

(2019) 10 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 33296 Of 2019 (S-Tr)

G Ashok Kumar

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 21-10-2019

Acts Referred:

Companies Act, 2013 — Section 67(1)(d), 152, 152(3), 154, 159, 161, 161(3), 164, 167, 168, 169, 178, 179
Constitution Of India, 1950 — Article 74, 74(a), 74(b), 226

Citation : (2019) 10 KAR CK 0013

Hon'ble Judges : G.Narendar, J

Bench : Single Bench

Advocate : M.Nagaprasanna, M.L.Suvarna, T.S.Mahantesh, Rakshitha D.J, V.Lakshminarayana, Pavan Kumar, Sriranga

Final Decision : Dismissed

Judgement

1. Heard the learned Senior Counsel Sri. M. Nagaprasanna on behalf of the petitioner, the learned Addl. Government Advocate on behalf of respondent No.1, learned senior counsel Sri. S.S. Naganand on behalf of respondent Nos.2 and 4 and the learned senior counsel Sri. V. Lakshminarayana on behalf of the third respondent.

2. The petitioner is before this court being aggrieved by the appointment of the third respondent as a nominated Director (Technical) on the Board of the fourth respondent Corporation in his place and the consequent appointment of the petitioner as Managing Director of KAVIKA under the impugned order dated 22.07.2019. The act of nomination is titled as a transfer-cum-nomination (Annexure-H).

FACTS OF THE CASE:-

3. It is the case of the petitioner that he joined the services of the second respondent on 05.04.1984 as an Assistant Engineer and subsequently was

promoted to the cadre of AEE on 29.11.1999 and to the cadre of Executive Engineer with effect from 22.08.2007. Thereafter, to the cadre of Superintending Engineer with effect from 30.04.2016. That on account of the ruling of the Hon'ble Apex Court rendered in the case of B.K. Pavithra, a review of the promotions of certain candidates was necessitated and consequently the promotions accorded to them were revoked and they were relegated to the lower cadre and one such candidate was the third respondent. That on account of the demotion the petitioner moved up in the order of seniority and consequently the petitioner stood promoted as a Chief Engineer with effect from 30.06.2014 by order dated 16.04.2018 and the third respondent was reverted to the Superintendent Engineer. That thereafter the State Government legislated and promulgated a special enactment called the Karnataka Extension of Consequential Seniority to Government Servants promoted on the basis of Reservation (to the posts in Civil Services of the State) Act, 2017. That a challenge was mounted calling in question the validity of the Act before the Hon'ble Apex Court. The said petitions came to be rejected and the validity of the Act of 2017 was upheld resulting in one more round of churning and consequent to the same the persons who had been reverted and relegated to a lower cadre were once again restored to the original seniority.

4. It is submitted by the learned senior counsel for the petitioner that the then Government was on its last legs having lost its majority and while functioning as a minority Government proceeded to indulge in mass transfers for extraneous reasons and that the order impugned is also one such order and stands tainted on this count alone. He would further submit that new Government in place, immediately on assuming charge issued a "Tippani" (instructions) directing all departments not to implement the orders and directions issued by the erstwhile government, if they had not been implemented. The copy of the same dated 26.07.2019 is produced and placed it before the court along with memo dated 13.09.2019. He would contend that in the light of the same the third respondent could not have taken charge as no resolution had been passed by the Board of the fourth respondent appointing the third respondent as a Director. But he would fairly concede the authority of the Government to nominate Director/Directors and also the corresponding right to remove in terms of Article 74 of the Articles of the Association-the 4th respondent Company.

5. He would further contend that the appointments and removal are at the pleasure of the Government but the exercise of the pleasure doctrine cannot be in an arbitrary manner. Though an attempt was made to canvass that the third respondent was not qualified to be nominated as a Director in view of his earlier reversion learned senior counsel would not press the contention in the light of the Act of 2017. But he would contend that the seniority list on which reliance is placed by the Government to nominate and appoint the third respondent is only a provisional seniority list and hence reliance on the provisional seniority list is misplaced.

6. The writ petition is stiffly resisted by the third respondent who was on caveat. Statement of objections have been filed on 28.08.2019.

7. The learned senior counsel Sri. V. Lakshminarayana appearing on behalf of the third respondent would contend that the writ petition is liable to be rejected on the sole ground of suppression of facts as he has not disclosed substantial facts like the handing over the charge of post of Director (Technical) to the third respondent on 23.07.2019 and the fact of him having taken charge of the office of KAVIKA. He would further contend that the petitioner is not even qualified to hold the post of Chief Engineer and the challenge to the order of appointment of the third respondent by a person who is not qualified to hold the post, if entertained would be injurious to the interest of the 4th respondent resulting in public injury.

8. The learned senior counsel would fairly submit that the fourth respondent is an independent legal entity having been incorporated under the Companies Act on 30.04.2002. He would contend that the third respondent was promoted as AEE on 05.02.1992 whereas the petitioner was promoted to the said post on 29.01.1999 and the seniority of the third respondent is protected by virtue of the law laid down by the Hon'ble Apex Court in the case of Ajith Singh reported in (1999) 7 SCC 209. That the promotion of the petitioner was on account of various government orders in continuation of the Governments. Policy of reservation dated 27.04.1978. He would contend that in view of the Act of 2018, the momentary dislocation of the third respondent on account of reversion, is of no consequence. He would invite the attention of the court to the proceedings dated 23.07.2019 and would submit that the petitioner having handed over charge is not entitled to maintain the instant writ petition. He would submit that it is purely a case of application of the doctrine of pleasure theory and if that be the admitted position he would contend that the impugned order could not be subjected to judicial review as there is neither any violation of any fundamental rights nor violation of principles of natural justice. He would, elaborating further, contend that the third respondent has been appointed following the exact procedure that was adopted while nominating and appointing the petitioner to the post of Director and that is the mode adopted by the fourth respondent Company. That the very proceedings/orders nominating and appointing the petitioner and the third respondent as Directors of the Board of fourth respondent is not for any specified period and it is until further orders of the Government. He would contend that the same being the admitted position it is open for the Government to recall or review the nomination and appointment at any time and no reasons need be assigned. He would place reliance on the rulings of the Hon'ble Apex Court reported in AIR 1963 SC 395 (Para 12 & 13) to contend that the Transaction of Business Rules (TBR) empower the Chief Minister to pass orders of the like nature.

9. The learned senior counsel would place reliance on the order passed by a Coordinate Bench in the batch of writ petitions in W.P. No.24368/2018 and other

connected writ petitions which came to be dismissed by order dated 22.10.2018 and would invite the attention of the court to paragraph 13 and elaborating further he would submit that the doctrine originates from the Latin term "durante bene placito" meaning during pleasure and would contend that the person who has been nominated would and could hold office, only during the pleasure of the authority. He would also place reliance on several of the rulings in support of the doctrine of pleasure. He would draw the attention of the court on the ruling rendered in the case of Daneshwari Thakur vs. State of HP, reported in 2014 SCC Online HP 2790. In the opinion of this court there can be no quarrel with the proposition of the law laid down by the Hon'ble Apex Court and this court.

10. The learned senior counsel would contend that a perusal of the entire pleadings put-forth on behalf of the petitioner no where sets out any allegation of malafide and the petitioner having not demonstrated any "malus animus" has no right to maintain the writ petition. He would contend that there is no termination of the petitioner's services and he not being aggrieved person has no right to maintain the writ petition and in this regard he would place reliance on the rulings of the Hon'ble Apex Court reported in 1976 1 SCC Page 671 (Para 33 & 34). Elaborating further he would contend that the petitioner having no legally enforceable right cannot mount a challenge to the order nominating and appointing the third respondent to the post of Director on the Board of the 4th respondent. In this regard he would place reliance on the ruling of the Hon'ble Apex Court reported in AIR 1980 SC 1255. He would further contend that the court in the exercise of the jurisdiction vested in it under Article 226 of the Constitution should not obscure the intention of the legislature by reading something which is not provided by the legislature. He would further elaborate to contend that if no positive relief can be granted, then the petition cannot be entertained to grant a negative relief to dislodge the third respondent. He would refer to the use of the words "shall have the right to remove and appoint an other in his place" in Article 74. He would lastly contend that if the petitioner is aggrieved by his removal from Directorship then the remedy lies before the National Company Law Tribunal. Though he would contend that the provisions of Section 152 as also Section 178 and 179 are inapplicable to Government Corporations. No material is placed to substantiate the said arguments.

11. The learned senior counsel appearing on behalf of the third respondent has placed reliance on the following rulings:-

1

Calcutta Gas Company (Proprietary) Ltd. Versus State of West Bengal and Others.

1962 Supp (3) SCR

1 : AIR 1962 SC

1044

2.

Dr. Rai Shivendra Bahadur V. Governing Body of the Nalanda College, Bihar Shariff and

Others.

AIR 1962 SC 1210

3.

Secretary to the Government and Another

Versus M. Senthil Kumar.

2005 (3) SCC 45

4.

V.K. Majotra Versus

Union of India and Others

2003 (8) SCC 40

5.

Rajasthan Pradesh Vaidya Samiti, Sardarshahar and Another Versus Union of India

and Others.

2010 (12) SCC 609

6.

Nirmal Jeet Singh Hoon Versus

Irtiza Hussain and Others.

2010 (14) SCC 564

7.

Khalid Hussain (Minor), Petitioner v. Commissioner and Secretary to Government of Tamil Nadu, Health Department,

Madras and others.

AIR 1987 SC 2074

8.

Pravasi Bhalai Sangathan v.

Union of India and others.

AIR 2014 SC 1591

9.

State of Uttar Pradesh and Another Versus Uttar Pradesh Rajya Khanij Vikas Nigam

Sangharsh Samiti and Others.

2008 (12) SCC 675

10.

Sri Ramdas Motor Transport Ltd. and Others Versus Tadi Adhinarayana Reddy and Others.

1997 (5) SCC 446

11.

Harbhajan Singh Versus Press

Council of India and Others.

2002 (3) SCC 722

12.

B.P. Singhal vs. Union of India

2010 (6) SCC 331

13.

Jeevanrao Vishwanathrao Gore

v. State of Maharashtra and Others.

2015 (5) Mh.L.J.

375

14.

Dnyaneshwar Digamber Kamble

2016

(1)

Mh

L.J

vs. State of Maharashtra and

602

Others.

12. The learned Senior Counsel Sri S.S.Naganand appearing on behalf of the fourth respondent would contend that this is a simple case of pleasure theory and in terms of Article 74 of the Articles of Association of the 4th respondent Company, the Government is entitled to nominate and appoint or remove a Director and no right is vested in the nominee Director to question the same. That it has been the practice, that the officer who is nominated as a Director assumes office with effect from the date on which the order is made and that has also been the practice that has been adopted even by the petitioner at the time of his appointment and elaborating further he would submit that the Board has passed a resolution appointing the third respondent as a Director and the third respondent has also taken charge with effect from 23.07.2019.

13. The learned senior counsel for the 4th respondent draws the attention of the court to the memo dated 06.09.2019 and the enclosed reports, pertaining to handing over of charge dated 16.08.2018 and 23.07.2019. He would submit that the first report evidences taking over of charge by the petitioner and the second report allegedly evidences the handing over of charge by the petitioner to the third respondent. The learned senior counsel inviting the attention of the court to the memo dated 09.09.2019 would take this court through the enclosed documents namely the resolution of the Board dated 07.08.2019 and would submit that the formalities as mandated by the Companies Act has been duly complied with and hence no infirmity can be attached to the nomination and appointment of the third respondent to the Board of the 4th respondent Company. A similar resolution dated 18.09.2018 passed by the Board at the time of appointing the petitioner is also placed on record.

14. The learned AGA would submit that the actions of the Government cannot be faulted with and that the appointment and continuation in the post is at the pleasure of the Government and the Government having in its wisdom deemed it expedient to nominate and appoint the third respondent as a nominee Director on the Board of the fourth respondent, the same cannot be the subject matter of a lis as the petitioner is not conferred with any vested right to remain in the said post and it is the sole domain of the Government to address administrative exigencies in the manner best known to it and he would support the order impugned in the instant writ petition.

15. Per contra, the learned senior counsel Sri. M.N. Nagaprasanna in reply would contend that the law with regard to the doctrine of pleasure has been settled by the constitutional Bench of the Hon'ble Apex Court in the case of B.P. Singhal vs. Union of India reported in 2010 (6) SCC 331. He would contend that the exercise of the power cannot be at the sweet will, whims and fancy of the authority but can only be for a valid reasons. He would take this court through paragraph 12 with regard to maintainability of the writ petition.

16. In the opinion of this court much digression is unnecessary as the petitioner is an aggrieved person on account of him having been dislodged from the post to which he had been nominated and appointed.

17. The learned senior counsel would further taken this court through paragraphs 16 to 24 wherein the Hon'ble Apex Court after tracing the origin of the doctrine of pleasure has analysed the scope of the doctrine in the light of various judicial pronouncements, the observation of the renowned jurist Sri. H.M. Seervai's in his treatise and the definition of pleasure appointment in Black's Law Dictionary and thereafter observed and held in paragraph 33 and 34 as follows: -

"33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set up, when an office is held during the pleasure of any Authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.

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

18. The learned senior counsel would emphasise the findings in paragraph 34 and contend that the authority exercising power is required to exercise the same within the parameters as settled by the Hon'ble Apex Court in paragraph 34 i.e. the exercise is for a valid reasons.

19. Learned senior counsel placing reliance on the tippani dated 26.07.2019 would contend that the Board erred in passing the resolution dated 07.08.2019. He would contend that the nomination and taking of charge is not of any consequence as the Board had not resolved to appoint the third respondent as a Director and in the absence of a resolution the third respondent could not have assumed office and hence he would contend that the proceedings dated 23.07.2019 ought to be eschewed from consideration as being non-est in the eye of law. He would also place reliance on the Division Bench ruling of the Bombay High Court reported in 2015 (5) Mh L.J 375 and would contend that in similar

circumstances the termination and removal of Chairman and non official Directors on the Board of State Road Transport Corporation, had been interfered with and the order of removal/termination have been quashed following the principles laid down by the Hon'ble Apex Court in the case of B.P. Singhal. He would also place reliance on another ruling of the Division Bench of the Bombay High Court reported in 2016 (1) Mh L.J 602 pertaining to the termination of the office of the Chairman of the Government company, invoking doctrine of pleasure wherein yet again the Hon'ble Division Bench has been pleased to deem it necessary to interfere and quash the orders.

Head Note (b) reads as under:-

"(b) Doctrine of Pleasure - Exercise of - Scope - Withdrawal of pleasure cannot be at sweet will, whim and fancy of State Government and it can only be for valid reasons - Moreover, power of withdrawal of pleasure can be used reasonably and only for public good."

No Government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons."

20. The Division Bench while allowing the writ petitions has been pleased to observe in paragraph 24 as follows:-

"24. We may note here that along with the second affidavit, the State has produced relevant documents in relation to the appointment of the Chairman made by the earlier Government. However, the State Government has not produced any document to show that while issuing the impugned order, valid reasons were either recorded or considered by the State Government. It is pertinent to note that in the first affidavit dated 20th January, 2015, the State Government had not pleaded the existence of any valid reasons. The said affidavit is completely silent on the aspect of existence of such reasons. The said reasons are pleaded subsequently in paragraph 4 of the affidavit dated 17th February, 2015 which is quoted above. Not a single document is placed on record to show that any valid reason was recorded by the State Government while passing the impugned order. Nothing prevented the State Government from producing the relevant documents for the perusal of this Court to show that

withdrawal of pleasure was for a valid reason and for the public good. What is stated in the subsequent affidavit appears to be clearly an afterthought. In any event, reasons cannot be supplied by way of an affidavit. In view of the law laid down by the Apex Court in the case of B.P. Singhal, the State Government could have exercised power of the withdrawal of pleasure only for the public good and for valid reasons. Thus, in the present case, it is impossible to record a finding that the impugned order has been passed for any valid reasons. Without producing any contemporaneous evidence to show that any valid reasons were recorded while passing the impugned order, by an affidavit, by way of an afterthought, certain reasons are sought to be pleaded. The petitioner in the Writ Petition No. 326 of 2015 has filed a rejoinder explaining as to why the said Corporation was running in losses. Therefore, the impugned order cannot be sustained as there is no material on record to show that it was passed for valid reasons and for the public good."

21. Though various contentions are advanced this court is of the considered opinion that the writ petition requires to be considered in the light of the Companies Act and the Articles of the Association.

22. The 4th respondent company came to be incorporated on 30.04.2002 and the certificate of Incorporation issued by the Registrar of Companies and the Memorandum of Association and Articles of Association are placed before this court. There is no dispute with regard to the fact that right is vested in the Government to nominate and appoint the Director under Article 74(a). Articles 74(a) & (b) reads as under:-

Appointment and remuneration of Director(s). Chairman, Chairman & Managing Director, Managing Director, & Whole time Directors.

74.

(a)

Subject to the provisions of the Act, so long as the entire paid up share capital in the Company is held by the Government of Karnataka and Central Government or by a subsidiary of a wholly owned Government Company, the Government of Karnataka shall have the right to nominate and appoint all the Directors of the Board of the Company and shall have also the right to remove the Director (s) from Office at any time at its absolute discretion and appoint another/others in his/their place(s) and also fill any vacancy which may occur as a result of such Director(s) ceasing to hold office for any reason whatsoever.

(b)

So long the entire paid up share capital in the Company is held by the Government of Karnataka or by the Central Government or by the Government of Karnataka and the Central Government or by a subsidiary of a wholly owned Government Company, the Government of Karnataka shall have the right to nominate and appoint one or more of the Directors to the Office of the Chairman

of the Board of Directors or Managing Director or Whole Time Directors of the Company for such term and on such remuneration and/or allowance as it may think fit and may at any time remove him/them from office and

appoint another/others in his/their place(s) :

23. On a bare reading it is apparent that Article 74(a) confers the right on the Government to nominate and appoint all the Directors of the Board and so also the right to remove the Director at any time at its absolute discretion and also the right to replace the existing Director or to fill up any vacancies that arises. Article 74(B) relates to appointment of Chairman of the Board of Directors or the Managing Director or Whole Time Director as also right to remove them and replace them with other.

24. The instant case involves the removal of the nominee Director i.e. the petitioner and the nomination and appointment of the third respondent as the nominee director. Hence Article 74(a) alone is of relevance in the instant case.

25. The clause commences with the phrase "Subject to the provisions of the Act". In the first chapter of the Articles of Association, titled as "Interpretation" the word the "Act" or "said Act" is defined to mean the Companies Act and includes any reenactment or statutory modification thereof for the time being in force. On a conjoint reading of Article 74(a) and the definition of the word the "Act" or the "said Act", the only inescapable conclusion that could be drawn is that, the Articles of Association mandates that the power vested in the State Government to nominate or remove a Director, but Article

74 of the Articles of Association also mandates that the same can be exercised only in consonance with the Companies Act. The conjunctive reading of Article 74(a) and the definition of the words the "Act" or the "said Act" leaves no room for any ambiguity or maneuverability. The phrase "subject to the provisions of the Act" used in the Article enjoins a duty in the State Government to exercise the authority only in consonance with the Companies Act. In this background it is necessary to examine the provisions of Section 152 of the Companies Act, 2013, which deals with the appointment of Directors.

"(3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.

(5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed: Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment."

26. From a reading of the above, the corollary that can be gathered from the

above provisions is that in the light of sub-section (3) no person can be appointed a Director of a Company unless he has been allotted Director Identification Number as required under Section 154. Hence, it can be safely inferred that it imposes an embargo or a prior compliance which ought to precede the appointment of a Director. Sub-section 5 mandates that a person appointed as a Director shall not act as a Director unless he gives his consent to hold the office as Director and such consent has been filed with the Registration within 30 days. This is an event post appointment but a mandatory compliance. Section 154 deals with the allotment of DIN number. Section 159 renders any contravention of Section 152 as a punishable offence with a jail term of up to six months or with fine which may extend to 50,000/- rupees.

27. Section 161 deals with appointment of Additional Director, Alternate Director and Nominee Director. The provisions of relevance is sub-section (3) which reads as under:-

"(3) Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company."

28. In the course of arguments none of the respondents have elaborated under what provision the appointment of a third respondent is made. But keeping in mind the language used in Article 74(a) i.e. the words "nominate and appoint" and if the same are read in conjunction with sub-section (3) of Section 161 the only inference that can be drawn is that the petitioner and the third respondent are only nominee Directors. Secondly, the language of sub-section (3) leaves no room for doubt and makes it amply clear that even such a nominee Director can be appointed only by the Board. The phrase "subject to the Articles of the Company, the Board may appoint any person as a Director nominated by" gives no scope for any ambiguity. The language employed in the provision is clear and unambiguous. Every such person, nominated by any institution or Government can be appointed only by the Board and all decisions of the Board are by way of resolutions passed in the meeting of the Board.

29. If this be the construction that can be placed then any order of nomination/appointment by the Government nominating and appointing any person as a Director would crystallize and become effective only on the passing of a resolution by the Board. Any other interpretation would be in the teeth of the provisions of Section 161.

30. The appointments and qualifications of Directors is provided in the Act under Chapter-XI. The Sections 152, 154 and 161 occur in the same chapter and all relate to the appointment of Directors. If that be so, then sub-section (3) of Section 152 also comes into play. Irrespective of the provision under which the person is sought to be appointed the said person cannot be appointed unless he has been allotted the DIN number as is mandatory under Section 154.

31. If this be the mandate of the Act then the third respondent could not have been appointed a Director without being allotted a DIN number or the passing of the resolution appointing him as a Director by the Board of the 4th respondent. Admittedly, the resolution appointing the third respondent and removing the petitioner from the Board was passed in the 98th Meeting held on 07.08.2019. The details regarding the date on which DIN number came to be allotted is not forthcoming from the submissions made by the counsels. Even assuming for argument sake that the allotment of the DIN number preceded the passing of the resolution. Even then the date of appointment of the third respondent as a Director is 07.08.2019. Thus the removal of the petitioner and the appointment of the third respondent was by the common resolution passed during the 98th Meeting held on 07.08.2019. But certain documents were handed over to the court during the course of the arguments, which reveals that the DIN number was allotted to the petitioner on 05.09.2018 and thereafter the petitioner came to be appointed by the Board in its 91st Meeting held on 18.09.2018. The said documents are relevant for the limited purpose to infer that even to the knowledge of the 4th respondent Board, the obtaining of the DIN number ought to precede the passing of the resolution appointing the Director.

32. The process for removal of Directors is provided under Section 169. The mode of vacating the office of Director provided under Section 167 and the provision for resignation of a Director under the Act is provided under Section 168.

33. From the above discussion, it is apparent that the appointment of the third respondent can only be effective from the date of resolution passed by the Board that is 07.08.2019. This court can only conclude so in the light of the provisions of sub-section (3) of Section 161 which provides for the appointment of a nominee Director. Hence, the right to hold the office of Director on the Board of the 4th respondent Company got crystallised in the third respondent on the passing of the resolution at 3.00 p.m. in the 98th Meeting of the Board held on 07.08.2019. Hence, the contention that the third respondent has taken charge on 23.07.2019 and has also participated in the meetings is of no consequence as his participation is to be construed as non-est in law.

34. The contention that the 4th respondent has adopted a particular practice and procedure in the matter of appointment and removal of Directors and the said practice assumes preeminence over and above the provisions of the Act cannot be countenanced in the light of the settled principle of law which mandates that whenever a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise it only in the manner provided in the statute itself. A full Bench of the Hon'ble Apex Court in the case of CAPTAIN SUBE SING AND OTHERS Versus LT. GOVERNOR OF DELHI & OTHERS reported in (2004) 6 SCC 440, has in para 29 placed reliance on the pronouncement of the Constitutional Bench in the case of Anjum MH Ghaswala reported in 2002 1 SCC 633 and also has reiterated the observations of the Apex

Court in the case of Dhananjaya Reddy vs. State of Karnataka reported in 2001 4 SCC page 9 para 29 reads as under:-

"29. In Anjum M.H. Ghaswala a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection Dhaananjaya Reddy v. State of Karnataka.) The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1) (d) read with sub-clause (i) thereof."

35. The Hon'ble Apex Court in the case of Dhananjaya Reddy vs. State of Karnataka has observed in paragraph 23 has observed as follows in this regard:-

"It is settled principle of law that where a power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. This Court in State of Uttar Pradesh v. Singhara Singh (AIR p. 361 para 8) held

"A Magistrate, therefore, cannot, in the course of investigation, record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down".

36. From a reading of the above it is apparent that this principle of law is a well settled principle and any violation of the principle would automatically vitiate the action. Hence, the claim of the third respondent regarding assumption of office with effect from 23.07.2019 is per-se illegal and any argument to the contrary cannot be countenanced in the light of the provisions of the Companies Act read supra. The Articles of Association which enables the Government to nominate and appoint subject to the provisions of the Act leaves no room to the respondents to maneuver an argument otherwise. The Articles of Association mandates that the appointment or removal ought to be subject to the provisions of the Companies Act then any action of the Government which is not in compliance with the provisions of the Companies Act, stands vitiated. Hence, the contention that the appointment of the third respondent as a Director became effective with effect from 23.07.2019 is to be rejected and is accordingly rejected.

37. In fact, in the light of the provisions of the Act the claim can only be boomerang against the third respondent in the light of the provisions of Section 152 which prohibits any person from acting as a Director without being allotted a Director Identification Number (DIN). Hence, the claim to the contrary would be illegal in terms of the provisions of the Act.

38. To summarise, the appointment of a nominee Director under Article 74(a) does not get crystallized on the passing of the order but becomes effective only on the passing of the resolution by the concerned Board. If that be so, then the

order of the Government tantamounts to recommendation only and in the light of the provisions of Article 74 it is to be construed as a binding recommendation which the Board is bound to implement but that by itself can by no stretch of imagination be construed as a resolution of the Board appointing as a Director. In that view of the matter, the claim of assumption of office with effect from 23.07.2019 and the claim of the third respondent having functioned as a Director between 23.07.2019 and 07.08.2019 is of no consequence and the Act/Acts are non-est in law.

39. Now coming to the aspect of the validity of the order the same need not detain this court for long. This court has perused the file pertaining to the proposal forwarded by the second respondent to the Hon'ble Chief Minister for orders. The proposal is not backed by any reasons. The proposal for appointment of the third respondent is found at para 27. But there is no corresponding proposal for the removal of the petitioner from the office of Directorship of the 4th respondent Company's Board. On the contrary the file note at para 26 only reveals a proposal for appointment of the petitioner as a Managing Director of KAVIKA. The Hon'ble Chief Minister at para 33 has merely recorded as follows:-

"?????? 26 ????? 27???? ????????????"

Meaning thereby, the Chief Minister has merely approved the proposal at para 26 and 27. No reasons whatsoever are assigned. The scope of the doctrine of pleasure has been discussed threadbare and the law in that regard has been settled and laid down in B.P. Singhal's case which has been the touch stone in respect of matters involving the applicability of the doctrine of pleasure theory. The findings rendered and law laid down in paragraph 34 is a precedent, binding this court. The division bench of the Bombay High Court in the case of Dnyaneshwar vs. State of Maharashtra has succinctly held in para 10 as under:-

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

40. The file does not disclose any reason whatsoever much less any valid reason for appointing the third respondent as a Director. Further, the file also does not disclose any valid reasons for the removal of the petitioner. Forget valid reasons the file does not even contain a proposal for the removal of the petitioner from the post of Director on the Board of the 4th respondent Company. In the absence of a proposal for removal and approval of the same by the authority then the appointment of the third respondent in no manner curtails the right of the petitioner to continue as a Director of the Board of the 4th respondent Company.

41. In the light of the above discussion the order of the Hon'ble Chief Minister

nominating the third respondent as a Director on the Board of the 4th respondent Company is to be held as illegal as the same is not supported by any valid reasons.

42. Accordingly, the writ petition is allowed.

The order impugned dated 22.07.2019 stands quashed.

43. There shall be no order as to costs. The Registry is directed to return the file in the custody of the court to the counsel for the second respondent.

44. After pronouncement of the order, learned Senior Counsel Sri V.Lakshminarayana appearing on behalf of respondent No.3 submits that liberty be granted to the Government to re-do the exercise. In the opinion of this Court, the order does not prohibit the Government to act in accordance with law. In fact, the premise on which the writ petition has been allowed is, that the action of the Government is vitiated on account of not following the procedure stipulated under the statute and the articles. Hence, no liberty be reserved and the contention of the learned Senior Counsel is superfluous.

45. An application - IA-2/2019 is also filed praying stay of the operation of the order. This Court by a detailed order has held that the procedure as envisaged has not been followed. In that view of the matter, question of staying the judgment does not arise. Application is accordingly rejected.