

(1983) 12 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition Nos 2572 and 2586 of 1983

Ramesh Bhauraoji Girde and Another

APPELLANT

Vs

State Maharashtra and Another

RESPONDENT

Date of Decision : 23-12-1983

Acts Referred:

General Clauses Act, 1897 — Section 16

Road Transport Corporations (Amendment) Act, 1982 — Section 15

Road Transport Corporations Act, 1950 — Section 5(2), 8, 8(2)

Citation : (1984) 2 ACC 40

Hon'ble Judges : Ginwala, J; Dhabe, J

Bench : Division Bench

Advocate : R. Manohar in W P Nos. 2572 and 2586 of 1983 and V.A. Naik in W P. No. 2586 of 1983, for the Appellant; B.P. Jaiswal, Asst. Govt. Pleader, for the Respondent

Judgement

Ginwala J.

1. The two petitioners in these two petitions question the validity of notices dated 27-10-1983 serve on them by the respondent State Government in the purported exercise of power under sub-section (2) of Section 8 of the Road Transport Corporations Act, 1950 and Rule 4A of the Bombay State Road Transport Corporation rules (hereinafter referred to as "the act" and "the rules" respectively) terminating their appointment as Directors of the Board of Directors of the Maharashtra State Road Transport Corporation with effect from 30-11-1983 Since a common questioner of law is involved in both these petitions, they are disposed of together by this judgment. In view of the urgency of the matter, on 30-11-1983 we had recorded the operative order dismissing both these petitions. We now proceed to record our reasons in support of the same.

2. Before dealing with the racial contentions of the parties it would be convenient at the outset to note the relevant provisions of the Act as they stood prior to the

Road Transport corporation (Amendment) Act , 1982 (hereinafter called "the Amendment Act") and as they stand subsequent thereto, as the controversy centres round the changes so brought about.

3. Section 3 of the Act empowers the State Government to establish a Road Transport Corporation in the whole part or any part of the State under such name to be exercised having regard to the circumstances stated in the said section Section 4 states that the Corporation so established shall be a body corporate by the name notified u/s 3 having perpetual succession and a common seal and can sue and be sued by the said name Section 5 of the Act, as it stood prior to the amendment (hereinafter called as ""old Section 5) was in the following terms:

"5. (1) Subject to rules made under this Act a Corporation shall consist of a Chairman and such number of other members as the State Government may think fit to appoint.

The State Government may, if it so thinks fit, appoint one of the other members as the Vice-Chairman of the Corporation.

Rules made under this Act shall provide for the representation both of the Central Government and of the State Government concerned in the Corporation in such proportion as may be agreed to by both the Governments and of nomination by each Government of its own representatives therein, and where the capital of a Corporation is raised by the issue of share to other parties under sub-section (3) of Section 23, provision shall also be made for the representation of such shareholders in the Corporation and the manner in which the representative shall be elected by such shareholders.

The term of office of, and the manner of filling casual vacancies among members of the Corporation shall be such as may be prescribed."

4. It may be noted at this stage that subsection (1) of the old Section 5 did not lay down any ceiling or lower limit on the number of members of the Corporation This matter was left to the State Government to be dealt with under the Rules to be made under sub-section (4) of old Section 5 read with Section 44 of the Act Under Rule 3 as amended in 1981, the upper limit was fixed at 33 including the Chairman Under clause (a) of sub-rule (1) of Rule 4, the term of of office of non-official members was fixed at two years.

5. Sub-section (1) of Section 6 lays down dis qualifications for being chosen as or for being a member of the corporation Section 7 provides for the resignation of his office by the Chairman or a member Section 8, as it stood prior to the amendment thereinafter called old Section 8") is material for our purpose and may be reproduced

"8 The State Government may remove from office the Chairman or any other member of the Corporation who-

is or, becomes subject to any of the disqualifications mentioned in Section 6. Or

without excuse sufficient in the opinion of the State Government is absent from more than four consecutive meetings of the Corporation

Provided that no member nominated by the Central Government shall be removed from office without the concurrence of that Government

It would appear that under old Section 8 the State Government or member in the two contingencies specified therein

6. The Amendment Act introduced certain amendments with a view primarily to secure the better function of the Road Transport corporation established under the Act As could be seen from old Section 5 and the other provisions in the Act prior to the amendment the management of the corporation vested in the body of the members including the chairman constituted under sub section (1) of that section As a matter of fact the corporation consisted of the chairmand and members appointed by the State Government it was thought necessary to change this organizational set up for the management of the Corporation and if was decided that the general superintendence, direction and management of the affairs and business of the Corporation should vest in a Board of Directors it was thought that this approach would help in keeping the agency through which the Corporation has to function distinct from the Corporation itself these statement of objects and reasons of the Amendment Act. To achieve these purposes old Section 5 was substituted under the Amendment Act and it is as follows

"5 Management of Corporation and Board of Directors - (1) The general superintendence, direction and management of the affairs and business of a Corporation shall vest in a Board of Directors which with the assistance of its committees and Managing Director may exercise all such powers and do all such acts and things as may be exercised or done by the corporation.

The Board shall consist of a Chair man and such other Directors, being not less than five and not more than seventeen, as the State Government may think fit to appoint.

The State Government may, if it so thinks fit appoint one of the other Directors as the Vice-Chairman of the Board.

(4), Rules made under this Act shall provide for the representation both of the Central Government and of the State Government concerned on the Board in such proportion as may be agreed to by both the Governments and of appointment by each Governments of its own representatives thereto and where the capital of a Corporation is raised by the issue of shares to other parties under sub-section (3) of Section 23, provision shall also be made for the representation of such shareholders on the Board and the manner in which the representatives shall be elected by such shareholders

The term of office of and the manner of filling casual vacancies among the Directors shall be such as may be prescribed"

7. With this change in the organisational set up and creation of Board of Directors, with a provision for appointment of directors, the Amendment Act provided for the consequential amendments in the various sections of the Act. Broadly speaking, the words "Director" and "Board of Directors" were substituted respectively for the words "Member" and "Corporation" wherever they occurred in the body of the Act.

8. Under the Amendment Act, the body of the old Section 8 is numbered as sub-section (1) with consequential amendments and sub-section (2) is added which reads as follows

"(2) The State Government may terminate the appointment of any Director after giving him notice for such period (being not less than one month) as may be prescribed

Provided that the appointment of a Director appointed by the Central Government shall not be terminated under this sub-section without the concurrence of that Government"

9. Some other changes were brought about in the Act by the Amendment Act but they are not relevant for our purpose

10. With the change in the organisational set up and the provision for a Board of Directors vested with the management of the Corporation, question would have arisen as to what would be the fate of the persons who were members of the Corporation at the time of the commencement of the Amendment Act in order to provide answer to this problem, Section 15 has been put in the Amending Act and it reads as follows

"15 Continuance of existing members of Corporations:--Every person holding office immediately before the commencement of this Act as the Chairman, Vice-Chairman or other member of Road Transport corporation, established u/s 3 of the principal Act shall, on such commencement, be deemed to have been appointed as the Chairman, vice-chairman or other Directors (as the case may be) of the Board of Directors of the said Corporation under the principal Act, as amended by this Act, for the remainder of the term for which such person would have continued to hold office as the Chairman, Vice-Chairman or other member of such Corporation, if that Act had not been enacted."

11. Under sub-section (2) of Section 1 of the Amendment Act, that Act shall come into force on such date as the Central Government may by notification in the official gazette appoint. The Central Government by its notification dated 18-11-1982 appointed the date of publication of that notification in the official gazette as the date on which the Amendment Act would come into force. This notification was published in the gazette on 13-11-1982 and thus the amendment came into force with effect from that date. Consequent to the amendment of old Section 8 by inserting sub-section (2) therein the State Government amended the Rules by inserting Rule 4A providing that it may

terminate the appointment of a Director after giving him one month's notice in writing in accordance with the provisions of sub-section (2) of Section 8 of the Act.

12. Reverting to the petitions at hand, the State Government under its notification dated 29-7-1982, in exercise of its powers under old Section 5 read with Rr 3 and 4 of the Rules, appointed the petitioner in Writ Petition No 2588 of 1983, as non-official ,members of the Maharastra State Road Transport Corporation (called "the Corporation") with effect from 29-7-1982. The petitioner in Writ Petition No. 2572 of 1983 was similarly appointed as non-official member of the Corporation with effect from 4-8-1982 under a notification of even date By virtue of Rule f4 (1) (a), the term of their office as non-official members of the corporation would be for a period of two years from the date of respective appointments By the impugned notices the State Government, as stated appointment as Directors of the Board of Directors with effect from 30-11-1983 in exercise of the powers conferred upon it u/s 8(2) read with Rule 4A. These notices are under challenge

13. The case of the petitioners as set out in the petitions, briefly stated is that since both of term were appointed prior to the abovesaid amendment of the Act under old Section 5 read with Rules 3 and 4, they were entitled to hold office for a term of two years and this is a right which is vested entitled to hold office for a term of two years and this is a right which is vested in them by virtue of their appointment. According to them, sub-section (2) of Section 8 and Rule 4A can operate only prospectively and not retrospectively and cannot take away this vested right; They contend that their appointment was subject only to the provisions contained in old Section 8, which is now sub-section (1) of the present Section 8 and that section did not empower the state Government to remove them or to terminate their appointment except in the circumstances stated therein In short, what they contend in the petitions is that Section 8(2) and Rule 4A would govern only those Directors who would be appointed subsequent to the commencement of the Amendment act but bit the members who were already holding office on such date since these two provisions cannot the given retrospective effect in the absence of any express provision to that effect or necessary intendment since they affect their versed rights.

14. The respondent State Government has refuted these contentions in both the petitions, by filing its return in both the petitions Therein the state Government of sub-section (2) of Section 8 of the Act the right of the petitioners to hold office for two years was not unfettered and was subject to the power of the State Government u/s 16 of the General Clause Act and that what had been done by insertion of sub-section (2) in Section 8 was merely in specify the pre-existing power of termination The State Government further contends that Section 8(2) and Rule 4A would operate upon the sitting 1 section Members and the words "may terminate appointment of any Director" occurring in Section 8(2) does not exclude from its fold such persons who actually held office in the date when the

amendment Act came into force, According to the State Government, the impugned notices are prospective in operation inasmuch as they terminate the appointment of the petitioners prospectively

15. Since neither the petitioners nor the State Government had referred to the effect of Section 15 of the Amendment Act in their petitions or returns, at the very commencement of the hearing of these two petitions we drew the attention of Mr. V R Manohar, the learned counsel for the petitioners to that section and requested him to put forth his submissions with regard to the scope and effect of that section on the termination of the offices and persons appointed prior to the commencement of the Amendment Act Mr Manohar had been good enough to make his submissions in this behalf, which we will refer presently We may however mention at this stage this after the conclusion of the arguments and before we recorded the operative order additional affidavit had been filed in Writ Petition No. 2572 of 1983 purporting to show that even after the Amendment Act the State Government had been referring to the petitioners as members and not as Directors and for all purpose the petitioners were treated as members and not as Directors. We have taken this additional affidavit into consideration before recording the operative order.

16. Let us first examine the scope of the power of the State Government to remove a member as it obtained prior to the Amendment Act obtained prior to the Amendment Act because if it had such an absolute power as contended by it, the question of considering the effect of the amended provision would not arise As seen above, the State Government contends that even prior to the enactment of sub-section (2) of Section 8 of the Act it had power to remove a member by virtue of section 16 of the General Clauses Act, 1897, and that insertion of sub-section (2) of Section 8 by the Amendment Act was merely to specify this existing power of removal The question, therefore, which falls for consideration is whether apart from the provisions contained in the Act or the Rules, the State Government had and has the power to remove a member in support of this power, the State Government seeks to derive assistance from the provisions of Section 16 of the General Clauses Act. Mr Manohar submitted that since prior to the Amendment Act there was provision for removal of member contained in Section 8, the provisions of Section 16 of the General Clauses Act would not be attracted He submitted that the latter provisions would not apply if the relevant legislation exhibits a different intention We think, there is much substance in this submission of Mr Manohar Section 16 of the General Clauses Act lays down that where by any Central Act or Regulation, the power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed, whether by itself or any other authority in exercise of that power It would, therefore, appear that these provisions are not absolute in terms but depend upon the provisions in the Act or Regulation which empowers the authority to make the appointment If such an Act or Regulation qualifies the power of the appointing authority to suspend or dismiss the

appointee, then the appointing authority would have so exercise the power subject to such limitations and cannot exercise it in the absolute terms as laid down in Section 16 of the General Clauses Act Let us then look at the provisions of the Act to see to whether it contained the power of removal of a member

17. As seen above, old Section 8 conferred on the State Government the power to remove from office the Chairman or any other member of the Corporation in the two contingencies specified therein. It would, therefore, appear the power of removal of the members nominated by the State Government It did contain a provision for their removal and this power was a qualified power and could be exercised only in the two contingencies specified in old Section 8 In other words, old Section 8 exhibited an intention as regards the power of removal different from the one conferred by Section 16 of the General Clauses Act In the absence of old Section 8, the State Government would have the power to remove any member nominated by it by virtue of the power conferred on it u/s 16 of the General Clauses Act as the appointing authority. But old Section 8 has qualified this power by putting limitations on it, inasmuch as the power of removal can be exercised only in the two contingencies specified therein and not otherwise. In our opinion therefore Section 16 of the General Clauses Act would be of no avail to the State Government in maintaining that apart from the provisions of the Act, it had the power to remove the petitioners.

18. The view which we takes is fortified by what has been laid down by this Court in *Jehangir v. corporation of the City of Nagpur* 1960 Nag LJ 99 The petitioner in that case was nominated as a Councillor of the Municipal corporation under Sec 9(1)(d)(vi) of the City of Nagpur corporation Act by the Directors of the Cloth Mills at Nagpur, he being an employee of one of the cloth mills then. After he ceased to be in the employment of the cloth Mill, the Directors nominated another person as Councillor in place of the petitioner and the State Government notified the fresh appointment and it was this Notification which was challenged in a writ petition before this court one of the questions which was canvassed before this Court was that u/s 15 of the Central Provinces and Berar General Clauses Act, 1914, the Mills which had the power to make an appointment had also the authority to suspend or dismiss the appointee Dealing with this question this Court held that the Mills would certainly have the power to dismiss or suspend the appointee, if any different intention did not appear in the Act. Nothing that Section 21 (3) of the City of Nagpur Corporation Act specifically provides for the removal of a Councillor, this Court held that Section 15 of the Central Provinces and Berar General Clauses Act would not apply The view which the been taken by a Division Bench of thus Court in *Jehangir's* case has been followed by another Division Bench of thus Court in *Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others*, which was a case concerning the powers of the Powers of the Board of Directors to remove the Chairman and the Vice-Chairman by passing a mere vote of no confidence by passing a mere vote of no confidence under the provisions of the Maharashtra Co-operative Societies Act, of removal having been made, in the said Act, this Court held that

Section 16 of the General Clauses Act would have no application. A similar view has been taken by a Division Bench of the Rajasthan High Court in *Kanta Devi and Another Vs. State of Rajasthan and Others*,

19. It would, therefore, appear that the State Government could not have derived power to dismiss or remove any member appointed by it u/s 16 of the General Clauses Act except the power which had been conferred on it in this behalf under old S 8 which, as seen above, is continued as sub-sec (1) of S 8. In short, therefore, prior to the insertion of sub-section (2) of Section 8, the State Government could not have removed any member appointed by it simply because it was the appointed authority unless the removal was necessitated because of any of the two contingencies specified in the old S 8. We therefore, do not find any substance in the contention urged on behalf of the respondent State Government that apart from old Sec 8 it had power to remove members of the Corporation.

20. The question then which falls for consideration is whether the State Government can press into service the power conferred on it by sub-section (2) of S 8 read with Rule 4A for terminating the appointment of a member who is appointed as such prior to the coming into force of the Amendment Act. Mr Manohar for the petitioners contends that these provisions are not retrospective and cannot operate on the appointment of a person who has been nominated prior to their coming into force. He contends that by virtue of their nomination the petitioners had acquired a vested right to hold office as members of the Corporation for a term of two years as provided by Rule 4 (1) (a) and this vested right can not be taken away by sub-section (2) of Section 8 since it is not only not made retrospective by any express provision but even by necessary intendment also it cannot be deemed to have any retrospective effect by any express provisions but even by necessary intendment also it cannot be deemed to have any retrospective effect. There cannot be any dispute with the proposition that no statute, unless it be a statute dealing with procedure, can be construed to have retrospective operation unless it so provides either expressly or by necessary implication or intendment and a vested right cannot be taken away by a statute which is prospective in operation and not retrospective. There is ample authority for the proposition that a member, who is nominated to a Body for a fixed tenure, acquires a vested right to hold that office for that period subject to the provisions of the Statute under which the Body is created. A reference in this respect may be had to paragraph 16 of the report in *Jehangir's case* 1960 Nag LJ 99 and paragraph 6 of the report in *Harisingh v. State* 1964 Jab LJ 585. The Amendment Act does not make sub-s (2) of Section 8 which is inserted by it retrospective. There is nothing in the Amendment Act from which it could be inferred that the Legislature intended this sub-section to operate retrospectively. Mr. Manohar is, therefore, right when he says that this sub-section operates prospectively and not retrospectively and it, therefore, follows that if it is so it would not affect the right of the members who are appointed prior to the coming into force of the Amendment Act. There would not have been much difficulty in

upholding the contention of Mr Manohar, had the legislature not enacted Section 15 in the Amendment Act in the absence of that section it would have been possible to say that the provisions of the new Sec 5 and sub-section (2) of S 8 would operate only on the Directors who would be appointed after the commencement of the Amendment Act. However, the provision contained in Section 15 of the Amendment Acts robs the petitioners of this contention.

21. The effect of Section 15 of the Amendment Act is that on the commencement of the Amendment Act a member holding office prior to such commencement would be deemed to have been appointed as Director of the Board of Directors of the Corporation for the remainder of the term for which such member would have continued to hold office had the Amendment Act not been enacted. In other words on the commencement of the Amendment Act the erstwhile members of the Corporation stand appointed as Directors of the Board of Directors of the Corporation for the remainder of their term. By virtue of this provision therefore such members lose their identity as members of the Corporation as soon as the Amendment Act came into force and since that date they acquired a new status as Directors of the Board of Directors. In other words, from the moment the Amendment Act commenced, the erstwhile members ceased to be members and were reborn as Directors and their tenure to hold office is fixed for the remainder of their term as members. If we look at the status of the petitioners from this angle, it would be abundantly clear that once they become Directors under the provisions of the Amendment Act, sub-sec (2) of Section 8 would govern their tenure as Directors and in that case, the State Government, would have the power to terminate their appointment after following the procedure prescribed in R. 4A. If thus is so, then, no fault can be found with the impugned notices.

22. However, Mr. Manohar submitted that Section 15 of the Amendment Act will not affect the status of the petitioners as members of the Corporation as what has been done under that section is merely to alter the designation of the erstwhile members into Directors and this mere change in the nomenclature could not take away the right which is vested in the petitioners as members of the Corporation to hold office for two years, subject to Section 6 and old S. 8. Mr. Manohar contended that by enacting Section 15 of the Amendment Act, the legislature could not have intended to make the erstwhile members as Directors within the meaning of Clause (bb) of S. 2 or new S 5 of the Act. According to Mr. Manohar, if Section 15 of the Amendment Act is construed as converting the erstwhile members into such Directors, an anomalous situation would arise in this connection, he pointed out that under old Section 5, there was no upper limit on the number of members to be appointed by the State Government, while under new Section 5 such a number has been limited to 17. Mr Manohar pointed out that prior to the commencement of the Amendment Act, the Corporation in the State consisted of 31 members and if by the deeming fiction of Section 16 of the Amendment Act, all these 31 members are construed to constitute Board of Directors under new Section 5 of the Act such a Board of Directors consisting of 31 persons would contravene sub-section (2) of new Sec 5. Mr Manohar

submitted that if new S 5 and Section 15 of the Amendment Act have to be construed harmoniously, it must be held that Section 15 of the Amendment Act does not constitute a Board of Directors within the meaning of new Section 5 and merely provides for the continuance of the existing members for the remainder of their term, without attracting sub-section (2) of Sec. 8 of the Act.

23. It is true that old Section 5 did not lay down any limit, either upper or lower, on the number of members to be appointed by the State Government and the upper limit had been laid down by the State Government under Rule 3 being 33. It is not disputed that at the commencement of the Amendment Act, there were 31 members of the Corporation. By virtue of Section 15 of the Amendment Act, all these members would not be deemed to have been appointed as Directors and because of that, the Board of Directors so constituted on the commencement of the Amendment Act would have Directors in excess of the limit laid down by sub-section (2) of new Sec. 5. Prima facie, therefore, it would appear that Section 15 of the Amendment Act would be in conflict, with new Section 5 (2), where the number of the existing members exceeded the limit prescribed by new Section 5 (2) however, these two sections would have to be construed harmoniously to give effect to both of them Apparently Section 15 of the Amendment Act is a transitory provision in order to keep the management of the Corporation running. In the absence of Section 15 of the Amendment Act, a hiatus would have been created inasmuch as in view of the changed pattern of management provided by new Section 5, the existing members of the Corporation would lose their right of managing the affairs of the Corporation, the moment the Amendment Act commenced. It is in order to fill this vacuum that Section 15 has been enacted. It was open to the legislature to have said that the existing members would continue as such till the remainder of their term of till a new Board of Directors was constituted under new Section 5 However, instead of doing so, as can be seen, the legislature has deemed it fit to convert the existing visually done to give immediate effect to the various provisions which have been introduced by the Amendment Act and particularly the changed pattern of management Had this not been done there would have been great confusing as regards the powers of the erstwhile members vis-a-vis the powers of Directors as provided by the amendment It, therefore appears that the intention of the legislature in enacting Section 15 of the Amendment Act was to convert the existing members into Directors thus creating the first Board of Directors which could, immediately on the commencement of the Amendment Act, take up the management of the affairs of the Corporation under the changed pattern Now if the existing members became Directors u/s 15 of the Amendment Act, they lost their identify as members of the Corporation and with that all the rights and privileges they had acquired by virtue of their appointment as members of the Corporation prior to the Amendment Act In other words, if they had acquired by virtue of their appointment as members of the Corporation prior to the Amendment Act In other words, if they had acquired a vested right to hold office for a term of two years subject only to the provisions of old Section 8, they lost

this right on the commencement of the Amendment Act when they became Directors which office would be subject to the provisions introduced by the Amendment Act when they became Directors which office would be subject to the provisions introduced by the Amendment Act Looked from this point of view, there is no conflict between new Section 5 of the Act and Section 15 of the Amendment Act obviously new S 5 (2) of the Act with the limitation on the number of members would operate on the Board of Directors which the State Government would appoint after the commencement of the Amendment Act. However till then, by virtue of Section 15 of the Amendment Act, the then existing members who would new constitute the Board of Directors would continue for the remainder of their term subject to the provisions of the amended Act, since their appointment as Directors comes into existence with the commencement of the Amendment Act In our view, therefore, having regard to S 15 of the Amendment Act, the State Government had the power to terminate the appointment of the petitioners as Directors of the Corporation.

24. As we have pointed out above, the petitioners, in their additional affidavit, have tried to point out that even after the commencement of the Amendment Act, the authorities concerned have been referring to them as members of the Corporations and not as Directors and even the State Government by its Notification dated 14-1-1983 has appointed an Officer as a "Member" of the Corporation and not as a "Director" of the Board of Directors. It is difficult to see how this would help the petitioners in the face of the specific provision contained in that section says that as from the date of the commencement of the Amendment Act, the existing member shall be deemed to have been appointed as Director, it matters little if some persons or even the State Government, in ignorance of this specific provision, continued to address them as members Certainly, there cannot be any estoppel against law and if they have been wrongly addressed as members even after the commencement of the Amendment Act or even the State Government has appointed an Officer as a member of the Corporation and not as a Director, it can above We, therefore, find that whatever has been said in the additional affidavit does not, in any way, give a different colour to the legal position.

25. It was for these reasons that we passed the following order on 30-11-1983.

26. "For the reasons which will be recorded later both the petitions are hereby dismissed. In the circumstances of the case, there shall be no order as to costs.

27. Petitions dismissed.