly announced his intention publicly to remove all Chairman of various Corporations, Boards, etc. Obviously with a view to remove his political opponents and to provide offices to the members of the Janta Dal Party. Thereafter on 11-5-1990 a notification, Annexure 2, was issued under Sub-section (7) of Section 3 of the Act whereby, the petitioner was removed from the office of the Chairman of the Authority with immediate effect. By a separate notification of the same date, Annexure 3, the Minister Town Development Department was nominated as the Chairman of the Authority in his place till further orders. The action of the Government was wholly illegal inasmuch as Sub-section (7) of Section 3 of the Act has been held to be ultra vires by the High Court, so far as it is made applicable to the office of the Chairman. It was submitted that if Sub-section (7) of Section 3 was not controlled by Section 5 of the Act it was arbitrary, and therefore, in breach of Article 14 of the Constitution of India. The action of the Government was a colourable exercise of power motivated by political expedience. On such grounds the writ petition was tiled praying that Annexures 3 and 4 be quashed, and the respondents be directed not to remove the petitioner from the office of Chairman of Patna Regional Development Authority till 4-10-1992, when the petitioner will complete his statutory term of three years. A supplementary affidavit has also been filed in which it has been urged that the power was exercised contrary to the provisions of the Rules of Executive Business framed under Article 166 of the Constitution of India. However, no argument was addressed before us about the illegality of the action on the ground that it was in breach of the Rules of Executive Business.

3. C.W.J.C. No. 3338/90 has been filed by Shri Baijnath Jha, who claims to be a social worker actively associated with the development work and had been nominated as the Chairman of the Darbhanga Industrial Development Authority from the year 1980 to 1984, According to the petitioner he was appointed Chairman of the Darbhanga Regional Development Authority by Notification dated 20th December, 1989 (Annexure 1). The petitioner was given the same pay and allowances, including house allowance as are permissible to State Ministers. Despite the fact that there was nothing against the functioning of the petitioner as Chairman of the Authority, it appears that the Chief Minister,

respondent No. 4, desired that all non-official Chairmen and Vice-Chairmen of the several Boards or Corporations under the Bureau of Public Enterprises should be removed and instead the Departmental Secretaries may take over charge as Chairmen. This desire of the Chief Minister was communicated through his Principal Secretary to the Chairman Bureau of Public Enterprises on 11-4-1990. On the same day the Chairman of the Bureau of Public Enterprises put up a note to the Chief Secretary that all non-official Chairman and Vice-Chairman may be removed with immediate effect and the concerned Secretaries of the department may take over charge after approval of the Chief Minister was obtained. The concerned departments may obtain in the various files the orders of the Ministers concerned as also the formal orders of the Chief Minister. The proposal was placed before the Chief Secretary who directed that the concerned departments may proceed in the matter by showing the order of the Chief Minister and obtaining the orders of the concerned Minister, and that it was not necessary to trouble the Chief Minister in each case. The proposal was approved by the Chief Minister, Annexure 2 contains the notings in the file upon which the petitioner has relied in support of the aforesaid facts. It is contended by the petitioner that such action was arbitrary and without jurisdiction as it became evident that all Chairmen of the Boards/Authorities who belonged to the Congress-I Party were to be removed so as to accommodate members of the Janta Dal Party. The order was, therefore, mala fide and a colourable exercise of power. The action contemplated did not provide for observance of the principles of natural justice. In these circumstances the petitioner filed the writ petition on 21-5-1990 impugning the circular Annexure 2 dated 21-4-1990.

Subsequently, the petitioner filed a supplementary petition being addition/amendment to the writ petition on 2-8-1990 and stated that a notification has been issued on 4th of May, 1990 removing the petitioner from the office of Chairman, Darbhanga Regional Development Authority with immediate effect. A copy of the notification was annexed as Annexure 5 to the writ petition and the petitioner prayed that in addition to Annexure 2, Annexure 5 may also be quashed. By another supplementary affidavit filed on 11-10-1991 the petitioner brought to the notice of this Court that a notification dated 9-9-1991 had been issued appointing another person as Chairman of the Darbhanga Regional Development Authority. It was submitted that since the removal pursuant to Annexure 2 itself was illegal, Annexure 4 was also illegal.

4. In C.W.J.C. No. 3024/90 Kailash Bihari Sharma is the petitioner. He filed the writ petition on 9-5-1990 when it came to his knowledge that the Government was contemplating to remove him from the office of the Chairman of Muzaffarpur Regional Development Authority. According to the petitioner he is a distinguished social worker and in recognition of his contribution to the development of the State he was nominated Chairman of the Muzaffarpur Regional Development Authority by notification Annexure 1 dated 21-12-1989. The petitioner also refers to the relevant extract of the notings which is the same as Annexure 2 in C.W.J.C. No. 3338/90, on the basis of which he apprehended that the

Government may remove him from the office of the Chairman of the Authority. It also appears from the averments in the writ petition, particularly paragraph 13 thereof that the petitioner belongs to the Congress-I Party. Instead of contesting the assembly election he applied himself seriously to perform the duties of the Chairman of the Authority, since he had special interest in developmental works. It is contended by him in the writ petition that since a Chairman holds office for the statutory period of three years, he could not be removed earlier, particularly when there was nothing against his conduct, and he had not incurred any of the disqualifications under the Act.

Later the petitioner filed a supplementary affidavit on 18-5-1990 stating that a notification which had not been received by him had been issued removing him from the office of the Chairman of the Authority. He annexed a true copy of the said notification as Annexure 3.

5. A counter-affidavit has been filed on behalf of the respondent No. 5, the Vice-Chairman of the Authority contending that the petitioner has no case whatsoever as the petitioner could hold the office of Chairman of the Authority only during the pleasure of the State Government. The petitioner did not hold a civil post and therefore he had no right to hold the post except during the pleasure of the State Government.

6. I shall now refer to the relevant provisions of the Bihar Regional Development Authority Act upon which reliance has been placed by the parties. Section 3 of the ACT empowers the State Government to constitute by notification in the official Gazette an authority to be called as Regional Development Authority, bearing the name of that region. The authority shall be a body corporate by the aforesaid name shall have perpetual succession and a common seal with power to enter into contract and to acquire, hold and dispose of property both movable and immovable and shall by the said name sue and be sued. Sub-sections (3) to (10) of Section 3 are relevant and are therefore reproduced below :

(3) The authority shall consist of the following members, namely--

(a) Chairsan, who shall be the Minister of the Urban Development Department of the State of Bihar or any nominated by the State Government and his tenure shall be generally of three years;

(b) Vice-Chairman, to be appointed by the State Government;

(c) a planning Member who shall be the Chief Town Planner, Bihar or his nominee not below the rank of Assistant Town Planner (ex officio);

(d) Chetriya Pradhikaron May Parne Wale Nikayo Ke Beach Cos Tin Partinidhi jin may ek Adhayach; ek Anusuchit Jati ya Anusuchit Janjati ke sadasaya aur em mahila hogi jo Rajya Sarkar dwara namnirdeshit kiya jayen;

(e) two other persons to be nominated by the State Government of whom one shall be a person of administrative or technical experience and the other shall be

a social scientist;

(f) Administrator/Chief Executive Officer of the Municipal Corporation or Executive Officer/special officer of the Municipality situated at the Head-quarters of the Regional Development Authority;

(g) Chairman, Bihar State Housing Board or his nominee who should not be below the rank of Executive Engineer (ex-officio);

(h) not more than three members of the Bihar Legislature of the Regional Development Area nominated by the State Government;

(i) Collector or Deputy Development Commissioner-cum-Chief Executive Officer of the District, to be nominated by the State Government (ex officio);

(j) Chief Engineer, Public Health Engineering Department or his nominees not below the rank of Executive Engineer (ex officio);

(k) Chief Engineer, public work Department or his nominee not below the rank of Executive Engineer (ex officio); and

(l) Secretary, Urban Development Department or his nominee not below the rank of Deputy Secretary (ex officio).

(4) The Vice-Chairman shall be a whole-time Government servant.

(5) The Vice-Chairman shall be entitled to receive from the funds of the Authority such salaries and such allowances, if any, and governed by such conditions of service as may be determined by rules made in this behalf.

(6) Other members specified in Clauses (d), (e), and (f) of Sub-section (3) may be paid from the funds of the Authority such allowances, if any, as may be fixed by the State Government in this behalf.

(7) The Chairman, if he is a person nominated by the State Government under Clause (a) of Sub-section (3) of Section 3 and the Vice-Chairman shall hold office during the pleasure of the State Government.

(8) Members referred to under Clause (d), (e) and (f) shall hold office for a term of three years from the date of their nomination to the Authority :

Provided that such term shall come to an end as soon as the member ceases to be a member of the body from which he was nominated.

(9) A member other than an ex officio Member may resign his office by writing under his hand addressed to the State Government but shall continue in office until his resignation is accepted by that Government.

(10) No act or proceedings of the Authority shall be invalid by reason of the existence of any vacancy in or defect in the Constitution of the Authority.

7. Section 4 provides for disqualification for appointment of a member of the

Authority. It disqualifies a person who has been convicted by a criminal court for an offence involving moral turpitude, or has been judged a bankrupt or insolvent or who has directly or indirectly any share or interest, any contract or employment, with, by or on behalf of the Authority, or a is a Director or Secretary or a Manager or other salaried officer of any incorporated company which has any share or interest in any contract or employment with, by; or on behalf of the Authority, or is of unsound mind.

8. Section 5 provides for the removal of a member which reads as follows :

Removal of the member.--

(1) The Government may, by notification remove any member from office--

(a) if he has without the permission of the Authority been absent from more than three consecutive meetings of the authority, or

(b) if he, being a legal practitioner, acts or appears on behalf of any person other than the authority in any Civil Criminal or other legal proceeding in which the Authority is interested, which the Authority is interested, either as a party or other wise; or

(c) if he has, in the opinion of the Government contravened the provisions of Section 10; or

(d) if he in the opinion of the Government had become physically or mentally unable to act as a member :

Provided that when the Government proposes to take action under Sub-section (1) an opportunity of explanation shall be given to the member concerned, and no such action shall be taken except after taking into consideration his explanation, if any and after recording the reasons in support of such action.

(2) A member removed under the foregoing provision shall not be eligible for reduction or renomination.

9. From the foregoing provisions of the Act it is apparent that the Authority consists of several members including a Chairman, Vice-Chairman, and other official and non-official members. Section 3(3)(a) provides for nomination of Chairman by the State Government, and further provides that his tenure shall be "generally of three years". It is also open to the State Government to nominate the Minister of the Urban Development Department as the Chairman of the Authority. However, when the Minister is not nominated and any other person is nominated to be the Chairman of the Authority, his tenure shall be generally of three years. Sub-section (7) of Section 3 provides that the Chairman, if he is a person nominated by the State Government, shall hold office during the pleasure of the State Government. Sub-section (8) refers to Members nominated under Clauses (d), (e) and (f) who shall hold office for a term of three years from the date of their nomination. It is, therefore, apparent that the Legislature has purposely made a distinction between the Chairman nominated by the State

Government and members nominated under Clauses (d), (e) and (f) of Sub-section (3) of Section 3. While it is provided that his tenure shall be generally of three years, in case of the latter fixed term of three years has been provided. Moreover subsection (7) further provides that nominated Chairman shall hold office during the pleasure of the State Government. The same applies to the Vice-chairman as well, but in the instant case we are not concerned with the appointment or removal of the Vice-Chairman.

10. In none of the writ petitions the notification appointing the Chairman provides for a tenure. We may, therefore, assume that in the absence of any specific tenure provided in the notification appointing the Chairman the general rule that the tenure shall be for three years must apply. This, however, is subject to Sub-section (7) of Section 3 which further provides that a nominated Chairman shall hold office during the pleasure of the State Government.

11. Section 5 of the Act provides for removal of any member from office, and Chairman of the Authority is one such member as is apparent from Sub-section (3) of Section 3. The grounds for the removal of a member are such that once removed u/s 5, he shall not be eligible for redaction or renomination. Apparently therefore, the grounds on which a member can be removed are only those mentioned in Section 5, and the action taken u/s 5 is punitive in nature. That is why the proviso to Sub-section (1) of Section 5 provides for an opportunity to the member concerned to offer his explanation.

12. The main thrust of the argument urged on behalf of the petitioners is that once a person is nominated as Chairman of the Authority under the Act, he cannot be removed before the expiry of the Statutory term of three years except on any of the grounds mentioned in Section 5 of the Act. It is submitted that the doctrine of pleasure incorporated in Sub-section (7) of Section 3 of the Act must be read subject to Section 5 of the Act, or other wise it must be declared to be ultra vires. Reliance is placed upon the Judgment of a learned Single Judge of this Court reported in R. P. Raja Vs. The State of Bihar and Others, . On the other hand the learned Advocate-General appearing on behalf of the State, submitted that the express words used in clause (a) of Sub-section (3) of Section 3 of the Act leave no room for doubt that though the term may be generally of three years, there is no fixed term and it is open to the Government to nominate a person as Chairman of the Authority for a lesser or even longer period. He further submitted that the various notifications nominating the Chairman did not prescribe any term of office. It must be held therefore, that such nominee was to hold office during the pleasure of the State Government. In the alternative he submitted that even if an appointment was made for a specified term, it was always open to the State Government in its pleasure to determine the tenure earlier, and unless such premature determination was on any of the grounds mentioned in Section 5 of the Act, the procedure provided therein was not required to be followed. In such a case Section 4 did not apply as the action was not punitive and the removal was, therefore, in exercise of the pleasure doctrine

incorporated by Sub-section (7) of Section 3 of the Act, He submitted that the provision for a fixed term is compatible with the doctrine of pleasure as it is evident from the constitutional provisions regarding appointment and removal of Governors.

13. It is not disputed before us that the removal of the petitioners is not on any of the grounds specified u/s 5 of the Act. It is also not disputed that the removal of the Chairmen of the various Boards is pursuant to the general policy decision of the Government.

14. In this factual background I shall first take up the contention urged on behalf of the petitioners that the removal of the petitioners without following the procedure prescribed u/s 5 of the Act is illegal. In the alternative it is submitted that even if the State Government wanted to exercise its powers of removal invoking the doctrine of pleasure, it was found to follow the principles of natural justice. It was also contended that if the doctrine of pleasure incorporated in Sub-section (7) of Section 3 of the Act was not controlled by Section 5, the Sub-section should be held to be bad in law as it confers upon the State Government unguided and arbitrary power to remove a Chairman or Vice-Chairman of the Board. As observed earlier reliance is placed upon a judgment of this Court reported in *R. P. Raja Vs. The State of Bihar and Others*, . In a batch of writ petitions in which we have delivered judgment today, we have considered the aforesaid judgment of this Court and we have held that the aforesaid judgment does not lay down the law correctly so far it holds that the doctrine of pleasure under Sub-section (7) of Section 3 of the Act is controlled by Section 5 of the Act, and therefore, it is obligatory for the State Government even while exercising power under the doctrine of pleasure to give the person concerned a reasonable opportunity of being heard.

15. In *R.P. Raja's* case (*supra*) the learned Single Judge of this Court was considering the provisions of the very Act with which we are concerned in the instant writ petition. The petitioner *R.P. Raja* who had been appointed Chairman of the Ranchi Regional Development Authority had been removed. The order of removal did not disclose any ground on which he had been removed. It was held that the pleasure doctrine was a constitutional privilege conferred on the Governor. There was nothing in the constitution providing for the pleasure to non-service man, nor is the pleasure, a matter of legislative enactment either in the body of the Constitution or Schedule VII. The State has no authority to legislate on the pleasure of the Governor. The Governor's pleasure is what is stated in Article 310 of the Constitution, The pleasure doctrine was a service concept and therefore could not apply to a person such as the petitioner who was not a civil servant. The reasoning of the learned Single Judge proceeds on an assumption which is not correct, namely that the doctrine of pleasure is confined to Article 310 of the Constitution of India and that the same cannot be incorporated in any law by Legislature, Firstly, the doctrine of pleasure is not confined to Article 310 of the Constitution of India because even Article 156, Constitution of

India which deals with the appointment of Governors incorporates that doctrine while at the same time providing for a term of office for Governor. I have no doubt that the doctrine of pleasure is not a creation of the constitution, but the concept has acquired constitutional sanction under Article 310 of the Constitution subject to the provisions of Article 311. There is no justification for the assumption that if the Legislature wishes to incorporate the doctrine of pleasure in any law dealing with the tenure of appointment of a person to a post which is not a civil post, the Legislature cannot incorporate the said Doctrine in the law in the same manner as it has been incorporated in Article 310 of the Constitution of India. In fact there are large number of enactments which incorporate the doctrine of pleasure, and the learned Advocate-General referred to some of them namely the State Financial Corporation Act, 1951. The State Agricultural Credit Corporation Act, 1968 (Section 1). The Air Agricultural Refinance and Development Corporation Act, 1968. The Air Corporation Act, 1961, and the Industrial Finance Corporation Act 1943. These are all Central enactments and contain provisions whereby the Legislature has incorporated the doctrine of pleasure in the Acts. I, therefore, find no support for the proposition that the doctrine of pleasure cannot be incorporated in large number of enactments by the Legislatures.

16. The question then arises as to whether in exercise of the authority derived from the doctrine of pleasure the State Government could remove the petitioners without complying with the requirements of principles of natural justice and without following the procedure for removal u/s 5 of the Act. In AIR 1987 SC 1963 1463-Dr. D.C. Saxena v. The State of Haryana and Ors., the Supreme Court was considering similar provisions in the Haryana Board of School Education Act. The appellant had been removed by the State Government from the office of Chairman of the Board even before he completed his tenure of two years for which he had been appointed. The case of the State was that the tenure of the petitioner had been curtailed, in exercise of power conferred under Sub-section (4) of Section 3 of the Act as the State Government had taken a general decision to dispense with the services of non-official non-M.L.A.'s as Chairman of the Boards and Corporations pursuant to that general policy decision the tenure of the petitioner had been curtailed and similarly Chairman of 11 other Boards or Corporations were also dropped. The action was sought to be justified on the ground that the petitioner could be in service only during the pleasure of the Government. It was urged on behalf of the appellant in that case that the procedure laid down in Section 9 of the Act which related to removal of members was not followed.

Repelling the contention the Court observed :

The contention that Section 9 has been violated is wholly without force because, in our opinion, Section 9 does not come into play at all in this case. It is apparent, that while the former deals with of Section 4-A and Section 9, that while the former deals with the general power of State Government to terminate

the tenure of the Chairman, Vice-Chairman and Member, the latter carves out a special field dealing with a category of cases that the State Government may remove a member whose continuance in office is not in the interest of the Board. A cases, failing within Section 9 is a case where removal must be for reasons personal to the member and flow from his conduct or such other factor which requires that, in the interest of justice and fair play, he should be given an opportunity to tender an explanation. In the view that Section 9 carves out a special field, Section 4-A is left with abridged scope. So abridged, it deals with cases other than those where the continuance of Member calls for termination in the interest of the Board and requires that such member be given an opportunity of tendering an requires that such member be removal. Section 4-A can be said to include cases where the tenure of a Chairman, Vice-Chairman or Member is liable to terminate on grounds of general policy. On the facts and circumstances, it is clear that the termination of the appellants tenure was the in a new class of Chairman in different Boards in the State. From the material of record we are not satisfied that the termination of the appellants tenure was prompted by mala fide or was punitive in nature. The appellants services were dispensed with because of a general decision taken by the Government of dispensing with the services of non-officials and non-M.L.A.'s as a Similarly, with the termination of the appellants services the services of Chairman of several other Boards and Organisations were terminated.

17. Applying the same principles to the instant case, it must be held that since the action was not punitive and the action was pursuant to a general policy decision of the Government the provisions of Section 5 were not attracted. Therefore, it was permissible for the State Government to remove the petitioner in exercise of the right which the State Government to under the doctrine of pleasure. A similar situation arose before the Rajasthan High Court and the decision is reported in *Surya Narain Choudhary Vs. Union of India (UOI) and Others*, . The Constitution of India, a Governor appointed for a period of five years could be removed from office at the pleasure of the President even before completion of the term. It was held that the term of five years provided under Article 156 was subject to the exercise of power by the President and therefore Governor at his pleasure. The presidential pleasure was not justifiable for was it regulated or controlled by any provision in the manner provided under Article 311 of the Constitution. The aforesaid Judgment of the Rajasthan High Court strongly supports the case of the respondents. The learned Court, one reported in *Ghanshyam Singh Vs. Union of India and Others*, and the other an unreported decision in the case of *Smt. Amarjit Kaur v. Union of India (UOI)*, in Civil Writ Petition No. 1761/90. These two decisions of the Delhi High Court have been considered and followed by a learned Single Judge of the Gujarat High Court in the case reported in *Harisinh Pratapsinh Chavda Vs. Chimanbhai J. Patel and Others*, . In the Gujarat case the petitioner was appointed Chairman of the Gujarat Water Supply Board and the term of office of the Chairman was prescribed to be three years. The Act provided that the terms of the office of the

Chairman may be determined even earlier by the State Government wanted to curtail the tenure of the official Gazette. Since the Government wanted to curtail the tenure of the petitioner he approached the High Court with a prayer that it may be declared that the respondents had no jurisdiction to ask for resignation of the petitioner from the post of the Chairman of Board and to permanently restrain them from shortening or curtailing his tenure. The State Government in its reply contended that the appointment of the petitioner was made on the basis of the political philosophy of the party in power. Every political party has its own philosophy objective and method to secure maximum benefit to the citizen so that the said party may again return to power. Such political appointments to various Corporations, Boards, Institutions etc. are made to secure implementation of promises held out in the election manifesto of the political party. It was for this reason that the petitioner had been requested to resign because he had been appointed, when the B.J.P. formed a coalition Government, and that situation had since changed. The action was bona fide because it was believed that the policy and programme of the Janta Dal Party could not be carried out by a person belonging to the B.J.P. who had a different political philosophy, policy and programme. Reliance was also placed on Sub-section (1) of Section 6 of the Act which provided that the Government had power to determine the term of the Chairman earlier by issuing a notification in the official Gazette. No penalty or punishment was sought to be imposed against the petitioner, since a privilege was conferred on the State Government by the Act to determine the term of the Chairman earlier. The power was exercised in accordance with the provisions of the Act. The contention of the respondents was upheld and the learned Judge observed :

Reading the entire scheme of the Act, it becomes clear that it is on the basis of the subjective satisfaction on the part of the State Government that an appointment of the Chairman of the Board is to be made. It is clear from Clause (a) of Sub-section (1) of Section 4, which inter alia provides that State Government may appoint the Chairman, "appearing to it to be qualified by reason of wide administrative experience in a managerial capacity." Therefore, whether the person can be said to be qualified for such post or not or whether such person is having, wide administrative experience in a managerial capacity or not, etc. is left by the Legislature to the State Government to decide. No objective criteria has been laid down so as to decide the facts in an objective manner by courts or by applying the principles of judicial review. Similarly, the proviso to Sub-section (1) of Section 6 empowers the State Government in no uncertain terms to determine the term of the office of the Chairman of the Board earlier than three years. Thus, the statute has conferred power on the State Government in respect of the appointment as well as determination of the office of the Chairman of the Board. It has nothing to do with disqualification as contended by the petitioner. Similarly, there is no question of removal or dismissal also.

The learned Judge quoted with approval the observations of the Delhi High Court

in Smt. Amarjit Kaur's case (supra) wherein their Lordships had observed :

The discretion of the Government in appointment as well as removal is untrammelled. It is in public interest because it is part of the policy (and its implementation), laid down by the Government. It must be recognised that each political party which forms the Government comes into power with promises and assurances in regard to Social political and economic welfare of the people. For example, a party in power at a given time may have its distinct policy and programme for upliftment of poors or representation and protection to women. The five year plans which are, sponsored by the Government would reflect the areas of prioriety of social welfare. The programmes and the plans for the implementations of the policy would be administered by the social welfare department of the Government themselves and through the agencies like the Social Welfare Board. The change in social policy and programmes with the democratic change of the rulers are, thus, part of our social life. The policies and programmes and priorities shift with the change in the Government and such a change must be presumed to be in public interest so long as the Government is in power. The charged in the personnel in special positions such a chair person of the Cenrral Social Welfare Board are, therefore, inevitable part of change in the policy and yrogramme. If a democratically elected Government therefore, feels that for effective implementation of Us policies and programmes a change in the personnel is necessary, it cannot be accused of mala Me or pursuing an act af vendatta.

The learned Judge then oberved :

In my opinion, the instant case squarely falls within the four corners of Smt. Amarjit Kaur's case (supra). Looking to Section 4 of the Act, there cannot be any manner of doubt that the appointment to the post of Chairman is left to the subjective satisfaction of the State Government. No qualification is prescribed, there is no bar of lower upper age limit; there is no provision superannuation. The expression "wide administrative experience in a managerial capacity" is left to the complete discretion of the Government. Neither any guidelines nor norms have been laid down in the Act for the purpose of furnishing necessary particulars to the Government as to who can be appointed as the Chairman of the Board. In these circumstances, it can safely be said that the appointment of the Chairman of the Board has been left to the realm of high Government discretion. It also cannot be disputed that looking to the preamble as well as various provisions of the Act, the Board along with the Chairman is very much associated with the policy frame work of the Government, The appointment, continuation and determination of the office of the Chairman of the Board is thus, absolutely and inevitably controlled by the Government for the purpose of programmes and policies which are to be prepared by the Government in power and for their effective implementation.

Lastly he concluded by observing :

In my opinion, therefore the appointment of the petitioner as the Chairman of the Board is political in nature and the said appointment was made after general election of the Gujrat Legislative Assembly when coalition Govt. of Janta Dal Party and Bhartiya Janta Party formed in the State of Gujrat. When the said situation was changed and B. J. P. withdraw its support to the Government in the State, it was open to the State Government to exercise power under the Act which is conferred on it by the Legislature and the said action cannot be said to be contrary to law. I am also in agreement with the observations of the Division Bench of the High Court of Delhi in Smt. Amarjit Kaur's case (supra) that the discretion of the Government in appointment and termination of the Chairman is untrammelled and it is a part of the policy of the Government. If, therefore, a democratically elected Government feels that for effective implementation of its policy and programme a change in the personnel is necessary, it is permissible for that Government to do so and the said action cannot be held to be arbitrary, unreasonable or mala fide. The appointment to the post of Chairman is not an employment under the Part XIV of the Constitution. There is no vested right in the Chairman to continue to hold the office of the Chairman for the entire period for which he was initially appointed and the Government has power under proviso to Section 6(1) of the Act to determine the said appointment even earlier.

I must hasten to add at this stage that I am not holding that the office of the Chairman is not a public office. The distinction, however, must be borne in mind between the two expressions, namely "public office" and "civil post". It is well-settled that for the purpose of invoking the provisions of Article 311 of the Constitution of India, it is necessary that the person must be holding a civil post either under the Union of India or under the State. In the instant case, in my judgment, the petitioner cannot be said to be holding a civil post as understood and contemplated by Chapter XIV of the Constitution and, therefore, those provisions cannot be attracted in this case. If, therefore, the term of the petitioner has been curtailed or is determined earlier under the Proviso to Section 6(1) of the Act, he cannot file a petition for the purpose of continuance or reinstatement to the said post till the said order is over. No petition for the said relief is maintainable since it is within the absolute discretion of the Government to determine the term of the Chairman by exercising the above statutory power which has been conferred on it by the competent Legislature. I am exercising jurisdiction under Article 226 of the Constitution of India. It can not substitute my opinion for that of the opinion formed by the Government on the basis of the subjective satisfaction by exercising power as an appellate authority over the decision taken by the Government, and therefore, the decision in Kumari Shrilakha's (supra) of the Supreme Court cannot be invoked or pressed into service by the petitioner in this case.

I have quoted the observations of the Gujrat High Court as also of the Delhi High Court with a view to avoid repetition since I find myself in complete agreement with the Principles laid down by the Delhi High Court and Gujrat High Court in the aforesaid decisions. I, therefore, hold that since the State Government took a

general policy decision to remove the Chairman of various Boards/Authorities etc. and removed them in its discretion derived from the doctrine of pleasure, the action was not mala fide, nor was it punitive in character. In fact, it was motivated by larger public interest because public interest would suffer if the Government on the one hand, and the Chairman of the various Boards and Institutions on the other, who implement the Government's policy are at a logger heads. In my view that principle is equally applicable to the Chairmen of the Government companies who are sought to be removed for the same reason. In fact, most of the petitioners herein are political persons, and some of them were important members of the political party in power when they were originally appointed. There can be no doubt that these appointments are political in nature, and this Court cannot exercise its discretion to resolve issues which are essentially political issues. In, fact the Advocate-General has rightly commented that the petitioners who-secured such appointments on the basis of political patronage cannot be heard to complain that they have been removed without any reason. They have been removed in the same manner in which they had been appointed, and on both occasions the motivation was political in nature. I may only add that even in Dr. D.C. Saxena's case (supra) the Supreme Court while considering a similar stand, where pursuant to a general policy decision of the Government several Chairmen were sought to be removed, did not hold that such an action was mala fide. In my view, therefore, there is no merit in these writ petitions and accordingly CWJC Nos. 3024, 3338 and 3385/90 are rejected.

C.W.J.C. No. 2744/90

18. The petitioner Ambika Prasad claims to be an active social worker. He was also a member of the Bihar Legislative Council from the year 1976 to 1982. According to the petitioner he was appointed Chairman of the Bihar State Housing Board by the issuance of a notification dated 6-12-1989 (Annexure-1). The aforesaid notification shows that by an order of the Governor the petitioner was appointed Chairman of the Bihar State Housing Board in exercise of powers u/s 4 and 16(2)(A) of the Bihar State Housing Board Act, 1982 "till further orders."

The petitioner claims that u/s 6 of the Act the tenure of the Chairman has been fixed as three years and therefore, the petitioner should have continued as Chairman till 5th of December 1992. He further asserts that his appointment was confirmed by the new Chief Minister by his order dated 23-12-1989. By the notification Annexure 4 his terms and conditions as regards pay and allowances were fixed. There was no allegation of misconduct or negligence against him. He then refers to the circular dated 11-4-1990 to which I have referred earlier in connection with CWJC No. 3385/90. In view of the order of the Chief Minister dated 13-4-1990 a news was published in the news papers to the effect all persons belonging to the Congress I Party who were holding the post of Chairman of various Boards etc. shall be removed so as to accommodate Janta Dal Members. Apprehending that he may also be removed the petitioner tiled the

instant writ petition on 24-4-1990 praying for an order quashing the circular Annexure-5 to the writ application, which contains the notings of the Chairman of the Bureau of Public Enterprises, the Chief Secretary, and the Chief Minister regarding removal of Chairman of various Boards etc.

19. The petitioner thereafter filed an application on 30th May, 1990 stating that by notification dated 29-5-1990 Annexure-12, the petitioner had been removed from the office of Chairman of the Housing Board and in his place Shri Mohinder Singh I.A.S. had been appointed. He challenged the legality and validity of the aforesaid Annexure-12.

20. It is not necessary to refer to certain other facts stated in the writ petition and the supplementary affidavit, since that is not necessary for the disposal of this writ petition. In its first counter-affidavit filed on 9-6-1990, the State of Bihar has contended that the petitioner has not brought all facts to the notice of the Court. It is stated that Shri B.B. Lal, I.A.S. was appointed as Chairman and Managing Director of the Bihar State Housing Board by notification Annexure-A dated 8-8-1985. Subsequently by a notification dated 27-5-1986, the earlier notification dated 8-8-1985 was modified and the petitioner was appointed as Chairman of the Bihar State Housing Board with effect from 1-6-1986. Section 6 of the Bihar State Housing Board Act, 1982 provides that the term of office of Chairman shall be three years from the date of appointment, and the proviso to the aforesaid section enables the State Government to extend the term for a period not exceeding six months. Consequently, the term of the petitioner as Chairman of the Board came to an end of the 1st of June, 1989 and thereafter the post was lying vacant, since the matter relating to the appointment of another Chairman was under consideration of the Government. However, in view of administrative exigency, by way of a working arrangement, the Chief Minister passed an order on, 15-11-1989 to the effect that the office of Chairman of the Board had been lying vacant since 1-6-1989 after the expiry of the tenure of the petitioner, in administrative interest the petitioner may be appointed as Chairman of the Board "till further orders." It was pursuant to such an order of the Chief Minister that the notification Annexure-1 was issued appointing the petitioner as Chairman of the Board "till further orders." The appointment of a regular Chairman was under consideration of the Government and even before the Government could take a final decision the petitioner filed the instant writ application apprehending that he may be removed on the basis of the notings of the Chief Minister as contained in Annexure 5. It is stated that the matter relating to appointment of a Chairman was already under consideration, and that the decision to appoint another Chairman was not taken pursuant to the notings contained in Annexure 5 because the post was already lying vacant and only by way of working arrangement the petitioner had been appointed to hold the office of Chairman of the Board till further orders. It was ultimately on 28-5-1990 a notification was issued appointing Shri Mohinder Singh, I, A. S. as Chairman-cum-Managing Director of the Board, and terminating the appointment of the petitioner who had been appointed to hold the office of Chairman till further

orders. The said notification is Annexure-C to the counter-affidavit and is the same as Annexure-12 filed by the petitioner. That thereafter Shri Mohinder Singh, I.A.S. took charge on 29-5-1990 as Chairman-cum-Managing Director of the Board.

21. It is, therefore, the case of the respondent State of Bihar that the petitioner cannot claim any right to hold the office once a regular Chairman was appointed. He had been appointed only till further orders and, therefore, once an order was passed appointing a regular Chairman, his appointment came to an end. It is further submitted that an extension can be granted only for a period of six months, and therefore, in any event, the petitioner could not continue for more than six months.

22. It is not disputed before me that by the notification Annexure-1 dated 6-12-1989 the petitioner was appointed Chairman of the Board only "till further orders." No particular term was specified. Counsel for the petitioner firstly submitted that even if the order did not say so, in view of the provisions of Section 6 of the Act, it must be held that the petitioner was appointed for a term of three years. It is not possible to accept this contention because the notification in clear words says that the appointment was "till further orders". No doubt Section 6 of the Act lays down that the term of office of members including the Chairman (Excluding Ex-officio member) shall be three years. The second proviso of Section 6 provides that the State Government may by notification extend the said period by another period not exceeding six months. Section 9 provides for the removal of the Chairman and other non-official members on certain grounds. Section 10 however is relevant which provides as follows :-

Filing of casual vacancies in certain case. If any member other than the Ex-officio member is permitted by the Board to absent himself from its meeting for a period exceeding six months, or if any such member dies, resigns his office, or is removed from office u/s 9 the vacancy shall be filled within two months by a fresh appointment and any person appointed to fill such vacancy shall enter upon office forthwith but shall hold office only so long as the vacancy lasts in case of absence, and for, the unexpired portion of the term of office in other cases :

Provided that the person so appointed is eligible for being appointed as a member to the provisions of Section 4 of the Act and is not disqualified u/s 5.

In the instant case it cannot be disputed in view of the documentary evidence on record that the term of the petitioner had come to an end on 1-6-1990 since he had been appointed by notification Annexure-B with effect from 1-6-1986. Thereafter the office had been lying vacant. In view of the order of the Chief Minister dated 15-11-1989 the notification Annexure-1 was issued appointing the petitioner as Chairman of the Board till further orders. Section 10 of the Act relates to filling up of casual vacancies only in certain cases. The section contemplates a situation where a non-official member is absent for a period exceeding six months, or where a member dies or resigns his office or is

removed from office, The Section contemplates that in such cases the vacancy shall be filled up within two months by a fresh appointment and any person so appointed to fill up such vacancy shall hold office only so long as the vacancy lasts in the case of absence, and for the unexpired portion of the term of office in other cases. In the instant case the vacancy was caused not on account of any member going on leave, nor was it caused on account of any member dying or resigning his office. The vacancy was also not caused on account of any member being removed from office u/s 9 of the Act. It is only in such cases that the person appointed shall hold office for the period of the vacancy or for the unexpired portion of the term of office, as the case may be. In the instant case the situation contemplated by Section 10 did not exist. The office of Chairman was lying vacant because after the expiry of the tenure of the earlier incumbent no one had been appointed as the Chairman of the Board. Obviously, therefore, Section 10 did not apply. In these circumstances the Government decided to make a working arrangement till further orders, so that in the meantime a regular Chairman may be appointed. It is under these circumstances that Annexure-1 was notified appointing the petitioner as Chairman of the Board till further orders. By the very terms of the notification the tenure of the petitioner was precarious and came to an end once a regular appointment was made. This is precisely what happened on issuance of Annexure-12 where under an I.A.S. officer was appointed as Chairman of the Board, and consequently the appointment of the petitioner had to be terminated. The petitioner, therefore, cannot justifiably complain that there has been premature termination of his appointment.

23. Equally untenable is the submission urged on behalf of the petitioner that Annexure-12 is an order of removal and therefore, the same cannot be justified unless any of the grounds specified in Section 9 of the Act is made out. As I have observed earlier, the action of the Government was not punitive. All that happened was that the tenure of the petitioner came to an end on the appointment of a regular Chairman.

24. Counsel for the petitioner submitted that the termination of the appointment of the petitioner is pursuant to the police decision taken by the Chief Minister in the notings as contained in Annexure 5. Even if that is so the termination of the appointment cannot be assailed as held by me earlier" However, in the instant case, the facts are different because the office of Chairman was lying vacant and only a working arrangement had been made. By the very nature of things, the working arrangement came to an end once a regular Chairman was appointed.

25. Counsel for the petitioner then submitted that certain allegations have been made in the counter-affidavit filed on behalf of the respondents which show that the action was punitive. I have carefully perused the counter-affidavit, and it is clearly stated therein that the facts mentioned in the counter-affidavit regarding the conduct of the petitioner are not germane, but they have been mentioned because in the writ petition the petitioner claimed that he had a clear record of

service and was not guilty of improper conduct. As I have earlier observed, the termination of the appointment of the petitioner is not punitive nor does the notification Annexure-12 mention any such ground for his removal. From the averments in the counter-affidavit, which have been made in reply to the assertions made by the petitioner in his writ petition, it cannot be inferred that the action was punitive and, therefore, principles of natural justice are attracted. It has therefore to be held that the petitioner had no right to hold the office of Chairman of the Board after a regular Chairman was appointed. The order of his appointment clearly mentions that his appointment was "till further orders", meaning thereby, till a regular appointment was made. Having regard to the fact that the office had been lying vacant for quite some time, it cannot be said that the such arrangement was not justified in the interest of administration. I, therefore, find no merit in this writ petition and the same is, therefore, rejected.

C.W.J.C.No. 3763 of 1990 :

26. The petitioner Rishi Kesh Mahto claims to be a member of the Congress I Party and owes allegiance to the programme and policy of the Congress I Party. According to him he was appointed as the Chairman of the Regional Industrial Area Development Authority by the State of Bihar when the Congress I Party was in power in the State. In the year 1990 elections to the Legislative Assembly in Bihar took place and the Congress I could not form a Government. When the Janta Dal came in power it decided to remove all non-official Chairmen of the Corporations and Boards under the control of the Bureau of Public Enterprises. He then refers to the notings in the file dated 11-4-1990 and the decision of the Chief Minister thereon, pursuant to which the petitioner was removed from office. A notification dated 19-4-1990 was issued whereby the appointment of the petitioner was cancelled with immediate effect and in his place Shri T. Nand Kumar, Additional Industrial Development Commissioner, Bihar, was appointed as the Chairman of the Authority. The petitioner makes a grievance that Section 3(3) of the Bihar Industrial Area Development Authority Act, 1974, under which the impugned notification has been issued, is bad in law since it does not lay down any guideline for the exercise of that power. He further states that he has been removed without examining the merits and demerits of individual cases. He was never given opportunity to explain his case before the Government. Moreover, his removal is for political reasons.

27. A counter-affidavit has been filed on behalf of the respondents in which it is stated that the impugned notification has been issued in accordance with law and that the Government was perfectly justified in exercising its discretion to cancel the appointment of the petitioner in public interest. It is submitted that each political party comes to power with promises and assurances which it has to fulfil. Policies and programmes have to be implemented through various agencies and therefore in order to effectively implement its policies it is justified in making changes in the various Boards/ Authorities etc. in accordance with law. In the instant case it is submitted that the impugned notification has been issued in

accordance with law and therefore the petitioner cannot be heard to make a grievance that he has been removed for political considerations.

28. I have held earlier that if a Government decides, as a matter of policy, to remove existing Chairman and to appoint those in whom it has faith for the effective implementation of the policies of the Government, such action cannot be challenged as mala fide or punitive. However, in the instant case it is not necessary to go into that aspect of the matter. The order of appointment of the petitioner itself mentions that the appointment is "till further orders". Obviously, therefore, no term of office has been fixed under the notification (Annexure-1) appointing the petitioner as Chairman of the Authority. It is not disputed before me that under Sub-section (3) of Section 3 of the Bihar Industrial Area Development Authority Act, 1974 no fixed term of office of Chairman of the Authority has been specified. Sub-section (3) of Section 3 provides that the Chairman shall be appointed by the State Government who shall hold office during the pleasure of the State Government. The case of the petitioner stands on no better footing than that of the petitioner in CWJC No. 2744/90, His appointment was "till further orders". The Act does not prescribe the tenure of office of the Chairman, The petitioner accepted the appointment under Annexure-1, and he cannot now be heard to say that he should be continued. If his submissions were to be accepted, it would give rise to an anomalous situation, because in the absence of any term specified in the notification appointing him, and in the absence of any term specified in the Act under which he had been appointed, he can claim to continue in office for his life time, unless he is removed for misconduct. I have no doubt that since his appointment was till further orders, once another Chairman was appointed, the appointment of the petitioner came to an end. That is precisely what has happened in the instant case. There is no question of premature termination in the absence of any prescribed term of office. The order, on the face of it, does not show that it is punitive in nature. The petitioner himself admits that it is so and that it has been passed pursuant to a policy decision of the Chief Minister. In these circumstances, I find no merit in this writ petition, and the same is rejected.

C.W.J.C.No. 3762 of 1990 :

29. Petitioner, Bishwanath Rishi, claims to owe allegiance to the Congress (I) Party. He was earlier a Minister of State and represented the Korha reserved constituency in the Bihar Legislative Assembly for three terms. He was appointed Chairman of the Bihar Rajya Khadi Gramudyog Board, which is a Board constituted under the Bihar Khadi and Village Industries Act, 1956, as amended by Bihar Act 11 of 1982. He has produced the Notification (Annexure-1) dated 2nd January, 1990, from which it appears that he had been appointed as the Chairman of the Board "till further orders". As in the other writ petitions, the petitioner has referred to the policy decision of the State Government to remove all non-official Chairmen of the various Boards and Authorities, and has contended that after the Janta Dal Party came in power, there was a concerted

effort to remove all non-official Chairmen of the various Boards and Authorities, who did not owe allegiance to the ruling party. Consequently, by Annexure 3 dated 19th April, 1990, issued in exercise of power u/s 7 of the Act, his appointment was cancelled with immediate effect, and Sri N.K. Singh, who was the Secretary of the Department of Industries was nominated as the Chairman of the Board. He has impugned Annexure-3 on various grounds. It was submitted by the counsel for the petitioner that though the words used in Annexure-1 are "till further orders", in view of Section 4(6) of the Act it should be understood to mean a period of three years as is prescribed to be the normal tenure of a non-official member nominated on the Board, It was secondly contended that his removal was on the ground that he was found otherwise unsuitable to continue as Chairman and, therefore, his removal was not justified without first affording an opportunity to him to represent his case.

30. It is not disputed before me that under the Act, no specific term has been prescribed for the Chairman of the Board. In fact, Section 4 provides that the State shall nominate a maximum of eleven members on the Board, out of whom three shall be Government servants. From out of the non-official members, one shall be nominated as the Chairman of the Board. The learned Advocate-General contended that admittedly the petitioner was never nominated as member of the Board. Before a person can be nominated as the Chairman of the Board, he should first be nominated as a member. Out of the members so nominated, the State Government may nominate one of them to be the Chairman. In the instant case, therefore, the nomination of the petitioner as the Chairman of the Board was itself illegal. Moreover, the nomination as Chairman was "till further orders". The petitioner had no right to hold the office for any particular period.

31. It is difficult to accept the submission urged on behalf of the petitioner that his appointment "till further orders" must be construed to mean an appointment for three years. It appears that his appointment was a purely temporary measure. Nothing has been produced before us to show that the petitioner was ever nominated as a member of the Board. In the absence of his being nominated as a member of the Board, he could not be nominated as a Chairman of the Board. It is, therefore, evident that his appointment as Chairman was itself illegal. If we were to quash Annexure 3, it would amount to perpetuating an illegality, which the court must avoid in exercise of its writ jurisdiction. It is also not disputed that though the Act prescribes a tenure for the members of the Board, no tenure is prescribed for its Chairman. Therefore, the petitioner cannot claim a particular tenure, and his rights must be determined by reference to the notification nominating him as Chairman. In the instant case, he was nominated to be the Chairman of the Board "till further orders". Consequently, when Annexure 3 was notified, the precarious tenure of the petitioner came to an end, and another person was duly nominated as the Chairman of the Board.

32. Learned Counsel submitted that the removal of the petitioner was on the ground that he was found otherwise unsuitable and, therefore, his removal was

punitive in nature. It is no doubt true that Section 7 of the Act, as amended, provides for various grounds on which the Chairman or any member can be removed, and one of them is that he is found otherwise unsuitable to continue in office. Sub-section (2) of Section 7 provides that the action taken under Sub-section (1) of Section 7 shall not be challenged in any court of law. That, however, will not affect the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner has been removed on one of the grounds prescribed for removal of a Chairman or a member of the Board. He contends that the action was punitive and the order had been passed without notice to the petitioner. If the petitioner were legally appointed under the provisions of the Act, I could have considered this grievance of the petitioner. In view of the finding that he was never legally appointed as the Chairman of the Board, I refuse to exercise my discretion in writ jurisdiction since it would amount to perpetuating an illegality.

33. This writ petition is, therefore, rejected.

C.W.J.C.No. 3481 of 1990 :

34. Petitioner, Amarendra Mishra, has challenged in this writ petition the policy decision of the Government (Annexure 2), to which I have referred earlier in connection with other writ petitions. He has also prayed for quashing Annexure 3 dated 19-4-1990, which is the notification removing him from the office of Chairman of the Bihar State Financial Corporation, and appointing in his place Sri N.K. Singh, Secretary, Department of Industries to function as the Chairman of the Corporation in addition to his other duties.

35. The petitioner contends that there was no allegation of misconduct against him and that he had functioned efficiently as the Chairman of the Corporation. Despite this fact, though he had been nominated Chairman of the Corporation by notification (Annexure 1) dated 22-12-1989 for a term of three years his appointment was prematurely terminated pursuant to the Circular of the Chairman of Bureau of Public Enterprises as is evident from Annexure 2. He, therefore, contended that his removal from office was illegal and the policy of the Government was equally illegal. It may be relevant to refer to some of the relevant provisions of the State Financial Corporations Act. Section 10 of the State Financial Corporation Act, 1951, provides for the Constitution of the Board of Directors. Four Directors have to be nominated by the State Government of whom one Director shall be a person who has special knowledge of, or experience in, small scale industries. Similarly other Directors have to be nominated by the Reserve Bank, Development Bank, other banking institutions and share holders. Section 11 provides for the term of office and retirement of Directors in the following terms :

11. Term of office and retirement of Directors.--(1) A nominated director shall hold office during the pleasure of the authority nominating him.

(2) An elected director other than a director deemed to be elected under the first

proviso to Section 10 shall hold office for four years :

Provided that two out of the four directors so elected shall retire at the end of two years after the first election and the other two at the end of four years after such election, the directors so to retire being determined by lot.

(3) Notwithstanding anything contained in Sub-section (2), an elected director shall continue in office until his successor is elected and shall also be eligible for re-election after the rotation of elected directors has begun.

Section 15 provides as follows :-

15. Chairman of the Board.--(1) The Chairman of the Board shall be one of the directors, nominated by the State Government, after considering by efflux of time in that period have been filled by nomination or election, as the case may be :

Provided further that the same person may be appointed to function both as Chairman and as managing director.

(2) The Chairman shall hold office for two years or until his successor is nominated :

Provided that a Chairman shall so long as he remains a director be eligible for re-nomination as Chairman.

36. The petitioner has referred to the notings in the file which he has annexed as Annexure 2 containing the policy decision of the Government to remove non-official Chairman. He has made a grievance that the policy decision was contrary to law, inasmuch as the Chairman of the Corporation could not be removed in any manner other than in accordance with Section 13 of the Act, which provides the grounds on which the Government may remove from office any of the Directors. He further challenges the order as being in violation of the principles of natural justice and a mala fide action which was politically motivated.

37. I have already held earlier that the removal of a Chairman pursuant to the policy decision of the Government cannot be said to be mala fide. The contention of the petitioner that he could be removed from office only on the grounds stated in Section 18 of the Act is also untenable, because Section 13 will apply to a case where the action taken is punitive in character and the director concerned becomes subject to any of the disqualifications mentioned in Section 12 of the Act. In the instant case, the action was not punitive. Moreover, under the scheme of the Act a Director has to be nominated as the Chairman of the Board. Nominated Director in terms of Section 11 hold office during the pleasure of the authority nominating him. Thus, if the Government decided to remove the petitioner from the office of the Director of the Board, he could not continue as the Chairman of the Board, because only a Director can be nominated as the Chairman. That is why the notification (Annexure 3) removes him from the office of Director and Chairman of the Corporation.

38. I, therefore, find no merit in this writ petition and the same is, accordingly dismissed.

39. I shall now consider those writ petitions which pertain to Corporations which are really Government Companies incorporated under the provisions of the Companies Act. The rights of the parties are derived from the Articles of Association of the Company concerned and power has been exercised for removal of the petitioners under the Articles of Association.

C.W.J.C.No. 2838 of 1990 :

40. The petitioner, Bharat Pd. Singh, was at one time a member of the Bihar Legislative Assembly. The Government of Bihar in exercise of power under Article 75 read with Article 81 of the Articles of Association of the Bihar State Pul Nirman Nigam Limited, appointed the petitioner as Chairman of the aforesaid Nigam for a period of three years by notification dated 24th December, 1989. The petitioner was given the same emoluments and facilities as are admissible to State Ministers. The petitioner assumed office and began to discharge his duties. After elections were held to the Bihar Legislative Assembly and a new Government came into office on 10th March, 1990, an attempt was made to remove all persons associated with the Corporations and Boards belonging to the party earlier in power so as to provide for members of the ruling party. Considerable difficulties were faced by the petitioner in the discharge of his duties, in view of the obstructive attitude and pressure tactics adopted by the Government. Ultimately a notification dated 24th April, 1990 was issued (Annexure 4) removing the petitioner from the office of Chairman of the Nigam in exercise of powers under Articles 75 and 81 of the Articles of Association. By the same notification the secretary in the Department of Road Construction was appointed as the Chairman.

41. The grievance of the petitioner is that no opportunity was given to the petitioner to show-cause, before the order of removal was passed. The petitioner was removed because of his association with a particular party. It has, therefore, been prayed that the notification (Annexure 4) dated 24-4-1990 be quashed and a writ of mandamus be issued restraining the respondents from giving effect to the aforesaid impugned notification and commanding them to allow the petitioner to continue as the Chairman of the Nigam. From the supplementary affidavit filed on behalf of the petitioner, it appears that subsequently another officer of the State Government was appointed the Chairman of the Nigam, and ultimately by notification dated 9-9-1991 one Shri Ashok Kumar Singh, M.L.A. was appointed the Chairman of the Nigam.

42. A counter-affidavit has been filed on behalf of respondent Nos. 1 and 2 in which it has been submitted that the Governor has the power under Article 75 read with Article 81 to nominate the Directors or Chairman of the Board of Directors in his discretion. He has also power to dismiss or remove them from office. The counter-affidavit gives a detailed reply to the various allegations

made by the petitioner in his writ petition to the effect he was not being permitted to work smoothly as Chairman by the Government. In regard to the removal of the petitioner, it has been stated that that was done pursuant to a policy decision of the Government. To streamline the functioning of the Government undertakings it was decided that the Secretary of the concerned department should be the Chairman of the Board/Undertaking. The action was not mala fide, and was only consistent with the Government's policy decision. The removal of the petitioner, therefore neither unconstitutional nor arbitrary. The petitioner could not claim to be a Government servant, and, therefore, no question of any discrimination arose. No service conditions have been prescribed, and, therefore, no question of breach thereof arises in this case. Articles 75 and 81 of the Articles of Association provide as follows :

75. The Directors shall be appointed by the Governor and shall be paid such remuneration, if any, as he may, from time to time, determine. The strength of the first Directors of the Company will be nine.

Subject to Section 284 of the Companies Act the Governor of Bihar shall be at liberty to remove from office all or any of the persons of the Board of Directors at any time in his absolute discretion and on removal, resignation, retirement or death of such person, whether original or substitute or upon the office being vacant for any cause whatsoever, to appoint any person or persons in his or their places.

81. (i) The Governor may from time to time appoint one of the Directors to the office of the Chairman of the Board of Directors.

(ii) The Chairman shall be appointed for such period and upon such terms and on such remuneration, if any, whether by way of salary or honorarium, etc. as the Governor may think fit, subject to the relevant provisions of the Companies Act.

(iii) The Governor, may from office time to time remove or dismiss the Chairman from office and appoint another in his place.

(iv) Any such Director who is appointed to the office of the Chairman shall, if he ceases to hold the office of Director from any cause, ipso facto immediately cease to be the Chairman.

43. It is the case of the respondents that the Government has exercised its discretion under the aforesaid Articles and the same cannot be challenged in a writ petition.

C.W.J.C.No 3347 of 1990 :

44. The petitioner, Professor Chandrika Pd. Yadav, was also appointed Vice-Chairman of the Bihar State Bridge Construction Corporation and he was also removed by the same order which has been impugned in C.W.J.C.No. 2838 of 1990. The grounds of challenge are more or less identical. It is, therefore, not necessary to refer to the facts of this case in greater detail.

C.W.J.C.No 3180 of 1990 :

45. The petitioner, Shri Kumud Ranjan Jha, claims to be a member of the Bihar Legislative Assembly since 1980 as a Congress (I) nominee. He was also a Deputy Minister in the year 1980, and thereafter Minister of State in the year 1989. By a resolution of the Government of Bihar the petitioner was appointed as Chairman of the Board of Directors of the Bihar Panchayati Raj Finance Corporation Ltd. which is a Government Company. The Government decided that the petitioner would be entitled to have all the privileges of a Cabinet Minister. It is the case of the petitioner that after the elections to the Bihar Legislative Assembly in the year 1990 Mr. Lalu Pd. became the Chief Minister of the State. He made a declaration in the Assembly that all non-official Chairman and Vice-Chairman of the Government Companies should be removed, and accordingly action was taken to remove such Chairman and Vice-Chairman. The petitioner has referred to the notings in the file, to which I have referred earlier. The case of the petitioner is that without issuing any formal order, the Secretary of the Rural Development Department assumed charge of the office of Chairman of the Corporation on 2-5-1990. The benefits extended to the petitioner were withdrawn. No notice was given to the petitioner before his removal from office. The matter pertaining to the removal of the petitioner was not placed before the Council of Ministers as provided under the Rules of Executive Business, and no order was authenticated in the manner prescribed under the Constitution. Moreover, the petitioner belongs to the Congress (I) and the petitioner had criticised the functioning of the Chief Minister. It is further submitted that Article 108 of the Articles of Association is subject to the provisions of Section 284 of the Company Act which provides that special notice on any resolution for removal of a Director has to be given, and the Director concerned is entitled to be heard on such resolution at the meeting hold for the purpose. No such resolution for the removal of the petitioner was over passed, nor was the petitioner given an opportunity of being heard in the matter. It is also contended that under Article 92 of the Articles of Association the Government has the power to appoint or remove the Directors but the Chairman is appointed under Article 115 of the Articles of Association and, therefore, the case of Chairman stands on a different footing than that of a Director. Consequently, the power to remove the members of the Board of Directors will not include the power to remove the Chairman as provided under Article 92 of the Articles of Association.

46. A counter-affidavit has been filed on behalf of the respondents. It is not necessary to refer to all the facts stated therein and only the relevant averments may be noticed. It is stated that the provisions of Section 284 of the Companies Act are not attracted when the Governor exercises his discretion under Article 92 of the Articles of Association. Section 284 applies only where the Company proposes to pass a resolution to remove a Director. It is stated that a notification dated 2-6-1990 was issued removing the petitioner from the office of Chairman of the Board and appointing the Secretary of the Department in his place. It is the case of the respondents that the petitioner has been removed under Article

92 of the Articles of Association.

C.W.J.C.No. 3351 of 1990 :

47. In this writ petition the petitioner Ahsanul Haque who was appointed Vice-Chairman of the Panchayati Raj Finance Corporation, was also removed in the same fashion as the petitioner in CWJC No. 3180/90. In fact, by the same notification dated 2-6-1990 the petitioner in CWJC No. 3180 of 1990 and the petitioner herein have been removed. The action is sought to be justified by the respondents on the same grounds, and, therefore, it is not necessary to refer to the detailed facts of the case. The relevant Articles in these two cases are Articles 92, 95-A, 108 and 115 of the Articles of Association which are as follows :

92. Until, otherwise determined by special Resolution, the number of directors of the Company shall not be less than three and not more than fifteen. The Governor shall have the power to appoint and remove all the Directors of the Company from time to time.

95-A. The Governor shall have power to appoint and remove the Director who may be notified as Vice-Chairman if considered fit to do so.

108. The Company may, subject to the provisions of Section 284 of the Act and subject to such directions as may be given by the Governor by ordinary resolution of which special notice according to Section 190 of the Act has been given, remove any Director before the expiry of his period of office and may by ordinary resolution of which special notice has been given, appoint another person in his stead. A Director so appointed shall hold office until the date upto which his predecessor would have held office if he had not been so removed. If the vacancy created by the removal of a Director under the provisions of this Article is not so filled by the meeting at which he is removed, the Board may at any time thereafter fill such vacancy under the provisions of Article 94.

115. Subject to the provisions of Sections 268 and 269 and other applicable provisions of the Act, the Directors may from time to time appoint any of the Directors to be the Chairman of the Board, either for a fixed term or without any limitation for the period for which he is to hold such office.

C.W.J.C.No. 2926 of 1990 :

48. In this case the petitioner Brij Mohan Singh claims to be a member of the Congress (I) Party and he was elected as an ML A at three elections. He was appointed Chairman of the Bihar State Food and Civil Supplies Corporation Ltd., which is a Government Company incorporated under the Companies Act. In the writ petition he had prayed for quashing of Annexure-2 which contained the order of the Joint Secretary, Food, Supply and Commerce which was issued pursuant to the policy decision of the State Government to remove non-official Chairman of Boards and Authorities etc. According to the petitioner, there was nothing to show that the Governor had exercised his discretion under Article 74 (d) of the Memorandum of Association, Moreover, Article 74(d) of the

Memorandum of Association was subject to the provision of Section 284 of the Companies Act. Article 74(c) and (d) are relevant and they read as follows :

74(c) The Governor may determine the period for which the Chairman-cum-Managing Director, the part time Chairman and Managing Director, when so appointed separately, are to hold office.

74(d) The Governor shall have the power to remove any Director including Chairman-cum-Managing Director and part time Chairman and Managing Director, when so appointed separately from time to time in his absolute discretion.

The petitioner thereafter filed a supplementary affidavit annexing therewith Annexure-3 dated 25-4-1990, according to which it was intimated that the Commissioner-cum-Secretary of the Department of Food, Supply and Commerce had joined as the Chairman of the Board.

49. A counter-affidavit had been filed on behalf of the respondents in which it is stated that the petitioner had been removed in accordance with Article 74(d) of the Memorandum of Association by notification dated 26-5-1990 which was annexed as Annexure-A to the counter-affidavit. This was done pursuant to the policy decision of the Government to remove all non-official Chairman of the Board/Corporations. His removal was, therefore, in implementation of the policy decision of the Government.

The petitioner thereafter filed an application for amendment of the writ petition, whereby he sought to challenge the notification removing him from the office of Chairman, which was annexed to the application as Annexure-A and is the same as Annexure-A to the counter-affidavit.

C.W.J.C.No. 3782 of 1990

50. Petitioner, Jagannarain Trivedi, was appointed Chairman of the Bihar Construction Corporation, which is a Government Company incorporated under the Companies Act. The averments in the writ petition are more or less the same as in the earlier two writ petitions, and in this writ petition as well considerable reliance has been placed on Article 47(i)(b) of the Articles of Association. The relevant parts of Article 46 are as follows :

46(i) (a) ** ** *

(b) The Governor may from time to time appoint from amongst the directors, Chairman and Managing Director a whole-time Director and determine the period for which either of them is to hold their respective offices.

Removal of Directors.

(c) The Governor shall have the power to remove any Director from office at any time in his absolute discretion.

Reliance was then placed on Section 284 of the Act and it is stated that the

procedure prescribed therein was not followed. From Annexure-1 it appears that the petitioner was nominated by the Governor to be the Chairman of the Corporation. Eight other persons had been nominated as Directors. This resolution is dated 8-6-1989. From the resolution it appears that the Corporation had been reconstituted in exercise of powers under Article 46(i)(a) and (i)(b) of the Articles of Association. The resolution also provides a three years tenure to the Chairman and Directors. By Annexure 3 dated 20th April, 1990, Annexure-1 was partially modified and the petitioner was removed from the office of Chairman. The membership of other non-official members of the Corporation was also terminated and the Commissioner-cum-Secretary of the Water Resources Department was appointed the Chairman of the Corporation.

51. I have earlier held that removal of Chairman of various Authorities created by Statutes pursuant to a policy decision of the Government is neither punitive nor mala fide, and I have relied upon the judgment of the Supreme Court in D.C. Saxena's case, as also the judgment of the Delhi High Court in Amarjit Kaur's case and that of the Gujarat High Court in Sri Harisinka Pratapsinha Chavda's case. In my view the same principles will also apply to the cases of removal of Chairmen of the Board of Directors of the Government Companies, particularly when their removal does not offend any Statute, and is in accordance with the provisions of the Articles of Association. I, therefore, do not consider it necessary to repeat my reasons.

52. There is another reason advanced by the learned Advocate-General as to why no interference by this Court in exercise of writ jurisdiction is warranted. The petitioners who had been appointed as Chairman of the various Government Companies derived their rights from the Articles of Association and from the provisions of the Companies Act. The Articles of Association clearly vest in the Governor the power to appoint Directors of the Company including Chairman and to remove them at any time in his absolute discretion. When the Governor exercises his discretion to remove the Chairman of the Board of Directors of a Government Company, can it be said that the action pertains to public law domain, or whether the action pertains to the private law field. In *L. I. C. of India v. Escorts Ltd.* AIR 1986 SC 1870 it was urged that the Life Insurance Corporation being an instrumentality of the State was debarred by Article 14 from acting arbitrarily. It was, therefore under an obligation to state to the Court its reasons for the resolution, once a rule nisi was issued to it. In reply, it was contended that the actions of the State or an instrumentality of the State which do not properly belong to the field of public law, but belong to the field of private law, are not liable to be subjected to judicial review. Dealing with the submissions urged before it, the court observed :

...While we do not for a moment doubt that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution, we do not

construe Article 14 as a character for judicial review of State actions and to call upon the state to account for its actions in its manifold activities by stating reasons for such actions.

For example, if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligation or obligations arising out of the Court, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the state or the instrumentality of the State matures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons and robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the state as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the Company, like any other shareholder.

Let us apply these principles to the facts and circumstances of the instant cases. The Government Companies have been incorporated under the provisions of the Companies Act for carrying out its manifold activities in various fields including those which were considered in the past to be strictly speaking state activities. In the context of a welfare state, the concept of state activity has undergone a radical change, and for the welfare of its subject the state has extended its activities to fields which would not interest the State a few decades ago. The activities may be commercial in nature, but calculated to subserve public interest. The State may be carrying on what may be termed as purely commercial activity, and the instrumentality engaged may be a Government Company. In the case with which we are concerned, the action challenged is the action of the Government removing the petitioners from the office of Chairman of various Companies and appointing in their places other Chairmen. It cannot be lost sight of that in these Government Companies virtually the entire shareholding belongs to the State. Under the Articles of Association, it is the Governor of the State who nominates Directors and the Chairman of various Boards, and has the authority to remove them in his absolute discretion. The persons appointed as Chairman have no right to be so appointed, nor do they possess any special qualification for holding the post. They are appointed, because the State Government trusts them with ability to carry on the affairs of the Company in larger public interest. They are expected to implement the policies of the Government and fulfil the promises made to the people. That is why, most of the petitioners, who had been appointed as Chairman of one or the other Government Company belonged to the political party which was in power

when they were appointed. The political situation having changed, the party in power found that the members of the political party, which now is in opposition, held vital offices in the Government Undertakings. Rather than implementing the policies of the Government, they may be instrumental in defeating the policy, and consequently public interest would suffer. The Government bona fide believed that unless there is a change in the personnel of these Companies, its policies cannot be implemented in larger public interest. This gave rise to the necessity for replacing the Chairmen, who had been earlier appointed by the party in power, which now sits in the opposition. In these circumstances, the Governor has exercised his discretion under the Articles of Association, and after removing the existing Chairmen has appointed new Chairman in their places in whom the Government has faith. Having regard to the fact that virtually all the shares are owned by the State Government, the action of the Governor is clearly the action of the share holders. In such companies there is no question of oppression of the minority share holders and, therefore, those questions do not arise for consideration. Can such an action be considered to be an action pertaining to public law field? In my view, the action pertains to private law field, and not public law field. It is akin to the powers exercised by the general body of share holders removing the Directors or Chairman of the Company. They cannot be asked to give reasons, and it is enough if the share holders have faith in a particular person or set of persons whom they trust can carry on the affairs of the Company and further its objectives better than the existing person or set of persons. The action really is the action of the shareholders changing the management of the Company. The petitioners have no right to hold the post except those under the Articles of Association. In the order removing the petitioners, no stigma is cast upon them. The action is neither punitive nor mala fide. Under these circumstances, the Governor cannot be called upon to disclose reasons why he removed a particular Chairman and appointed another, particularly when in doing so neither any statutory provision is offended nor any provision of the Articles of Association of the Company is breached. I, therefore, have no hesitation in coming to the conclusion that the action of the Governor in removing the petitioners from the office of Chairman of the various Government Companies in exercise of his absolute discretion under the Articles of Association of the Company is an action in the private law field and not in the public law domain, and hence the State cannot be asked to disclose the reasons why it considered it necessary to remove the petitioners from the offices held by them. In any event, the reasons have been disclosed, and the policy decision of the Government necessitated by political expediency cannot be characterised as either mala fide or arbitrary. It is a political decision, the wisdom of which cannot be examined by a court of law. The court can only examine its legal validity, and I find no legal infirmity in the policy decision. The petitioners cannot therefore, invoke Article 14 of the Constitution of India, and call upon the State to account for its action in removing them from the offices held by them in the Government Companies.

53. In some of the writ petitions where the Articles providing for the removal of the Directors/Chairmen are made subject to the provision of Section 284 of the Companies Act, it was urged that since the Article was subject to Section 284 of the Companies Act, the Chairman or the Directors of such Companies could not be removed unless a special notice was first given in accordance with law and the Director concerned was heard on the resolution at the meeting. In my view, the submission has no force. The fact that the relevant Article of Association is subject to the provisions of Section 284 of the Companies Act does not mean that the Director can be removed only in accordance with the procedure prescribed u/s 284 of the Companies Act. Section 284 will apply only to cases where a resolution to (sic) be moved for removing a Director before the expiry of his period of office. The section provides for special notice, conferring upon the Director concerned a right of being heard. This does not mean that the Governor has no authority under the Articles of Association to remove a Chairman or Director in his absolute discretion. The absolute discretion of the Governor is not affected by Section 284 of the Companies Act, but if a resolution is sought to be brought before the general body of the share holders for the removal of Directors, the procedure prescribed by Section 284 has to be followed. This only means that a Director may be removed by the Governor in exercise of his absolute discretion. He may also be removed by the general body of share holders by an ordinary resolution after special notice and in the manner prescribed by Section 284. If the Article is interpreted otherwise, the power conferred upon the Governor to remove a Director in his absolute discretion becomes meaningless. The submission, therefore, that the Governor could not have exercised his jurisdiction to remove a Chairman in view of Section 284 of the Companies Act must be rejected.

54. It was then urged that the Governor has acted as the head of the State since the executive action was in his name. Reference was made to the notifications issued in the name of the Governor. It was contended that since the Governor had acted as the head of the State, the action was state action within the meaning of Article 12 of the Constitution of India. The submission is merely technical and devoid of any force. The notifications themselves refer to the Articles of Association under which the Governor exercised his power of removal. The mere fact that a notification was issued by order of the Governor, like any other executive order, and authenticated in that manner, does not make any difference to the nature of the power exercised by the Governor. Admittedly, he purported to exercise his powers under the Articles of Association. The Governor is the head of the State, but he is also the authority empowered to remove Directors under the Articles of Association. His action, therefore, has to be considered in the light of the powers exercised by him, and where the exercise of power is referable to the Articles of Association it must be held that he was not exercising the powers as the head of the State, but as the authority empowered to do so under the Articles of Association. In the instant cases, I have no doubt that the Governor exercised the powers conferred upon him by the Articles of

Association, and did not exercise constitutional or statutory powers.

55. It was contended by some of the petitioners that the Government Companies being public Enterprises perform a public function in public interest and, therefore, there was a public element in their actions. It was, therefore, sought to be urged that their actions could be tested on the touchstone of Article 14 of the Constitution of India, and unless the action was informed by reason, the action must be struck down as invalid. Reliance was placed upon the judgments of the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, ; *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, and *Mahabir Auto Stores and Ors. v. Indian Oil Corporation and Ors.* AIR 1990 SC 1081. The submission ignores the vital fact that in the instant cases the action of the Companies or Corporations is not challenged, because the Companies or the Corporations have not issued any order removing the Chairman. The action is that of the Governor, who has exercised authority to remove the Chairman under the Articles of Association and not in exercise of Constitutional or statutory powers. The action of the Governor, as I have said earlier, is not in the public law domain but in the private law field.

The decision of the Supreme Court in *Kumari Srilekha Vidyarthi's* case also does not support the contention of the petitioners, having regard to the special features of the cases in hand. The petitioners were not holding public office having statutory duties to perform. They had been appointed Chairmen of the various Government Companies and nothing has been placed before us to conclude that they were required to perform any statutory duties in public interest. The principle in *Kumari Srilekha Vidyarthi's* case is of no assistance to the petitioners. So far as the judgments of the Supreme Court in *M/s. Dwarkadas Marfatia and Sons* and *Mahabir Auto Stores and others* are concerned, the actions complained of were those of statutory authority or the Government Company concerned. In the case of *Mahabir Auto Stores* the court clearly observed in paragraph 18 of the report that an administrative decision could be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. As I have held earlier, in the instant cases the exercise of power by the Governor was not in the public law field and, therefore, the principle laid down by the Supreme Court in *Life Insurance Corporation's* case fully applies to the facts of this case.

56. Though none of the petitioners has prayed for quashing of any of the Articles of Association as being ultra vires, in course of their submissions, learned Counsel appearing for some of the petitioners submitted that the Articles gave an untrammelled and uncontrolled power to the Governor to remove a Director or Chairman of the Board, and power being unguided, amounted to conferment of arbitrary powers in breach of Article 14 of the Constitution of India.

57. The learned Advocate-General, on the other hand, contended that the Directors or Chairman of the various Government Companies were nominated on the subjective satisfaction of the Governor and the Articles do not lay down any

criteria for such nominations. The nominees hold office during the pleasure of the Governor. The power to appoint includes the power to remove such appointees in his absolute discretion. The power to appoint or nominate was conferred in the widest terms and, therefore, the power to remove also had no limitations. Such nominations did not amount to employment, and in any case did not amount to employment under the State. They were nominated as Directors or Chairmen by the Governor who represented the dominant share holder of the Company, namely, the state. Such nominees could claim no rights apart from those conferred under the Articles of Association.

58. While it is true that the power to appoint and remove is conferred on the Governor in the widest terms, it cannot "also be denied that the nominees have not rights, apart from those given to them under the Articles of Association. In the matter of selection of such nominees no criteria have been laid down. Their nomination is purely on the subjective satisfaction of the nominating authority. The petitioners do not hold office as a matter of right nor do they possess any special qualification for holding the office. They were in fact nominated because they shared the policies and programmes of the party in power. In that sense their appointments were political in nature. One cannot lose sight of the fact that the Government implements its programmes and policies through its instrumentalities, and for doing so it must appoint persons in whom it has the faith that they will implement the policies and decisions of the Government in its true spirit. By a democratic process the Government may change and it may be that another political party with different programmes and policies may assume power. Under these circumstances can it be said that if the new Government wishes to implement its policies and programmes through its instrumentalities by removing those who hold high offices in such Corporations as Chairman or Directors while subscribing to different political philosophy, and substituting them by its own nominees, the action would be arbitrary? In my view, having regard to the realities of the situation and the nature of offices held by such nominees, the State must have wide discretion in the matter, and must be able to choose persons through whom it can implement its programmes and policies. This would also be in the public interest, because in the changed political situation the Government may find itself in a helpless situation where its policies and programmes may be obstructed by those heading the various instrumentalities of the State. If the Chairmen of the various Companies and Boards who belong to the opposing political party continuously obstruct the implementation of the governmental policies, the ultimate sufferers will be the public at large, because no developmental work can progress if the Government on the one hand and the Chairmen of various Corporations on the other are continuously at loggerheads. In my view, therefore, the conferment of very wide discretion in the matter of appointment of Chairmen of various Boards and Corporations is only consistent with the democratic set up envisaged by the Constitution of India. If a political party wins the confidence of the people and is democratically elected to form the Government, it must follow that it should be able to implement its political and

programmes in accordance with law. Matters relating to public policy and Medical expediency are beyond the purview of judicial scrutiny unless they can be said to be illegal and invalid being in contravention of any constitutional or statutory provision. In the instant cases, if the Government as a matter of policy intended to appoint officials as the Chairmen of the various Government Company, it could not be said that the decision was arbitrary. Even if the Government intended to substitute the present incumbents by nominating persons sharing the Government's political philosophy, it cannot be characterised as arbitrary or unfair. In fact, the petitioners themselves were nominated when the political party to which they belong was in power. They have no right under any statute which has been breached by removing them from office. Equally there is no constitutional provision which has been breached because the policy decision of the Government is justified having regard to the realities of the situation and the nature of office held by the petitioners. The submission therefore that the Governor has unguided discretion to appoint and remove Directors/Chairmen of various Government Companies and, therefore, such Articles should be declared to be void, must be rejected.

59. It was faintly urged on behalf of some of the petitioners that in making fresh appointments, the rules of executive business had not been followed. As is well-settled, rules of executive business are meant for the convenient discharge of governmental functions, and cannot be enforced unless it is shown to be mandatory in nature. If the ultimate decision taken is in accordance with law, and the order is issued by an authority competent to do so, the mere fact that some of the rules of executive business were not strictly complied with, will not vitiate the action.

60. In C.W.J.C. No. 3180 of 1990 and C.W.J.C. No. 3347 of 1990, an argument was sought to be urged that even if the petitioners in those writ petitions were removed from the office of Chairman and Vice-Chairman respectively, they continued as Directors of the Corporation concerned. The submission ignores the factual position that by Annexure 7 in C. W. J. C. No 3180 of 1990 the petitioner was removed both as Director and Chairman of the Corporation. In C. W. J. C. No. 3347 of 1990 the petitioner was appointed as Vice-Chairman of the Corporation under Annexure 1, which is a notification dated 24-12-1989. Article 81-A of the Articles of Association of the Bihar Rajya Pul Nirman Nigraha provides that the Governor may, if he deems it necessary, also appoint one of the Directors as Vice-Chairman of the Board of Directors. Under Article 75 the Directors are to be appointed by the Governor and are entitled to such remuneration, if any, as the Governor may from time to time determine. It appears from Annexure 1 as also the averments in the writ petition that the petitioner was never appointed a Director of the Corporation. In fact, the learned Advocate General submitted that his appointment as Vice-Chairman was illegal because before he could be nominated as Vice-Chairman of the Corporation he should have been nominated as one of its Directors. Without going into the question of validity of the petitioner's nomination as Vice-Chairman of the

Corporation, on the basis of the materials placed before us, we can safely held that he has been validly removed as Vice-Chairman of the Corporation. If there be any other notification nominating the petitioner as Director of the Corporation, that nominations is not affected by the impugned order. However, if the petitioner had not been nominated as Director of the Company by any other notification, he cannot claim to continue as a Director of the Corporation.

61. In C. W. J. C. No. 3180/90 it has been contended by. the learned Advocate General that the petitioner was never validly nominated as the Chairman of the Corporation. He has referred to various Articles in the Articles of Association and contended that the Governor has only the power to nominate Directors. After the Directors are nominated, the Directors may appoint one of them to be the Chairman in accordance with Article 115 of the Articles of Association. This is not disputed by the counsel for the petitioner, but he contendts that Article 115 was not operated when the petitioner was appointed Chairman of the Corporation. Prima facie, it appears that the nomination of the petitioner as Chairman of the Corporation was not strictly in accordance with the provision of the Articles of Association and for that reason alone in exercise of writ jurisdiction this Court may refrain from granting any relief to the petitioner. However, it is not necessary to go any further into this question, because I have held that even otherwise the removal of the petitioner is perfectly in accordance with law.

62. It was also contended that since the Chairman is appointed under Article 115 of the Articles, as distinct from Directors who are nominated by the Governor under Article 92, the power posted in the Governor under Article 92 to remove Directors can have no application to the case of a Chairman appointed under Article 115. The submission is wholly misconceived. The scheme of the Articles is that Directors must first be nominated under Article 92. Thereafter under Article 115 the nominated Directors may appoint one of them to be the Chairman. It follows that an essential qualification for appointment as a Chairman is that the person concerned must hold office as a Director duly nominated under Article 92. If such a person is removed from the office of Director, he must automatically cease to be the Chairman of the Company. As observed earlier, in the instant case the petitioner was never nominated as a Director, and was directly nominated as Chairman of the Board by the Governor. His appointment was not in accordance with Article 115 of the Articles of Association. In principle, therefore, he can make no grievance if he was removed by the same authority which appointed him.

63. Having considered the submissions advanced on behalf of the petitioners in these writ petitions, I find no merit in any of them. Consequently, C. W. J. C. Nos. 2838, 3347, 3180, 3351, 2926 and 3782 of 1990 are devoid of merit and are, accordingly, rejected. There will be no order as to costs.

C. W. J. C. No. 3610 of 1990.

64. The petitioner in this writ petition, namely, Aquil Haider, was appointed

Chairman, Patna Regional Development Authority, and in consequence thereof in his capacity as Chairman of the said Authority he was allotted Quarter No. 13/60 situate at Baily Road, Patna. It appears that after the petitioner was removed as Chairman of the Authority, he was called upon to vacate the quarters. He has, therefore, impugned the order dated 29-5-1990 (Annexure 3) of respondent No. 3, competent authority, requiring him to vacate the premises immediately. By Annexure 5 the appeal of the petitioner was rejected by respondent No. 2. The order in appeal has been passed on 5th June, 1990.

65. It is not in dispute that the petitioner was allotted the premises in question in view of his appointment as Chairman of the Patna Regional Development Authority. Consequently, once he ceased to be the Chairman of the Authority, he had no right to occupy the premises, The petitioner had impugned the order removing him from the office of Chairman in C. W. J. C. No. 3385 of 1990. I have rejected that writ petition and, therefore, since the order of removal has been upheld, the petitioner has no right to occupy the premises. In these circumstances, no relief can be granted to the petitioner.

66. C. W. J. C. No. 3610 of 1990 is consequently rejected.

N.S. Rao, J.

67. I agree.