
(2000) 05 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 662 of 1999

Surendra Pal Singh TT

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:

Rajasthan State Warehousing Corporation Rules, 1975 — Rule 3, 5
Warehousing Corporations Act, 1962 — Section 21, 22, 22(2)

Citation : AIR 2000 Raj 306 : (2000) 2 WLC 257

Hon'ble Judges : V.S. Kokje, Acting C.J.; Arun Madan, J

Bench : Division Bench

Advocate : C.K. Garg and G.K. Garg, for the Appellant; S.M. Mehta, General and R.M. Mathur, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.S. Kokje, Actg. CJ.

1. The appellant Surendra Pal Singh TT was nominated Director and Chairman of the Rajasthan State Warehousing Corporation (hereinafter referred to as the Corporation). He was nominated as Director in place of the earlier Incumbent of the office Shri Ramnath Verma, as a representative of the producers of agricultural products. In the appointment order dated 25-6-1998 (Annexure-2 to the writ petition) It was stated that the term of office would be three years from the date of appointment as per the Rules. On 31 -12-1998, the State Government nominated Shri N. R. Bhasin, Principal Secretary to Government of Rajasthan, Agriculture Department, as the Director and Chairman of the Board of Director of the Corporation in place of the petitioner Surendra Pal Singh TT. Aggrieved by this order the appellant filed a writ petition in this Court challenging the order dated 31-12-1998 (Annexure-3 to the writ petition) by which Shri N. R. Bhasin was nominated Director and Chairman of the Board of Directors in his place.

2. It was contended in the petition that once a person is nominated as a Director

for three years, he could be removed from the post only after complying with the provisions of Section 22(2) of the Warehousing Corporations Act, 1962 (hereinafter referred to as "the Act") which provides that the Board of Directors may remove from office any Director if he-

(a) is or has become subject to any of the disqualifications mentioned in Section 21 or

(b) is absent without leave of the Board of Directors for more than three consecutive meetings of the Board without cause sufficient, in the opinion of the Board, to exonerate his absence.

3. it was also contended that Rule 4 of the Rajasthan State Warehousing Corporations Rules, 1975, (hereinafter referred to as the "Rules") which provides for rescinding or modifying the nominations to the post of Director before expiry of three years, is bad being ultra vires the Act because it permits removal without following the provisions of Section 20 of the Act and is unconstitutional as it is arbitrary and without any guidelines. It was also contended that the Rule is bad as It erodes and controls the power of nomination of the Central Warehousing Corporation under Clause (a) of Sub-section (1) of Section 20 of the Act. It was also contended that the petitioner was nominated as Chairman of the Corporation as per provisions of Section 20(2) of the Act and he could be removed as Chairman only after previous approval of the Central Warehousing Corporation. It was also contended that Shri N.R. Bhasin, Principal Secretary to the Government of Rajasthan, Agriculture Department was already a Director of the Corporation and he could not have been nominated as a director second time in a different representative capacity to represent the producers. It was further contended that appointment of Shri N.R. Bhasin without removing the petitioner, in the first instance, was bad in law.

4. In reply to the writ petition, the respondent Nos. 3 and 4, the State of Rajasthan and the Rajasthan State Warehousing Corporation respectively, contended that the power to appoint or nominate also includes the power to suspend or remove any person from the post on which he is appointed or nominated. It was contended that the power of rescinding or modifying nomination orders given by the statute are perfectly valid and they suffer from no infirmity whatsoever. In the reply, at several places, "removal" of the petitioner was not denied as such but it was justified by using the following words "removal of nominated Member does not put any stigma on the performance or character", "the petitioner has been removed both as Director and Chairman and the exercise of the powers is fully within the purview of proviso to Rule 4 of the Rules", "the action of removal of the petitioner as Director and Chairman and the appointment of Shri N.R. Bhasin in his place was also published in daily newspaper", "there is no violation or circumventing the provisions of law or violation of the principles of natural justice in removing the, petitioner from the nominated post of Director and Chairman of the Rajasthan State Warehousing Corporation", "the petitioner has been rightly removed, as

per provisions of Rule 4 of the Rules of 1975", the order of removing the petitioner from the office of Director as well as Chairman is perfectly legal", "the power of removal was exercised under Rule 4 of the Rules of 1975". " the petitioner has rightly been removed as already stated above and in his palce Shri N.R. Bhasin has valldly been appointed", "appointments are made by the State Government and u/S 18 of the General Clauses Act. the State Government is empowered to remove them", "removal from the post of Director implies removal of the Chairman because Chairman is appointed from among the Directors", "the removal of the nominated Member does not involve a stigma", "removal of the petitioner before the expiry of the term is legal and within the purview of Rule 4 of the Rules of 1975", "the petitioner's removal is fully within competence of the State Government and there is no infirmity, whatsoever, in removing the petitioner from the office of Director and Chairman", "the petitioner has been removed by virtue of the powers conferred on the State Government by Rule 4 of the Rules of 1975 and It is not correct for the petitioner to state that he cannot be removed. before the expiry of the term."

5. The respondents also denied the allegations of mala fide as also other legal grounds taken by the petitioner.

6. Learned Single Judge, who heard the petition, dismissed the same by a detailed order with Rs. 10,000/- as costs imposed on the petitioner. Aggrieved by the order, the appellant has come up in this appeal.

7. Arguments advanced before the learned Single Judge were reiterated by both the parties, before us also. However, It was pointed out to the learned Advocate General appearing for the State that if the stand taken by the State Government itself was that the appellant was removed from the office, Section 22 of the Act would be applicable and the action will fall to the ground for non compliance of Section 22 of the Act. In answer to this, learned Advocate General resiled from the position taken by the Government in its reply before the learned Single Judge and submitted that the word "removal" was used in the reply loosely without meaning "removal" which would attract Section 22 of the Act. Learned Advocate General contended that the reply read as a whole, would show that the action was being Justified on the basis of Rule 4 of the Rules and the word "removal" was used in the sense of termination of appointment or nomination which had the effect of the appellant being removal from the office because of termination of nomination,

8. It will be necessary to discuss the relevant provisions of the Act and the Rule. Chapter III of the Act relates to the State Warehousing Corporations. Section 20(1)(b) provides for five Directors to be nominated by the State Government. Sub-section (2) of Section 20 of the Act provides that the Chairman of the Boards of Directors shall be appointed by State Government from amongst the Directors the State Warehousing Corporation with the previous approval of the Central Warehousing Corporation. Sub-section (7) of Section 20 of the Act provides that the terms of office of and the manner of filling casual vacancies

among Directors shall be such as may be prescribed. Section 2 Clause (f) of the Act defines the word "prescribed" to mean prescribed by rules made under the Act. Rule 4 of the Rules provides for the term of office and filling of casual vacancies among the members of the Board of Directors of the Corporation. Clause (1) of Rule 4 of the Rules reads as under :

"(i) The term of office of every Director nominated under sub Section (a) and (b) of the Section 20(1) of the Act shall, in the case of an official director be for the period for which he continues to hold office, and shall in other cases, be three years from the date of his appointment-

Provided that it shall be open to the authority competent to nominate the Directors (Official and Non Official) to rescind or modify the nominations any time or re-nominate a director for a further period of three years or till a successor is nominated in his place whichever is later".

9. Let us first deal with the argument that the term of office of Director is three years and it cannot be curtailed by rescinding or modifying the nomination without following the procedure prescribed for removal of a Director and without the conditions for removal of Director obtaining.

10. A plain reading of the aforesaid provisions would show that the Legislature did not prescribe a fixed term for the post of Director in the Act itself. It left the term to be decided by the executive by delegating power to make rules in this regard. The rule read with the proviso clearly shows that the maximum term of three years at a time was prescribed subject to the nominating authority rescinding or modifying the nomination any time before expiry of three years. If no order rescinding or modifying the nomination is passed, the nomination would come to an end on the expiry of three years from the date of appointment. This is the plain meaning of the provision which does not require any strenuous interpretative exercise. To say that three years is the guaranteed fixed term would be to ignore the proviso altogether. It has also been provided that the nominating authority could re-nominate a Director for a further period of three years or till a successor is nominated in his place, whichever is later.

11. Let us now deal with the argument that rescinding or modifying the nomination under Rule 4 would amount to removal which could be done only if the circumstances mentioned in Sub-section 2 of Section 22 of the Act exist and such removal could be only by the Board of Directors. Section 22(2) of the Act provides as follow :

"(2) The Board of Directors may remove from office any Director who -

(a) is or has become subject to any of the disqualifications mentioned in Section 21 ; or

(b) is absent without leave of the Board of Directors for more than three consecutive meetings of the Board without cause sufficient, in the opinion of the Board, to exonerate his absence."

12. Removal under the aforesaid provision could only be for incurring the disqualification u/s 21 or remaining absent without leave of the Board of Directors for three consecutive meetings of the Board without sufficient cause. The termination of nomination by rescinding or modifying the order under rule 4 cannot be taken "as removal per se unless it is shown that such rescinding or modifying nomination was for the reason of the Director having Incurred disqualification u/s 21 or for the reason that he remained absent without leave of the Board of Directors for more than three consecutive meetings of the Board without sufficient cause. It is a moot point as to whether the power under Rule 4 could be pressed into service in cases in which the incumbent has also Incurred disqualification for which he could be removed u/s 22(2) of the Act. We are not concerned with that in this case as it is nobody's case that the petitioner had incurred disqualification or conditions on which a Director could be removed u/s 22(2) of the Act, were fulfilled in his case.

13. The power to rescind or modify the term of appointment provided by rule 4 is quite distinct and separate from the power to remove a nominated Director u/s 22(2) of the Act, The question of removal would arise only when the nomination continues. When the nomination is rescinded, the incumbent ceases to be a Director and therefore cannot be removed. A person who has ceased to hold a post can not be removed from it. In the present case, though the respondent Nos. 3 and 4 had committed the in-discretion of loosely using the word "removal" in their reply Instead of using the word "rescinding of nomination" or "modification of the nomination", it cannot be said that action actually taken, was that of removal and not of rescinding of nomination or its modification. It is clear from the record that the only power relied upon to support the action and quoted in the reply was Rule 4 of the Rules and not Section 22 of the Act or any other power. For the aforesaid reasons, the argument that the rescinding of the nomination or its modification amounts to removal of a Director u/s 22 of the Act. has to be rejected.

14. So far as challenge to the vires of the Rules is concerned, we do not find any force in the contention of the appellant that Rule 4 is contrary to Section 22 of the Act or it is arbitrary, unconstitutional being without any guidelines. The State Government was empowered to frame rules prescribing term of office of the Director. It was not compulsory for it to prescribe three years as the term of office. It could prescribe lesser term also; It could also prescribe that the nominated Director shall continue in office during pleasure of the nominating authority. There is nothing wrong in the provisions of Rule 4 because Section 22 deals with removal and not with the term of office of Directors. There is nothing wrong in the legislature leaving the prescription of term of office of Director to the executive by providing that it shall be done by making rules. There is nothing wrong in prescribing by rules that the term of office of a Director shall be at the pleasure of the State Government. In such circumstances, the rules could validly provide a maximum term of three subject to rescission or modification earlier. The provisions of Rule 4 are therefore, neither ultra vires the Act nor ultra vires

the Constitution.

15. Now let us deal with the plea that the petitioner was Director representing producers of agricultural products and was replaced by an official. After all, the Corporation is controlled by official Directors and it is not necessary for the State Government to appoint any private Directors to represent particular sections of the community. Rule 3(b) of the Rules requires the State Government to nominate five Directors from among the eight categories enumerated therein. The first six categories are of ex-officio or official Directors. The last two categories viz. the representative of the traders and representative of the producers could only be non-official Directors. It is open to the State Government to nominate all the five Directors from amongst the first six categories of official or ex-officio Directors.

16. In such circumstances it is not necessary that on the expiry or rescission of the term of a Director representing traders or producers he be replaced by a Director of that particular category only. The State Government could replace a Director of category (vii) or category (viii) of rule 3(b) by any other person belonging to category (i) to (vi) of rule 3(b). It appears that for reserving to the State Government liberty to do exactly this that rule 4 provides for a flexible, if not altogether precarious, term of office of a Director. It enables the State Government to rescind or modify the term of office of a Director to make way for nomination of a Director from another category. We find nothing wrong in this.

17. The next point raised by the appellant was violation of the principles of natural Justice. It was contended that before rescinding or modifying the appointment order nomination of Director, a notice is required to be given to him as his removal results in civil consequences to him. Learned Single Judge has dealt with the case law on the point and we agree with the conclusions drawn by him for an additional reason that when the term of office of nominated Director is three years subject to rescission or modification earlier, no question of following the principles of natural justice arise because the tenure of the nominated Director is Itself flexible, if not precarious, depending upon the pleasure of the Government. The doctrine of pleasure does not depend for its application, on the specific words used in the provision to that effect. It may also be inferred from the over all effect of the language used in the provision. When the provision specifies that the term of office would be three years unless rescinded or modified earlier, Issuance of an order of rescinding appointment or nomination or modifying it does not require an opportunity of hearing to be given. The appointment itself is on the condition that it could be rescinded or modified at any time within three years. There is nothing new by which the petitioner was confronted. He had already notice in the rule itself that his nomination could be rescinded anytime even before expiry of three years, the outer limit prescribed by the rules. As already seen, rescission or modification of term of office does not amount to removal from the post. It is not even curtailment or shortening of the term because there has to be a fixed term for curtailment or shortening of

the term. When the rule provides for an uncertain length of term, the nomination continues during the pleasure of the Government and ceases with the pleasure of the Government. There is no question of affording hearing in such a case to the Incumbent of the post before rescission of the nomination. The principle of natural justice of *aud alteram partem*" is not applicable in the situation of the case.

18. On the questions of law, therefore, we are in agreement with the learned Single Judge. However, we are of the opinion that on the question of fact, the learned Single Judge did not come to the correct conclusions. There is no material on record to warrant the conclusion that the nomination of the appellant was politically motivated and for that reason, could also be terminated for political reasons. Both the parties have not placed any material on record to suggest political malice or the appointment and termination being politically motivated. We have to adopt an approach which is strictly legal without being swayed away by our own impressions of political realities as they appear to us to exist in the field of public administration. We would, therefore, examine the termination of nomination of the appellant strictly on the basis of action complained of and the language used in the orders challenged by the appellant.

19. To our mind, the learned Single Judge has unnecessarily gone into the legality propriety and morality of the order nominating the appellant as a Director on the Board of Directors of the Corporation. No one had challenged before the learned Single Judge, nor has challenged before us the order appointing the appellant as Director and Chairman of the Corporation. It is the appellant himself who has come to the Court challenging his alleged removal from office in the garb of rescinding the order of his nomination. We are therefore concerned only with the impugned order dated 13-12-1998 passed by the State Government. This order annexed to the writ petition as Annexure-3 states that the Governor was pleased to appoint Shri N.R. Bhasin, Principal Secretary to the Government of Rajasthan. Agriculture Department to be the Director and Chairman of the Rajasthan State Warehousing Corporation in place of Shri Surendra Pal Singh TT in exercise of powers conferred by Section 20(2) of the Act and Rule 3(c) of the Rules. In this order, there is no reference to Rule 4 of the Rules and instead, a reference is made to Rule 3(c) which provides that the Chairman of the Board of Director shall be appointed by the State Government from amongst the Directors of the State Warehousing Corporation with the previous approval of the Central Warehousing Corporation. It is common ground that the previous approval of the Central Warehousing Corporation was not obtained. Moreover, no order terminating nomination of the appellant to the post of Director has been placed on record. It was contended that by a composite order Shri N.R. Bhasin, Principal Secretary to the Government of Rajasthan was appointed Director and Chairman of the Corporation in place of the appellant and by implication the nomination of the petitioner was rescinded by virtue of the same order. It has been pointed out to us that Shri N.R. Bhasin was already a Director of the Corporation in his capacity as the Principal Secretary to the

Government, Agriculture Department. In the scheme of the Act and Rules, no one person could be nominated on the Board of Directors in two capacities. The categories (i) to (viii) enumerated in rule 3(b) are mutually exclusive and no one person can fall in more than one of the categories. Even otherwise, it cannot be countenanced that one single person could be made to represent two categories. There was therefore, no question of Shri N.R. Bhasin being nominated afresh a Director of the Corporation His nomination as Director being superfluous, it could not have the effect of replacing the petitioner by rescinding his nomination. If that is so, it cannot be said that nomination of the appellant to the Board of Directors of the Corporation was rescinded or modified even impliedly by appointing Shri N.R. Bhasin in his place. The impugned order, therefore, could have at best effect of replacing him as Chairman of the Board of Directors of the Corporation alone, validly or otherwise.

20. Admittedly, though Rule 3(c) was referred to in the order previous approval of the Central Warehousing Corporation was not obtained for appointing Shri N.R. Bhasin as the Chairman. The plain meaning of the provision is that it is mandatory to obtain previous approval of the Central Warehousing Corporation to appoint Chairman of the Board of Directors of the Corporation. That having not been done, the order appointing Shri N.R. Bhasin as Chairman of the Corporation falls to the ground. Moreover the Act and the Rules made thereunder do not provide for removal from the post of Chairman of the Corporation. The only method of removal of the Chairman is removing him from the post of Director. As the term of office of the appellant has not been rescinded or modified in exercise of powers conferred by proviso to Rule 4 of the Rules, the appellant continues to be the Director of the Corporation and since he continues to be the Director, he could not have been removed from the office of the Chairman. Without first rescinding the nomination of the appellant as Director under rule 4 or his removal otherwise no one could have been nominated in his place as Director and without the appellant ceasing to be a Director he could not have been removed from the post of Chairman. Similarly, without there being a vacancy in the post of Chairman, no one could have been appointed as Chairman. What the respondents have done is to make another nominee to sit in the lap of a Director who was Chairman also who was not legally made to vacate the post of Director and Chairman. The entire action is therefore, actually against the provisions of the Act and the Rules and cannot be supported. These aspects of the matter have escaped the attention of the learned Single Judge and were probably not brought to his notice at all.

21. We are, therefore, of the opinion that the impugned order passed by the learned Single Judge cannot be sustained. The appeal deserves to be allowed. It is hereby allowed. The Impugned order dated 13-12-1998 appointing Shri N.R. Bhasin Principal Secretary to the Government of Rajasthan. Agriculture Department as the Chairman of the Board of directors of the Corporation is quashed and it is declared that the appellant did not cease to hold office of Director and Chairman of the Board of Directors as a result of nomination of Shri

N.R. Bhasin in his place. We are apprised that subsequently, Shri N.R. Bhasin has also been replaced by another nominee. Since the nomination of Shri Bhasin is being held to be Invalid and it is being found that the appellant's nomination was not legally rescinded, all subsequent nominations in the office held by the appellant would also be illegal void ab initio. The appellant shall continue to be the Director and Chairman till the expiry of three years from the date of nomination as Director subject to rescission or modification of nomination under rule 4 of the Rules in accordance with law." There shall be no order as to cost.