
(1993) 07 MAD CK 0053
In the Madras High Court

P. Mahamani

APPELLANT

Vs

Tamil Nadu Magnesite Limited and Others

RESPONDENT

Date of Decision : 06-07-1993

Acts Referred:

Companies Act, 1956 — Section 316

Citation : (1993) 2 MLJ 634

Hon'ble Judges : Thangamani, J

Bench : Division Bench

Judgement

Thangamani, J.—The writ petitioner claims that in 1978 he passed the final examination conducted by the Institute of Company Secretaries of India, New Delhi. As per the rules and regulations of the Institute, a candidate who has passed the final examination should undergo training for a specified period in a company recognised by the Institute for such purpose, and with the Registrar of Companies for 15 days before registering such candidate as a member of the Institute. In his case the Institute has exempted him from undergoing the said training since for seven years he had already worked as Manager (Accounts) in the National Textile Corporation (AP KK & M) Limited. While he was working in the National Textile Corporation (AP KK & M) Limited, the first respondent Tamil Nadu Magnesite Limited, Salem called for applications for appointment of the Financial Controller-cum-Secretary in the said Company and he applied for the Same setting forth all his qualifications. In his application dated 4.8.1979 he has only mentioned that he has passed the final examination of the Institute of Companies Secretaries of India in 1978, as he has not been registered as a member then. He was selected and on the receipt of the appointment order he assumed charge on 2.5.1980. Since initially the Institute did not give him total exemption from the rule regarding training, the Board of Directors of the first respondent Company in their resolution dated 17.12.1981 redesignated his post as that of Acting Secretary-cum-Financial Controller. They also resolved that after becoming a member of the Institute the designation as Financial Controller-cum-Secretary could be restored. Later on, 01. 12.4.1982 he was admitted as a

member of the Institute by giving him total exemption from undergoing the requisite training. Thereupon the Board of Directors redesignated his post as stated above from 21.4.1992. The statutory authority was also duly informed about his redesignation.

2. In the meanwhile, in 1980 he was appointed as the financial Controller of Tamil Nadu Magnesite Products Limited on an honorarium of Rs. 250 per month.

3. On 10.5.1985 the second respondent Thiru V. Madhavan Nair, I.A.S. became the Managing Director of the first respondent Company. On 17.12.1985 he wanted the petitioner to furnish materials to substantiate a corruption charge against S. Subramaniam, a prior Managing Director of the Company. The petitioner refused to oblige the second respondent by giving a false statement against the prior Managing Director to the Officers of the Directorate of Vigilance and Anti Corruption. So on the same evening the Personal Assistant of the second respondent served on the petitioner the Office Order No. 15 dated 17.12.1985 placing him under suspension from whatever post he was holding in Tamil Nadu Magnesite Limited and Tamil Nadu Magnesite Products Limited with effect from that afternoon.

4. After placing him under suspension, the second respondent served the show cause notice-cum-charge sheet by letter No. 1(2)/6510/85-86 dated 13.1.1986. Of the four charges framed against him the first was that he had released security deposits of certain contractors without obtaining proper Government Security equivalent to the amount released by him at the instance of two contractors. Charge Nos. 2 and 3 read as if he is an employee of Tamil Nadu Magnesite Products Limited which he is not. The fourth charge is that he had deliberately offered his candidature for the post of Company Secretary in the first respondent-company suppressing the fact that he was not an Associate Member of the Institute of Company Secretaries of India and he had failed to inform the management about his non-qualification even after his appointment till the Company received the copy of the letter from the Institute intimating his admission as an Associate Member.

5. On 25.1.1986 he submitted his explanation to the charges levelled against him. However, the second respondent ordered enquiry into the charges. Aggrieved by the order of suspension dated 17.12.1985 and the subsequent charge memo dated 13.1.1986 he approached this Court challenging their legality and validity in W.P. No. 10527 of 1987. Along with the writ petition, he filed W.M.P. Nos. 15452 and 15453 of 1987 and obtained stay of operation of the impugned proceedings. The respondents also filed W.M.P. Nos. 16850 and 16851 of 1987 for vacating the stay. On 14.12.1987 all these W.M.Ps. came up for hearing before Venkataswami, J. He vacated the interim stay granted and directed the Management to expedite the enquiry and pass final orders expeditiously. Thereupon the writ petitioner took up the matter in appeal in W.A. Nos. 2325 and 2326 of 1987. The Division Bench held that the appointment of the petitioner was approved by the Board of Directors by the resolution dated

20.10.1979. Thereafter the Government was addressed on 7.12.1979 and it gave its approval. And as per the provisions of the Companies Act, Articles of Association read with Regulations in Schedule I, Table-A of Companies Act the Managing Director had no lawful authority whatsoever to pass the impugned orders placing the petitioner under suspension and initiating any disciplinary action by framing charges. Accordingly it set aside the impugned proceedings entitling the petitioner to be restored to duty forthwith. W.P. No. 10527 of 1987 was also taken up for hearing and allowed with cost. It was made clear that order was without prejudice to the right to take action afresh if deemed necessary by following proper procedure. Pursuant to the said order, on 7.5.1988 the petitioner reported for duty with a steno copy of the order before Mr. V.Madhavan Nair the second respondent. The Managing Director allowed him to join duty and directed him to attend the Meeting of Board of Directors of the Company to be held on 9.5.1988 in Madras. That Meeting was presided over by the second respondent. On 9.5.1988 the petitioner was directed to proceed to Salem. When he reported for duty, the Company again initiated action against him by placing him under suspension in its letter dated 9.5.1988 in Reference No. 1(2)/1244/88-89. On 19.5.1988 the first respondent served another letter including the charge memo containing practically the same allegations in Reference 1(2)/1529/88-89. On the above averments the present writ petition has been filed for issuance of a writ of certiorari calling for the records of the first respondent, culminated in letter No. 1(2)/1244/88-89 dated 9.5.1988 and the consequential charge memo Letter No. 1(2)/1529/88-89, dated 19.5.1988 issued by the first respondent and to quash the same.

6. Mr. S. Govindswaminathan, learned senior counsel appearing for the petitioner first argued that the second respondent Thiru. Madhavan Nair was not holding the post of Managing Director on the two relevant dates 9.5.1988 and 19.5.1988. Since the impugned orders have been signed by an unauthorised person, the same have to be reckoned as invalid orders liable to be set aside. He pointed out that Thiru Madhavan Nair is an Officer belonging to the cadre of Indian Administrative Service. The State Government issued orders in G.O.Rt. No. 1853, Public (Special-A) Department, dated 27.4.1985 placing his services at the disposal of the first respondent-Company for appointment as its Managing Director. Since the Managing Director can be appointed only by the Board of Directors, the Board adopted a resolution that he was appointed as the Managing Director for a period of five years with effect from 10.5.1985. Subsequently the State Government in G.O.Ms. No. 580, Industries (H-2) Department, dated 2.7.1985 directed that the services of the second respondent be placed at the disposal of the first respondent-Company for a period of one year in the first instance. The Board of Directors also at the next Meeting resolved to restrict the period of appointment of second respondent as Managing Director for one year only from 10.5.1985. Later on the State Government had issued orders in 1986 extending the period of deputation for another year. But the second respondent had failed to place the above order for the consideration of the Board of

Directors. Thus, the initial appointment for one year had not been extended and the term of office of the second respondent as Managing Director came to end on 9.5.1986 itself even though subsequently the State Government was extending the period of service for every year. So after 10.5.1986 the second respondent was not the Managing Director of the Company to issue the impugned order.

7. Whereas learned Counsel for the respondent contends that as per Article 14(a) of the Articles of Association of the Company, the Directors including the Chairman and Managing Director are appointed by the Governor. In the very same Article Sub-clause(c) provides that the Government shall have the powers to remove any Director including a Chairman and Managing Director from office at any time in his absolute discretion. This would indicate that Governor is the appointing authority for the Chairman and Managing Director and not the Board. While so, there is no necessity for placing the order of appointment of the second respondent before the Board and get its approval. In any event his appointment would not be illegal merely because it was not placed before the Board. There is substance in this contention of the second respondent and we are unable to accept the claim of the petitioner that the second respondent had no legal authority to call himself as the Managing Director of the first respondent-Company after 10.5.1986 and he could not have validly presided over the Meeting of the Board of Directors held on 9.5.1988 in which the relevant resolution was passed.

8. In G.O.Rt. No. 1691, dated 27.4.1988 the second respondent was appointed as the Managing Director of Tamil Nadu News Print and Papers Limited. Pursuant to the G.O., on 4.5.1988 he assumed charge as the Managing Director of Tamil Nadu News Print and Papers Limited. The same G.O. reads that orders regarding the posting of a successor to Thiru V.Madhavan Nair, I.A.S., will be issued separately. It is the contention of learned senior counsel for the writ petitioner that by this G.O. the service of the officer placed at the disposal of the first respondent-Company for appointment as its Managing Director on foreign service under Rule 6 of the Indian Administrative Service (Cadre) Rule, 1954 has now been withdrawn. The contention is developed on the following lines: While serving in the State Government an I. A.S. Officer can validly hold two posts temporarily till alternative arrangements are made. However, when a deputation is ordered, the services of the I.A.S. Officer is specifically placed with the borrower and so the concerned officer cannot claim that his services are with two borrowers. And the above order of the Government specifically clarified that the second respondent had ceased to be in the service of the first respondent-Company from 4.5.1988 with his assuming charge as the Managing Director of Tamil Nadu News Print and Papers Limited. Besides from that day only the said Company is paying his salary and so the second respondent cannot be stated to be the Managing Director of the first respondent-Company. However, we find nothing in the words of G.O.Rt. No. 1691 to assume that the second respondent automatically ceased to be the Managing Director of the first respondent-Company, the moment he joined the service of Tamil Nadu News Print and Papers

Limited. In fact, the Government order itself stipulates that the successor would be named later. This would indicate that the second respondent continued to be the chair-man-cum-Managing Director of the first respondent-Company even beyond 4.5.1988. The second respondent's tenure was extended by G.O.Ms. No. 358, dated 26.5.1987 from 10.5.1986 to 9.5.1988. By G.O.Ms. No. 361, dated 7.3.1988, he was appointed also as Chairman. G.O.Rt. No. 1691 does not make any reference to the above G.Os. and does not also affect the position as Chairman. Without referring to G.O.Rt. No. 1691, the Government passed G.O.Ms. No. 695, dated 10.5.1988 directing that the tenure of Thiru V.Madhavan Nair as the Chairman and Managing Director of the first respondent Company be extended for a period of one month from 10.5.1988 under the existing terms and conditions. Similarly in G.O.Ms. No. 804, dated 14.6.1988, the tenure of Chairman and Managing Director was extended by one month from 10.6.1988. Thus it is evident that there is no merit in the claim of the petitioner that by virtue of his appointment as the Managing Director of Tamil Nadu Print and Papers Limited, the second respondent had ceased to be Chair-man-cum-Managing Director of the first respondent-Company.

9. Tamil Nadu Magnesite Products Limited, Salem is the subsidiary Company of Tamil Nadu Magnesite Limited, Salem, the first respondent herein. u/s 316 of the Companies Act no public company and no private company which is a subsidiary of a public company shall appoint or employ any person as Managing Director if he is. either the Managing Director of any other company (including a private company which is not -subsidiary of a public company) except as provided in Sub-section (2). As per Sub-section (2) of Section 316, a public company or a private company which is a subsidiary of a public company may appoint or employ a person as its Managing Director if he is a Managing Director of one and of not more than one other company (including a private company which is not a subsidiary of a public company). So according to learned senior counsel for the writ petitioner, since no person can hold the post of Managing Director in more than two Companies and since the second respondent had assumed charge as the Managing Director of Tamil Nadu News Print and Papers Limited on 4.5.1988 he had ceased to be in the service of the first respondent company. And the meeting of the Board of Directors convened contrary to the said provisions of the Companies Act would be improper. He contended that the continuance of Thiru Madhavan Nair as Managing Director of the first respondent-company was contrary to the provisions of the Companies Act referred to above. There is no merit in this contention. The Central Government has by notification No. G.S.R. 577(E), dated 16.7.1985 directed that Section 316 of the Companies Act and a few other sections thereof shall not apply to a Government Company. The notification is one u/s 620(1)(a) of the Companies Act. While the petitioner's counsel that the Tamil Nadu News Print and Papers Limited is not a Government Company, counsel for the respondent asserts to the contrary. But as pointed out by the second respondent, he had tendered his resignation on 28.4.1988 itself as Managing Director of Tamil Nadu Magnesite Products limited. And in view of

G.O.Rt. No. 1691, dated 27.4.1988 which stipulates that orders regarding the posting of a successor to second respondent will be issued separately and G.O.Ms. No. 735, Industries Department dated 23.5.1988 appointing" Thiru P. Shankar, I.A.S., as the Chairman and Managing Director of Tamil Nadu Magnesite Products Limited with effect from 4.5.1988 A.N., the contention of the writ petitioner that the second respondent has violated Section 316 of the Companies Act is misconceived. In any event a reading of the section would indicate that the prohibition of appointing Thiru Madhavan Nair as Managing Director if at all could only be on Tamil Nadu News Print and Papers Limited while he was already holding the post of the first respondent Company and Tamil Nadu Magnesite Products Limited. And there is nothing in G.O.Rt. No. 1691, dated 27.4.1988 to suggest that by virtue of the order of appointing the second respondent as Managing Director of Tamil Nadu News Print and Papers Limited, his service with the first respondent Company has become determined.

10. Even if it is taken there is some technical flaw in the continuance of the second respondent Thiru Madhavan Nair as the Managing Director of the first respondent-Company on the date of passing of the impugned order, that cannot in any way militate against the validity of the said order. In matters like this public policy is clearly involved. And, in the tangled web of human affairs, law must recognise some consequences as relevant, not on grounds of pure logic but for reasons of practical necessity. To clear the confusion and settle the chaos, judges have invented the de facto doctrine, a doctrine of necessity and public Policy. In Gokaraju Rangaraju Vs. State of Andhra Pradesh, , one Shri Anjappa, Additional Sessions Judge, West Godavari District, heard and rejected an appeal arising out of a proceeding u/s 6-A of the Essential Commodities Act, by which the District Revenue Officer, West Godavari ordered the confiscation of certain quantity of rice and paddy. A criminal revision petition was preferred before the High Court of Andhra Pradesh. In another instance one Raman Raj Saxena, Additional Sessions Judge, Guntur passed orders in two sessions cases. The convicted accused preferred appeals to the High Court of Andhra Pradesh. By the time the criminal revision case and criminal appeals came up for hearing before the High Court of Andhra Pradesh, the Supreme Court quashed the appointment of Shri G. Anjappa and SriRaman Raj Saxena as District Judges on the ground that their appointments were in violation of the provisions of Article 233 of the Constitution. A point was raised whether the judgments rendered by Shri Anjappa and Shri Saxena were void and required to be set aside. The High Court overruled the point and held that though the appointments of Shri Anjappa and Shri Saxena were invalid, yet they were not mere usurpers but had held office under lawful authority and, therefore, the judgments rendered by them were valid and could not be questioned in collateral proceedings. When the matter was taken to the Supreme Court, held that the de facto doctrine saves the effect of the invalidation upon the acts done by the Judge whose appointment has been invalidated. The Judge who rejected the appeal was not mere usurper or intruder but was a person who discharged the functions and duties of a Judge under

colour of lawful authority. We are not concerned with the particular incumbents of the office. So long as the office was validly created, it matters not that the incumbent was not validly appointed. The same principle has been reiterated in *Pushpa Devi v. Madhavan* : 1987CriLJ1888 .

11. The doctrine is now well-established that the acts of the officers de facto performed by them within the scope of their assumed official authority in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure. It is founded on good sense, sound policy and practical experience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. When we consider how many public officers and persons there are who are charged with very important duties and whose title to the office on the part of the public cannot be ascertained at the time we will at once see to what it would lead if the validity of their acts, when in such office, depended upon the propriety of their election. It might tend if doubts are cast upon them, to consequences of the most destructive kind. It would create uncertainty with respect to the obedience to public officers and it might also lead to persons, instead of resorting to ordinary legal remedies to set right anything done by the officers, taking the law into their own hands. Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as the validity of his acts are concerned, it is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognised as valid on grounds of public policy, and for the protection of those having official business to transact. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices, and in apparent possession of their powers and functions. For the good order and peace of society their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined. It is manifest that endless confusion would result, if in every proceeding before such officers their title could be called in question.

12. An officer de facto is one who by some colour or right is in possession of an office and for the time being performs his duties with public acquiescence, though having no right in fact. Whereas an intruder is one who attempts to perform the duties of an office without authority of law, and without the support of the public acquiescence. No one is under obligation to recognise or respect the acts of an intruder, and for all legal purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public business and in security of private rights, the acts of officers de facto are not suffered to be questioned because of the want of legal authority except by some direct proceedings instituted for the purpose. In all other cases the acts of an

officer de facto are as valid and effectual, while he is suffered to retain the office as though he were an officer by right, and the same legal consequences will flow from them for the protection of the public and of third parties. There is an important principle, which finds concise expression in the legal maxim that the acts of officers de facto cannot be questioned collaterally. A person may be entitled to his designation although he is not a true and rightful incumbent of the office, yet he is no mere usurper but holds it under the colour of lawful authority. The de facto doctrine was introduced to the law as a matter of policy and necessity, to protect the interest of the public and the individual where these interests were involved in the official act of persons exercising the duties of an office without being lawful officers. The doctrine is in fact necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the government of the state and the numerous functionaries through whom it exercised its various powers on the ground of irregular defective title, insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be upheld until in some regular mode their title is directly investigated and determined. When one holds office under colour of lawful authority, whatever be the defect of his title to the office, acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy and acts done by an officer de jure. The defective appointment of a de facto officer may be questioned directly in proceeding to which he may be a party but it cannot be permitted to be questioned in a litigation which is of no concern or consequence to the officer concerned. So the writ petitioner cannot be heard to say that Thiru. Madhavan Nair, the second respondent had no authority to preside over the meeting of the Board of Directors wherein it was resolved to place him under suspension and initiate disciplinary action.

13. Learned Senior Counsel for the petitioner next submitted that the secretary of a company is a statutory post under the Companies Act. The Act specifically lays down that every company that has a paid up capital of Rs. 25 lakhs or more shall have a whole time Secretary. Section 303 of the Act envisages that all necessary particulars about the Company Secretary are to be entered in the Statutory Register kept in the Registered Office of the company and every such appointment shall be communicated under Form-32 to the Registrar of the Companies within 30 days of such appointment. The Articles of Association of the first respondent-company lays down that the Regulations contained in Table-A of Schedule-1 to the Companies Act shall apply to the Company except in so far as they have been specifically excluded by or under the Articles of Association. Under Article 82(2) even a Director of the company can be appointed as the Secretary. Thus the status of the Company Secretary is equivalent to that of the Director and the Managing Director of the Company. So he cannot be treated as if he is an employee of the Company governed by the Service Regulations of the

Company. Further the Articles of Association of the first respondent-Company states that the Directors including the Chairman and the Managing Director shall be appointed by the governor and they hold the posts at his pleasure. Since the post of the company Secretary is a statutory post on par with that of Directors of the Company, initiating disciplinary proceedings against the Company Secretary is beyond the powers of the Board of Directors. The Board of Directors of the first respondent-Company have appointed the petitioner as the Secretary after getting the concurrence of the Governor. So any action taken by the Board of Directors could only be after obtaining the approval of the Governor.

14. No doubt Article 32 of Table-A of the Companies Act stipulates that as Director of the Company may be appointed as the secretary of the Company. But it would not mean that the Secretary is on par with the Director. Though the appointment of the writ petitioner is by the Board and approval of the Government has been obtained in accordance with Article 23(1) of the Articles of Association the prior approval of the Governor. As per Article 23(1) of the Articles of Association, it would not mean that for initiating disciplinary action also the Board will have to obtain the prior approval of the Governor is required only for three purposes. They are: (1) to create any post if the maximum on the time-scale of pay for the post is Rs. 2,500 p.m. or more; (2) to appoint any person in any post if the maximum of the time-scale of pay for that post is Rs. 2,000 p.m. or more; and (3) to incur expenditure of a capital nature exceeding Rs. 10 lakhs at a time. Under Article 23(2) of the Articles of Association the Board is required to report to the Governor in respect of some specified acts. The Articles of Association of the company neither in Article 23 nor anywhere envisages obtaining of the approval of the Governor to initiate disciplinary proceedings against the Secretary. In fact the Division Bench of this Court, in W.A. Nos. 2325 and 2326 of 1987 W.P. No. 10527 of 1987 preferred by the petitioner herein earlier, in its order dated 3.5.1988 had recognised the authority of the Board of Directors to remove the petitioner from the post of the Secretary as stipulated in Regulation 82 which is deemed to be incorporated in the Articles of Association of the Company by virtue of Section 28(2) of the Companies Act. Regulation 82 which finds a place in Table-A, Schedule-I of the Companies Act, provides that any Secretary appointed by the Board may be removed by the Board. And as per Section 28(2) of the Companies Act, 1956 insofar as the Articles do not exclude or modify the Regulation contained in Table-A, those Regulations shall so far as applicable to the Regulations of the Company in the same manner and to the same extent as if they are contained in duly registered Articles. So the contention of the writ petitioner that the Board of Directors has no authority to initiate disciplinary proceedings against him is untenable.

15. In support of his contention learned senior counsel for the petitioner relied on the decision in *State of Gujarat v. Coromondal Investments Private Limited and others* (1991) 71 C.C. 470. In that case the Registrar of Companies filed a complaint against the respondent-Companies and its Directors for violation of the provisions of Section 383-A of the Companies Act, 1956 on the allegation that

one P who was acting as the Secretary of one Company, was an employee of another company. As per the provisions of Section 383-A of the Companies Act 1956, a company having a paid up share capital of more than Rs. 25 lakhs must have its own Secretary, the Gujarat High Court held that P was not an employee of the respondent-Company, and, therefore there is no violation of the provisions of Section 383-A of the Act by the Company and its Directors. This decision cannot help the petitioner in any manner since the decision was rendered on the facts of that case.

16. In *Haryana Seeds Development Corporation v. Aggarwal* (1989) 65 C.C. 95, relied on by learned senior counsel for the writ petitioner the Articles of Association of the Corporation provided that the Directors may appoint a Secretary of the Company for such term as they may think fit and any Secretary so appointed may be removed by them. The Managing Director of the Corporation terminated the services of the respondent as Company Secretary. On a writ petition filed by the respondent, a single Judge of the Punjab and Haryana High Court found the order illegal on the ground that the Managing Director had no authority to terminate the services of the writ petitioner as according to the Memorandum and Articles of Association, only the Board of Directors was competent to terminate the services of the Company Secretary. On appeal, the Corporation contended that under the Articles of Association, the Board has passed a resolution authorising the Managing Director to appoint, suspend and dismiss officers and that therefore the termination order was valid. Held, dismissing the appeal that in view of the Articles of Association the power to appoint the Secretary vested in the Board of Directors and not in the Managing Director. The delegation to the Managing Director authorising him to dismiss the Secretary was of no consequence as under the Memorandum and Articles of Association it was only for the Board of Directors to appoint the Company Secretary. Whereas in this case we find from the letter addressed to the writ petitioner by the Managing Director on 9.5.1988 that the Board of Directors decided to suspend his services from the Company with immediate effect pending enquiry. And the charge memo against him was being issued separately.

17. *P.L. Sharma v. Jammu and Kashmir Industries Limited* (1990) 67 C.C. 195 the appellant joined the Company as Assistant Chemical Engineer in 1972. His conflict with the Company started in 1976 when he filed a suit against the company for various reliefs. He began to suspect mala fides in every action of the company and resorted to Court proceedings even on a slight pretext. He was served with a charge sheet in 1982 and he was placed under suspension. An enquiry officer was appointed to enquire into the charges against him. He challenged the order of suspension by way of a writ petition in the Jammu and Kashmir High Court. The order having been stayed by the High Court it was incumbent on him to join duty. But, in spite of the company's letters asking him to do so, he remained absent. He was taking part in active politics during the period of his unauthorised absence. Thereupon his services were terminated. He challenged the order of termination by way of writ petition before Jammu and

Kashmir High Court. A single Judge of that High Court allowed the writ petition holding that the Board of Directors having appointed Sharma, the Managing Director, who is a subordinate authority, could not terminate his services. The letters Patent Bench of the High Court dismissed the appeal of the Company taking the view that Sharma's services could not be terminated by an authority subordinate to that which appointed him. On appeal the Supreme Court held that the powers of the Board of Directors to appoint officers of Sharma's category were delegated to the Managing Director and as such the Managing Director became the appointing authority. Further the employees are not civil servants and as such they can neither claim the protection of Article 311(1) of the Constitution of India nor the extension of that guarantee on parity. There is no provision in the Articles of Association or the Regulations of the Company giving same protection to the employees of the Company as is given to the civil servants under Article 311(1) of the Constitution of India. An employee of the Company cannot, therefore, claim that he cannot be dismissed or removed by an authority subordinate to that by which he was appointed. Since on the date of termination of Sharma's services the Managing Director had the powers of the appointing authority, he was legally competent to terminate Sharma's service.

18. In *Pyare Lal Gupta v. Agarwal* (1983) 53 C.C. 586 the Allahabad High Court has held that though Section 269 of the Companies Act, 1956, provides only for an approval of the Central Government for the appointment of a Director as Managing Director there is no corresponding provision for his removal. And he could be removed at liberty by the Board, and that the approval of the Central Government for his appointment did not derogate from the right of the Board of Directors to remove him from the post. So there is no force in the claim of the writ petitioner herein that his being a statutory post, the Governor alone has the authority to initiate disciplinary action against him and the Board of Directors acted beyond their power in passing the impugned resolution.

19. In the view we are taking on the facts, it is unnecessary for us to refer to *Lekhraj v. Deputy Custodian*, Bombay AIR 1956 S.C. 334 and *Joginder Singh Palta v. Time Travels (P) Ltd.* (1984) 56 C.C. 103 on which reliance was placed by learned Counsel for the company.

20. The next contention of the petitioner is that the Board has passed the resolution and the second respondent had to sign the impugned order without applying their mind. But there is no reason for not accepting the contention of the respondents that the Board had full discussion about the materials that were placed before them before suspending the petitioner. Further the court cannot go into the question whether the order of suspension and the charge memo are based on proper materials.

21. u/s 2(45) of the Companies Act, Secretary means a Company Secretary within the meaning of the Clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and includes any other individual possessing the prescribed qualifications and appointed to perform the duties which may be

performed by a Secretary under this Act and any other ministerial or administrative duties. Clause 45(A) of Section 2 of the Companies Act, 1956 reads that Secretary in whole time practice means a Secretary who shall be deemed to be in practice within the meaning of Sub-section (2) of Section 2 of the Companies Act and who is not in full time employment. Section 2(1)(c) of the Company Secretaries Act, 56 of 1980 defines a Company Secretary as a person who is a member of the Institute which in turn is defined in Section 2(g) as the institute of Company Secretaries of India constituted under that Act. u/s 9 of that Act there shall be a council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it by or under that Act. Section 21 provides for the procedure in enquiries relating to misconduct of members of the Institute. Parts I to III of the First Schedule of the said Act deals with the professional misconduct in relation to members of the Institute in practice, members in service and members generally. u/s 7 every member of the Institute in practice shall, and any other member may, use the designation of a Company Secretary. These provisions were sought to be pressed into service by learned senior counsel for writ petitioner in support of his contention that the alleged misconduct would fall within the scope of the First Schedule to the Act and it should be dealt with by the council of the Institute in accordance with the procedure prescribed in the Act. According to him, the Board of Directors cannot straightaway frame charges on professional misconduct and hold enquiry thereon. We do not find any substance in this contention. As its preamble indicates Act 56 of 1980 was enacted to make provisions for the regulation and development of the profession of Company Secretaries. This Act nowhere provides that all misconduct on the part of Company Secretaries have to be enquired into only by the Institute of Company Secretaries. Instead, the abovesaid procedure is intended to be followed by the Institute whenever any professional or other misconduct is referred to the Disciplinary Committee of the Council of the Institute. The ordinary service contract or the relationship of master and servant between the company and its employees is in no way affected by the provisions of Act 56 of 1980. An employer can under the terms of the contract of employment consider any misconduct on the part of the employee and take appropriate action. Hence the impugned orders are well within the powers of the Board and there is no error in the procedure adopted by it.

22. In the result, the writ petition is dismissed. No costs.