

(1991) 01 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 7949 of 1990

Harisinh Pratapsinh Chavda

APPELLANT

Vs

Chimanbhai J. Patel and Others

RESPONDENT

Date of Decision : 08-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Gujarat Water Supply and Sewerage Board Act, 1978 — Section 4, 5, 6

Citation : AIR 1991 Guj 115 : (1991) 1 GLR 667

Hon'ble Judges : C.K. Thakkar, J

Bench : Single Bench

Advocate : Y.N. Oza, for the Appellant; P.M., Additional General, J.M. Thakore, instructed by D.K. Trivedi, Govt. Pleader, for the Respondent

Judgement

1. This petition is filed by the petitioner who is the Chairman in the Gujarat Water Supply and Sewerage Board, Gandhinagar for an appropriate writ, direction or order for a declaration that the respondents have no jurisdiction to ask for resignation of the petitioner from the post of Chairman of the Board and permanently restraining them from shortening or curtailing his tenure before 3 years.

2. The petitioner was appointed as the Chairman of the Gujarat Water Supply and Sewerage Board (hereinafter referred to as "the Board") under S. 4(1) of the Gujarat Water Supply and Sewerage Board Act, 1978 (hereinafter referred to as "the Act") by the Government of Gujarat vide Government Notification dated August 20, 1990, the terms and conditions of which are laid down in Government Notification dated September 10, 1981. It is the case of the petitioner that he took over the charge of the office of the Chairman of the Board on August 21, 1990. According to the petitioner, he has been discharging his duties quite satisfactorily and there is no reason to disturb him. Under S. 6(I), the term of the office of the Chairman is prescribed and it is of 3 years. However, proviso to the said section enacts that the State Government by Notification in the official

Gazette may determine the term of the office of the Chairman even earlier. It is the contention of the petitioner that since his term of the appointment is for a period of 3 years, no action can be taken before the expiry of the said period of three years. It is further the case of the petitioner that by a letter dated November 12, 1990 the first respondent-Chief Minister requested him to submit his resignation from the post of Chairman, which is illegal, arbitrary and unconstitutional, without any authority of law and violative of Arts 14 and 16 of the Constitution of India. Since his appointment is for a period of 3 years under the statute and since the appointment is statutory, he cannot be asked to resign by the first respondent on the ground of change in the political situation, which is contrary to law. The said action is arbitrary, capricious and without application of mind. It has been taken to achieve selfish motives by the first respondent and there is mala fide and color able exercise of the power on the part of the authorities in asking the petitioner to resign and the said action requires to be quashed and set aside by this Court under Art. 226 of the Constitution of India.

3. When the petition was called out for hearing a notice was issued by this Court on November 22, 1990 and status quo was also granted. After the notices were served, the parties appeared and the first respondent files an affidavit-in-reply. It is inter alia contended in the affidavit-in-reply by the first respondent that the appointment of the petitioner was made on the basis of political philosophy of the party in power. Every political party has its own philosophy, objective and method to secure maximum benefit to the citizens so that the said party again return to power by the electorate. 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. In the instant case also, the appointment of the petitioner was political one. After the general election of the Gujarat Legislature Assembly, coalition Government of Janata Dal and Bharatiya Janata Party (hereinafter referred to as "BJP") came to power in the State. Since it was a coalition ministry, certain appointments including that of the petitioner was made but in view of the fact that BJP has adopted a hostile attitude towards Janata Dal Government in the State, members belonging to that party even separated from the Government. In these circumstances, as contended by the first respondent, that he had written a letter to the petitioner requesting him to resign and in the said letter itself it was specifically stated that his appointment was made when BJP was having a coalition in the Government and since the said situation did not exist, the latter should tender his resignation. According to the deponent, the said action was bona fide because he believed that the policy and programme of Janata Dal Party. cannot be carried on by the party belonging to BJP, which had a different political philosophy, policy and programme. The deponent also placed reliance on the convention, which according to him "a healthy convention established in this country that whenever there is a change in the Government, the incumbent or an office bearer or the Chairman of such organisation, corporation or institution voluntarily submits his resignation to provide an opportunity to the new Government to carry out its

programme, policies and promises on the basis of manifesto of the party in power. The first respondent in the affidavit-in-reply, wherein one Jaswant Mehta, Chairman of the Gujarat Electricity Board had submitted his resignation as per the healthy convention, when there was change in the Government, also cited an illustration. A copy of the said letter of resignation is produced at Annexure-I to the affidavit that is dated March 7, 1990. It is further the case of the first respondent that in any case under proviso to sub-section (1) of S. 6 of the Act, the Government has power, authority and jurisdiction to determine the term of the Chairman earlier by issuing a notification in the official Gazette. There is no question of imposing any penalty or punishment on the petitioner and since it is a privilege conferred by the State Government in accordance with the Act, the term can also be determined in accordance with the same Act. The appointment of the petitioner was made as per the wishes of the Government and in view of changed political situation, the said appointment can always be determined by the Government. However, instead of determining the term of the petitioner by exercising the power under the proviso to S. 6(I) of the Act, he has written a letter of request asking the petitioner to submit his resignation, which is according to the well-established convention of democracy. The petitioner cannot make any grievance if the first respondent adopts such a course, nor he can have any legal right against an action of determination of his term of office as the Chairman and the petition, therefore, requires to be dismissed.

4. I have heard at length the arguments of Shri Y. N. Oza, the learned advocate for the petitioner, Shri J. M. Thakore, the learned Advocate-General for the respondents Nos. 2 and 2 and Shri P. M. Raval, the learned Additional Advocate-General for the respondent No. 1.

5. I do not find any substance in the arguments of the learned counsel for the petitioner and in my opinion, the petition filed by the petitioner is not maintainable at law and requires to be dismissed. It is the contention of the learned counsel for the petitioner that as soon as the petitioner was appointed as the Chairman of the Board, he can hold the office for a period of 3 years and no action can be taken to determine or curtail the said term of his office, unless some penal action has been taken against him or he is removed or he incurs any disqualification as laid down in S. 5 of the Act. I am of the opinion that the argument advanced by the learned counsel for the petitioner is not well founded. S. 3 of the Act provides for the establishment of the Board. S. 4 is material for our purpose and the relevant part of the said section reads as under:

"4(1) The Board shall consist of the following members, namely:

(a) The Chairman to be appointed by the State Government, from amongst persons appearing to it to be qualified by reason of wide administrative experience in a managerial capacity or capability as a technical, expert, for such appointment;"

Section 5 provides that the person shall be disqualified for being appointed or

continued in certain circumstances enumerated therein. S. 6 lay down the term of office of members and the material part of the said section reads as under:

"6(1) The Chairman, unless appointed exofficio, shall hold office for three years:

Provided that the State Government may determine his term of office earlier, by notification in the Official Gazette.

A conjoint reading of sub-section (1) of S. 4 and sub-section (1) of S. 6 makes it abundantly clear that the Chairman can be appointed by the State Government from among persons appearing to it to be qualified by reason of "wide administrative experience in the, managerial capacity" or "capability as a technical expert" for such appointment. He shall hold office for 3 years, but the State Government can determine his term of office earlier by a notification in the official Gazette.

6. It is contended by the learned counsel for the petitioner that for a fixed tenure of 3 years the petitioner is entitled to hold the office as the Chairman unless his case falls in any of the clause of S. 5. In my opinion, reference to S. 5 is thoroughly misconceived. S. 5 of the Act provides for disqualification for being appointed or continued in certain circumstances. Those circumstances have been mentioned in the said section. Thus, if any person incurs any of the disqualifications mentioned in S.5, by operation of law, he ceases to hold the office. We are not concerned in this case with the said eventuality. In the instant case, the respondent authorities on the allegation have taken no action that the petitioner has incurred disqualification under S. 5 and, therefore, he should not be continued as the Chairman of the Board. The question, which falls for my consideration, is whether the State- Government has any right, power, authority or jurisdiction to determine the term of the office of Chairman. My answer to the above question is clearly in the affirmative.

7. 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 S. 4, which inter alia provides that State Government may appoint the Chairman, "appearing to it to be qualified y 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 have 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-sec.(I) of S.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 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.

8. It is then contended by the learned counsel for the petitioner that it is on the basis of political activities that the impugned action is being taken. It is, therefore, submitted that the impugned action is arbitrary, mala fide and politically motivated inasmuch as after BJP Ministers resigned from the Government and withdrew their support to the Government the first respondent was granted time by the Governor of the State to prove his majority in the Assembly. The first respondent was not in majority and to maintain his majority, he was obliged and compelled to take support from Congress party. "In order to achieve the said objective, the Chief Minister started distribution of power to independent members of Legislative Assembly and also to the members belonging to Congress Party. With that objective in mind, according to the petitioner, the first respondent takes the impugned action. Therefore, even though there is no apparent reason or ground to request the petitioner to resign from the office of the Chairman, the first respondent has done so which is illegal and contrary to law and the said action requires to be interfered with. The learned counsel for the petitioner has also placed reliance on orders passed in two petitions being Special Civil Application No. 5940 of 1990 and Special Civil Application No. 3124 of 1990. According to the petitioner, petitioners of both these petitions are similarly situated with that of the present petitioner. Both this Court has admitted the above petitions and interim relief is also granted and, therefore, this petition also requires to be admitted and ad interim relief requires to be continued. I do not find any substance in the contention raised by the learned counsel for the petitioner. It depends upon the facts and circumstances of each case and the relevant statutory provisions relating to such appointment. Whether any right is conferred on the person holding a particular office to be continued in the said office or not is to be decided on the merits of each case after considering the relevant statutory provisions. I have gone through the provisions of the Bombay Khadi and Village Industries Act, 1960 as well as the Gujarat Housing Board's Act, 1961. There is no similar provision in those statutes like the proviso to sub-section (1) of S. 6 in the instant case. In absence of such a right which the legislature has conferred on the State Government in the instant case by proviso to sub-sec. (1) of S. 6, it cannot be said that the cases of those petitioners are similarly situated to that of the present petitioner. In these circumstances, the reliance placed on orders in the above two petitions cannot be of any assistance to the petitioner and cannot apply in the instant case.

9. It was then contended by the learned counsel for the petitioner that with a view to accommodate some other person from the party other than BJP and to remain in power that the impugned action is sought to be taken by the first respondent. I am afraid this Court in the exercise of the powers under Art. 226 of the Constitution cannot enter into those questions since essentially they are "political issues." As observed by Krishna Iyer, J. in *Bhut Nath v. State of West Bengal*, reported in AIR 1974 SC P 806: (1974 Cri LJ 690), political issues are not justiciable issues and "the appeal should be to the polls and not to the

Courts". The Court cannot entertain a political question, since it is concerned only with adjudication of legal rights and liabilities in accordance with law.

10. Mr. Pavai, in this connection invited my attention to the case of Bhut Nath Mete Vs. The State of West Bengal, . In that case the question before the Rajasthan High Court was about the construction and interpretation of Art. 156 of the Constitution of India. Art. 156 provides the term of office of Governor. Under Clause (1) of the said Article, the Governor shall hold the office during the pleasure of the President while Clause (3) reads as under:

"Subject to the foregoing provisions of this Article, a Governor shall hold office for a term of 5 years from the date on which he enters upon his office.

The question before the Court was whether the Governor who was appointed under Art. 156 of the Constitution were entitled to hold office for a period of 5 years. The Court held that the 5 years term provided under Art. 156(3) were not absolute but subject to Clause (1) of the said Article. According to the Court, the 5-year term was subject to the exercise of power by the President and it was open to the President to terminate in his discretion the term of office of Governor at the pleasure. It was also held that the Presidential pleasure contemplated in that article was not justiciable. It was not regulated and controlled by any provision in the manner provided under Art. 311 of the Constitution, which relates to Civil Services. The learned counsel for the respondents contended that in the instant case also, S. 6(1) must be read subject to the proviso of the said sub-section and that under the proviso the term of office of the Chairman, which is prescribed as 3 years, is liable to be determined earlier by the State Government. According to the learned counsel for the respondents, any provisions in the Act do not control the said power and the petitioner has no right to hold the office and to continue to be the Chairman, if the State Government exercise the power under the proviso. I find considerable substance in the argument of the learned counsel for the respondents. As observed by me above, the provisions of S. 6 are abundantly clear and even though the term of the office of the Chairman is of 3 years, it is liable to be determined earlier by the State Government and, therefore, no writ order or direction can be issued by this Court restricting, preventing or prohibiting the State Government from exercising the statutory power, which has been granted by the legislature under the proviso to S. 6(1).

11. Mr. P. M. Raval, the learned Additional Advocate-General appearing on behalf of respondent No. 1 drew my attention to the case of Ghanshyamsingh v. Union of India, reported in (1990) 41 Delhi LT P 96 : (AIR 1991 Delhi 59). In that case initially the petitioner was nominated as a Director of Indian Farmers Fertilizers Co-operative Limited (IFFCO) but later on he was superseded by another person". The said order was challenged inter alia on the ground of mala fide exercise of power by the Government as well as on the ground of constitutional validity of S. 41(3) of the Multi State Co-operative Societies Act, 1984. S. 41(3) reads as under:

"A person nominated under this section shall hold office during the pleasure of the Government by which he has been no nominated."

12. It was argued that the provision like S. 4(3) of the Act by which a person nominated by the Central Government or State Government on the Board of a society to hold office during the pleasure of the respective Government by which he was appointed as Director was ultra vires, it was also argued that such a nomination can be said to be selection of a person in the office and since it is a public office, there must be deemed to have an element of continuity. The bye-laws of the society provided for a fixed period and in these circumstances, the provision whereby the Directors could hold the office only during the pleasure of the Government under sub-sec.(3) of S. 41 of the Act was arbitrary, capricious, unreasonable and ultra vires Arts. 14 and 16 of the Constitution. The High Courts of Delhi negated the said contention and the provision was held intra vires. The Court observed that it is true that the term of the office of elected members of the Board of Directors was for 3 years and was extendable also. That did not, however, mean that an absolute right had been created in favour of such persons and that no action could be taken against them during the said term. The term was subject to the pleasure of the Government and the Government had the "inherent power to recall or revoke that order." The Court also upheld the contention of the respondents that the exercise of power nominating respondent No. 3 in that case (in place of the petitioner) was made on the basis of subjective satisfaction only. Since it was in exercise of the power vested in the Government, it- was not open to judicial review excepting mala fides. In the facts and circumstances of the case, the Court did not uphold the contention of mala fides on the part of Shri Devlal, the then Deputy Prime Minister and dismissed the petition filed by the petitioner. It appears that against the said decision, the petitioner even moved the Hon'ble Supreme Court of India and the said petition; being S.L. P. No. 4811 of 1990 also came to be dismissed by the Supreme Court.

13. Almost an identical question arose before the same High Court in the case of Smt. Aparjit Kaur v. Union of India in Civil Writ Petition No. 1761 of 1990. In that case the petitioner was appointed as Chair-person of the Central Social Welfare Board (a Government Company) for a period of 3 years by Government resolution. The petitioner assumed the charge of the said office pursuant to the said resolution. Under the apprehension that the respondents would terminate her appointment before the completion of 3 years that the petition came to be filed by the petitioner in the High Court of Delhi praying therein that the respondents be restrained from terminating her appointment before the stipulated period of 3 years and to allow her to continue as the Chairperson.

14. It was contended on behalf of; the petitioners that the proposed action, was illegal, arbitrary and vindictive monopoly on the ground that the party in power in the Central Government was changed. It was submitted that merely on change of Government, appointment, which had been made by the earlier Government, could not be permitted to be cancelled by the new Government. It was further

submitted that the Court could pronounce upon the legality and propriety of such action in the larger interest of general public and good Government. It was also contended that the principles of natural justice ought to have been observed before taking any action against the petitioner by the respondent authorities. It was submitted that the petitioner was being prescribed to submit her resignation under the threat of dismissal.

15. The respondents appeared before the Court and controverted all allegations of mala fides. It was submitted that it was entirely for the Government to decide whether a particular person should be appointed as the Chair-person and should be continued or not. It was further submitted that the discretion of the Government in the appointment as well as removal of Chairperson was unlimited and untrammelled. The question before the Court in the above circumstances was whether there were any fetters imposed on the discretion of the Government in appointment, continuity and termination of the Chair-person and whether any action taken by the Government would be subject to judicial scrutiny by the Court.

16. Taking into consideration various clauses of Articles of Association, the Court held that it was entirely left to the subjective satisfaction of the Government whether a particular woman can be said to be "prominent social worker" or whether she enjoyed "all India status" for the purpose. Similarly, it was within the satisfaction of the Government to decide whether such a woman had "adequate administrative experience and organizational abilities". No details and guidelines were furnished in the Articles of Association and the Government was to decide said question on subjective satisfaction only. In view of the fact that it was left to the subjective satisfaction of the Government, as a necessary corollary, the Government had power to remove such woman from the office of Chair-person and the said decision cannot be said to be subject to judicial scrutiny or review ability by a Court.

17. With regard to the contention of the petitioner that the proposed action was politically motivated and no such action could be taken merely on the ground that the party in power at the Center was changed, the Court 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 priority of social welfare. The programmes and the plans for the implementation 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 the social policy and programmes with the

democratic change of the rulers is, thus, part of our social life. The policies and programmes and fluencies shift with the change in the Government. Such a change must be presumed to be in public interest so long as the Government is in power. The change in the personnel in special positions such as Chairperson of the Central Social Welfare Board is, therefore, inevitable part of a change in the policy and programme. If a democratically elected Government therefore, feels that for effective implementation of its policies and programmes a change in the personnel is necessary, it cannot be accused of mala fide or pursuing an act of vendetta."

Thus, according to the Court, the change in the personnel in position, is as "inevitable part of a change in the policy and programme" of the Government. The Court further observed that if a democratically elected Government felt that for effective implementation of its policies and programmes a change in the personnel was necessary, it could not be accused of mala fide or pursuing any act of vendetta.

18. The Court also relied on its earlier Judgment rendered in Ghanshyam Singh case (supra) against which the Supreme Court dismissed SLP. Referring to the judgment of the Supreme Court in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, the Court held that even in case of a normal Government function, there are certain areas of administrative actions and there are special occasions when a certain amount of freedom of action must be left with the Government in public interest. If such an action is taken, it cannot be said to be arbitrary, capricious, mala fide or unreasonable. After referring to a number of cases, the Court concluded:-

"To summaries, the appointment of a person as the Chair-person of the Central Social Welfare Board is neither an appointment nor ad employment under the State. The Government has absolute discretion in the appointment and removal of such a person there is no vested right in the Chair-person for continuing to hold the appointment for the entire period of three years. Although there is some element of public office the nature of appointment of a Chair-person is more akin to the contract of special service with special qualifications. In case of premature termination the only right which the Chairperson has is to claim compensation for the unexpired period.

Counsel for the petitioner, however, submits that compensation is not an adequate relief as the removal affects the dignity of the petitioner and the status of high office. As a matter of fact, the counsel submits, that the petition has not been filed to secure any monetary gain. It is well settled principles of law that for merely vindicating the dignity of a person or an office no legal remedy is available. In any case the extraordinary remedy of a writ petition cannot be invoked for vindicating ones honour. Where it is within the absolute discretion of the Government to confer the alleged dignity or status, it is implied in the said discretion that so-called dignity or status can also come to an end in the exercise of the said discretion. It is the Government, which in its discretion treated the

petitioner as a prominent social worker of all India status "and attributed adequate administrative and organisation abilities". After the entire petitioner has not objectively established that she possesses any such qualifications. The suitability for the appointment to, the said office of the Chairman, Central Social Welfare Board is inseparably connected with the policy framework of the Government. Every loss of office, whether high or low created subjective feeling of loss of social position. Further the considerations of high administrative discretion and policy transcend personal emotions of loss of status of the petitioner."

19. In my opinion, the instant case squarely falls within the four corners of Smt. Amarjit Kaur's case (supra). Looking to S. 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 or upper age limit; there is no provision for 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 Governmental 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 framework 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.

20. In the affidavit-in-reply filed by the first respondent the above circumstances have been highlighted. It was specifically stated in the affidavit that the appointment of the petitioner to the post of Chairman of the Board was a political one. The petitioner belongs to BJP and after the general election of the Gujarat Legislative Assembly, a coalition Government of BJP and Janata Dal came to be formed in the State and that the petitioner was appointed as the Chairman of the Board. In view of the fact that the said party (BJP) withdrew its support to the Government in the State and further, that the said party had adopted a hostile attitude towards Janata Dal Government and all the members belonging to the said party submitted their resignation from the Ministry, that the Government thought it fit not to continue the petitioner as the Chairman of the Board. The said action cannot be said to be arbitrary, unreasonable or mala fide. In fact it is in accordance with the democratic convention that the first respondent had written a letter of request asking the petitioner to resign, following well-established principles of democracy. The appointment was made on the basis of subjective satisfaction of the State Government and it has power to determine the said appointment or curtail the term in accordance with the

proviso to S. 6(1) of the Act. No objection can be taken or the petitioner, against such action, can make grievance.

21. Heavy reliance was placed by the learned counsel for the petitioner on the case of *Kumari Shrilekha Vidyarthi v. State of U.P.*, reported in 1990(4) JT 211. In that case, the State Government issued a circular on February 6, 1990 terminating the appointment of all Government counsel and directed preparation of fresh panels. The validity of the said circular was challenged contending that it was arbitrary, unreasonable discriminatory and mala fide. Relying upon a number of earlier judgments, the Supreme Court held that each and every State's action in order to survive must not be susceptible to the vice of arbitrariness, which is the crux of Art. 14 of the Constitution of India and the basic need to the rule of law, the system by which we are governed. It is no doubt true that the burden is on the petitioner to show that the alleged action was arbitrary, but if the action is uniformed by reason, the burden will be shifted to the State to repel that attack by declaring the material and reasons which led to the action being taken in order to show that it was a decision which was based on reason. Then considering various provisions relating to the selection, appointment, tenure, character roll, renewal etc. of the Government Counsels, the Court held that the Government counsels in district were treated as law officers of the State who were holders of an "office" or "post". Certain aspects were taken into consideration while deciding the said case by the Hon'ble Supreme Court. The provisions relating to appointment, continuance and renewal of Government Counsels clearly established that applications were to be invited for the appointment to the posts of Government Counsels. The District Officer was required to consider all the applications in consultation with the District Judge and to prepare the names in order of preference. The Legal Remembrance was required to submit the recommendation of the District Officer along with his own opinion to the Government. The initial appointment was for a period of one year during which the work and the conduct of the appointee would be watched to adjudge his suitability and a report was required to be submitted at the end thereof, by the District Officer after consulting the District Judge and on the same being found satisfactory, his appointment was to be made for not exceeding three years. Again, before expiry of the said term of three years the case of the incumbent was to be considered on the basis of his work, conduct and age of renewal and the Government was required to decide the question of his reappointment for a period not exceeding three years on the basis of the report of the District Officer and the opinion of the District Judge. If the Government agreed with their recommendations the term of existing incumbent was to be renewed for a period not exceeding further three years. The said procedure was to be followed on the expiry of every successive period of renewed appointment of the Government Counsel. Detailed provisions were made for maintenance of the character roll in which the District Officer and the District Judge were required to record their opinion on the capacity and work of the Government Counsel. All Government Counsels were prohibited from participating in political

activities so long as they work on those posts and the participation in political activities was considered to be a disqualification. Considering the ambit and scope of the above provisions, the Supreme Court observed:

"12. The above provisions in the AIR Manual clearly show that the Government Counsel in the district are treated as Law Officers of the State are holders of an "office" or "post". The aforesaid provisions in Chapter VII relating to appointment and conditions of engagement of District Government Counsel show that the appointments are to be made and ordinarily renewed on objective assess the person based on the opinion of the District Officer and the District Judge, and character roll is maintained for keeping a record of the suitability of the appointee to enable an objective assessment for the purpose of his continuance as a Law Officer in the district. There are provisions to bar private practice and participation in political activity by D.G.Cs. Apart from Clause 3 of Para 7.06 to which we shall advert a little later, these provisions clearly indicate that the appointment an engagement of District Government Counsel is not the same as that by a private litigant of his counsel and there is obviously an element of continuity of the appointment unless the appointee is found to be unsuitable either by his own work, conduct or age or in comparison to any more suitable candidate, available at the place of appointment. Suitability of the appointee being the prime criterion for any such appointment, it is obvious that appointment of the best amongst those available, is the object sought to be achieved by these provisions, which, even otherwise, should be the paramount consideration in discharge of this governmental function aimed at promoting public interest. All Government Counsel are paid remuneration out of the public exchequer and there is clear public element attaching to the "office" or "post"."

22. From the above observation and the reasoning of the Supreme Court, it clearly appears that the Government Counsels were treated as "law officers" of the State and according to the Supreme Court, they were holders of an "office" or "post".

23. I fail to appreciate how the ratio laid down in Kumari Shrilekha's case (supra) would be applicable to the facts and circumstances of the present case. It is not even contended, and in my opinion can be contended, that the post of Chairman cannot be said to be "civil post" within the meaning of Part XIV of the Constitution of India. It is not a "service under the State" so as to invoke the provisions of Art. 311 of the Constitution. In fact, looking to the provisions of S. 4, the matter is left to the absolute discretion and satisfaction of the Government to decide whether a person who would be appointed to the post of Chairman is qualified by reason of "wide administrative experience in managerial capacity". No objective criteria have been laid down regarding the age, educational or other qualifications etc. Therefore, I am in respectful agreement with the decision rendered by the High Court of Delhi in Smt. Amarjit Kaur's case (supra), and hold that the decision of the Supreme, Court in Kumari Shrilekha's case (supra) cannot apply in the instant case.

24. 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 Gujarat Legislative Assembly when

coalition Government of Janata Dal Party and Bharatiya Janata Party was formed in the State of Gujarat. When the said situation was changed and BJP 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. Amatjit 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 State so as to invoke the provisions of 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 S. 6(I) of the Act to determine the said appointment even earlier.

25. I must hasten to add at this stage that I am not holding that the office of the Chairman is not of 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 Art. 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 S. 6(1) of the Act, he cannot file a petition for the purpose of continuance or reinstatement to the said post till the said period 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. I cannot 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.

26. In the result, I do not find any substance, in any of the contentions raised on behalf of the petitioner and the petition requires to be dismissed. The petition is,

therefore, ordered to" be dismissed. Rule is discharged. No orders as to costs.

27. At this stage, Mr. Y. N. Oza, learned counsel for the petitioner prays that ad interim relief which has been granted earlier may be continued for some time so as to enable his client to approach an appropriate forum against this order. The said prayer was vehemently opposed by the learned Advocate "General as well as the learned Additional Advocate General. In the facts and circumstances of the present case, however, I am of the view that the request is reasonable and, therefore, ad-interim relief, which has been granted earlier, is ordered to be continued up to January 15, 1991.

28. Petition dismissed.