(1984) 01 KL CK 0013

In the High Court Of Kerala

Case No : O.P. No. 8026 of 1983

G. Karunakaran APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 04-01-1984

Acts Referred:

Citation : (1987) 61 CompCas 334

Hon'ble Judges : P.C. Balakrishna Menon, J

Bench : Single Bench

Advocate : B. Gopakumar and Chinoy Gopakumar, for the Appellant; Adv.-General and T.P. Kelu Nambiar and M. Ramachandran, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Balakrishna Menon, J.—As per exhibit P-1 order of the Government of Kerala dated January 25, 1983, issued by order of the Governor, the board of directors of the Kerala State Cashew Development Corporation Ltd. (hereinafter referred to as " the company"), was reconstituted under Article 18 of the articles of association. There are nine directors in the board reconstituted as per exhibit P-l and the petitioner is one among them. There is a subsequent order, exhibit P-2, dated September 7, 1983, as per which the fifth respondent is appointed as a director of the company, replacing the petitioner from the post. Article 18 of the articles of association of the company is extracted below:

"18. Appointment of directors.--(i) The directors shall be appointed by the Governor and shall be paid such salary and/or allowances as the Governor may from time to time determine.

(ii) Subject to the provisions of the Act, the directors shall hold office during the pleasure of the Governor.

(iii) The Governor shall have power to remove any director appointed by him from office at any time, in his absolute discretion and fill up any vacancy in the office of a director caused by retirement, removal, resignation, death, or otherwise."

2. The reconstitution of the board of directors as per exhibit P-1 is not for any particular term. Even though under Clause (ii) of Article 18, the directors hold office during the pleasure of the Governor, the petitioner prays for a writ of certiorari quashing exhibit P-2 order as made without jurisdiction, mala fide and arbitrary.

3. Article 18, extracted above, would clearly show that the directors hold office during the pleasure of the Governor. It is conceded by learned counsel for the petitioner that the directors of the company are not entitled to any salary or remuneration, but are paid sitting fees when they are required to attend the meetings of the board.

4. In the decision of this Court in A.S. Thomas v. State of Kerala [1981] KLT 278 ; ILR [1981] Ker 505 the question arose as to the right of a person to continue as a member of the Kerala State Rural Development Board constituted u/s 4 of the Kerala Act 15 of 1971, as per which the Government is authorised to constitute the board and the members of the board would hold office during the pleasure of the Government. The reconstitution of the board dropping the petitioner therein was challenged in that case and this court in paragraph 7 of the judgment stated thus at page 508 of ILR [1981] Ker 2 and on p. 279 of [1981] KLT:

" ... ...The statute imposes no restrictions on this power. The Government can terminate the board at will. Being so terminable, the life of the board is strictly limited to the duration of the Government''s pleasure. When that pleasure is withheld, the tenure of the board comes to an end. The question, however, is whether the period specified under the notification constituting the board binds the hands of the Government, or in other words, is the Government estopped from withholding the pleasure, once the pleasure has been crystallised and articulated in the order of appointment ? Such contention, in my view, could succeed only if the discretion of the Government under the statute were not unrestrained. The statute has however conferred upon the Government relatively unrestrained discretion to continue or withhold the pleasure at will. The only restraint on this otherwise unrestrained discretion is the fundamental legal norm that the pleasure must be exercised bona fide and in public interest. That being the ambit and reach of the statute, there cannot be any estoppel against the exercise of statutory discretion. "

5. Unless the exercise of pleasure is shown to be mala fide or against public interest, this court cannot interfere with exhibit P-2 order nominating the fifth respondent as a director of the board in the place of petitioner.

6. I had occasion to consider a similar case relating to the validity of an order of Government terminating the services of the managing director of the Kerala Health Research and Welfare Society in O. P. No. 7308 of 1983. The order of termination in that case was based on the Government''s view expressed in the

order, on the interpretation of the Rules and Regulations of the Society that a member of the board and its managing director shall cease to hold office on retirement from Government service on superannuation. On a proper interpretation of the Rules and Regulations, this court found that the view expressed by the Government was not correct and that there was nothing in the Rules and Regulations indicating that a member of the board or its managing director shall cease to hold office on retirement from Government service. It was in this context that this court held that if the Government gives a reason for the termination of the services of a member of the board, it is open to this court to consider the legality of the reason mentioned and if it is found that the reason seated is unsustainable in law, it is reasonable to presume that the Government would not have withdrawn its pleasure for the continuance in office of the member concerned but for its wrong view of the law. Exhibit P-2 order gives no reason for the discontinuance of the petitioner from the board of directors of the company, and, since under Article 18 of its articles of association the directors hold office during the pleasure of the Governor and the Governor is empowered to remove a director from office in his absolute discretion without any fetters placed on his powers for such removal, it should be presumed that the pleasure was withheld in the best interest of the company, unless it is shown that the exercise of power was not bona fide.

7. A member of the board of directors of a company is not holding an office of profit. Nor has he a right to the office except on the continued pleasure of the Governor. Exhibit P-1 order as per which the board is constituted is not for any particular term and each member of the board continues in office during the pleasure of the Governor, who is empowered to terminate the services of any member of the board at his absolute discretion.

8. The petitioner alleges that the order, exhibit P-2, is mala fide on account of the serious allegations against the fourth respondent, the Minister for Labour, as contained in exhibit P-I(a). In the counter-affidavit filed by the Deputy Secretary to the Government, Industries Department, on behalf of the first respondent, the State of Kerala, it is stated that the company concerned is under the control of the Industries Department and is being dealt with by the Minister for Industries. The allegation of mala fides is denied. It is also stated that there is nothing on record to show that the Industries Minister was in any way influenced by the fourth respondent. The files relating to the case were placed before me by the learned Advocate-General for my perusal. There is nothing in the files to show that the fourth respondent, the Minister for Labour, had done anything in the matter. It is true the fourth respondent has not filed a counter affidavit denying the allegations against him. But being a matter not within his portfolio, he is not obliged to file a counter denying the averments made against him.

9. Learned counsel for the petitioner relies on the decision of the Supreme Court in S. Pratap Singh Vs. The State of Punjab, , wherein it is stated at page 85 :

" Before proceeding further it is necessary to state that allegations of a personal character having been made against the Chief Minister, there could only be two ways in which they could be repelled. First, if the allegations were wholly irrelevant, and even if true, would not afford a basis upon which the appellant would be entitled to any relief, they need not have been answered and the appellant would derive no benefit from the respondent not answering them. We have already dealt with this matter and have made it clear that if they were true and made out by acceptable evidence, they could not be ignored as irrelevant. (2) If they were relevant, in the absence of their intrinsic improbability, the allegations could be countered by documentary or affidavit evidence which would show their falsity. In the absence of such evidence, they could be disproved only by the party against whom the allegations were made denying the same on oath. "

10. The company concerned is under the control of the Industries Department and the fourth respondent, the Minister for Labour, had nothing to do with the same. Under the circumstances, the allegations made against the fourth respondent should be held to be wholly irrelevant in considering the question as to whether exhibit P-2 is vitiated by mala fides. Except for the fact that the fourth respondent has not chosen to deny the allegations contained in the original petition against him, there is no other material in the case to hold that exhibit P-2 order is not one passed in the bona fide exercise of power vested in the Governor under Article 18 of the articles of association of the company.

11. Learned counsel for the petitioner submits that the order, exhibit P-2 is not one issued by the Governor who alone is invested with power to withhold his pleasure as provided for in Article 18 and hence the order is invalid. Exhibit P-2 order itself shows that it was issued " by order of the Governor" and was signed by the Secretary, Industries Department. There is therefore no substance in the contention that exhibit P-2 order is not one issued by the Governor withholding his pleasure for the continuance of the petitioner as a member of the board of directors of the company. The writ petition fails and is dismissed. In the circumstances, there will be no order as to costs.

