(2014) 02 GUJ CK 0054

Gujarat High Court

Case No: Letters Patent Appeal No. 973 of 2013

Shree Rajkot District Co-operative Milk Producers Union Ltd.	APPELLANT
Vs	
Bhanubhai Labhubhai Mehta	RESPONDENT

Date of Decision: Feb. 11, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 15(1), 15(2), 15(3)
- Gujarat Co-operative Societies Act, 1961 - Section 39, 40, 80, 80(1), 80(2)

Citation: (2014) LabIC 2401

Hon'ble Judges: R.R. Tripathi, J; Mohinder Pal, J

Bench: Division Bench

Advocate: S.I. Nanavati, Sr. Advocate, Navin Pahwa and M/s. Thakkar Assoc, Advocate for the Appellant; B.B. Naik, Sr. Adv., Bharat T. Rao, P.K. Jani and Niraj Ashar, Advocate for the Respondent

Judgement

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R.R. Tripathi, J.

Letters Patent Appeal (LPA) No. 973 of 2013 is filed by Shree Rajkot District Co-operative Milk Producers'' Union Limited being aggrieved by judgment and order passed by the learned single Judge in Special Civil Application (SCA) No. 10076 of 2013 dated 08.07.2013.

SCA No. 10076 of 2013 was filed by three petitioners, namely, Bhanubhai Labhubhai Mehta, Babubhai Bavanjibhai Nasit and Parshottambhai Keshabhai Savaliya.

The learned single Judge was pleased to pass the following operative order:

"34. For the reasons stated above, the petition is allowed. The impugned order dated 18.6.2013 is quashed and set aside. The petitioners are held entitled to continue as Government representatives on the Managing Committee of respondent No. 3 Sangh on the basis of the order dated 4.3.2013 irrespective of the impugned order dated 18.6.2013. The respondents are directed to permit the petitioners to work and discharge their duties as Government nominees/representatives on the Managing Committee of respondent No. 3 Sangh. Rule is made absolute.

35. At this stage, learned advocate Mr. Pahwa requested to stay and suspend the operation of this judgment and order.

36. The Court having held that the petitioners are entitled to continue as Government representatives cannot accept the request to suspend its judgment and order. Hence, the request of learned advocate Mr. Pahwa is rejected. Direct Service is permitted."

2. It is against this judgment and order that LPA No. 973 of 2013 is filed by the appellant Shree Rajkot District Co-operative Milk Producers'' Union Limited.

3. LPA No. 1252 of 2013 is filed by State of Gujarat, through Secretary, Government of Gujarat, Co-operation Department, along with the Registrar, Co-operative Societies, Gujarat State. The judgment under challenge is the same, viz. passed in SCA No. 10076 of 2013.

4. LPA No. 1347 of 2013 in SCA No. 11421 of 2013 is filed by the very same union, viz. Shree Rajkot District Co-operative Milk Producers'' Union Limited being aggrieved by the judgment and order passed by the learned single Judge in SCA No. 11421 of 2013, which was filed by the union (Shree Rajkot District Co-operative Milk Producers'' Union Limited). The learned single Judge was pleased to dismiss the petition vide judgment and order dated 04.10.2013, saying, in the operative part of the judgment, as under:

"24. In my view, the petitioner union having not taken any action to challenge the impugned order even after it got report dated 8.1.2013 relied on by respondent No. 2 and till after the order dated 18.6.2013 cancelling appointment of respondent Nos. 3 to 5 was set aside by this Court and it having called respondent Nos. 3 to 5 to the meetings of the petitioner society for transacting various businesses in due compliance of the impugned order, the petitioner could be said to have acquiesced in the impugned order.

25. What further appears from the declaration made by the respondent Nos. 3 to 5 that they have been associated with other federation of the co-operative societies and other co-operative societies and they appear to be well connected with the co-operation movements in the District of Rajkot.

26. For the reasons stated above, the Court does not find any merit in the contentions raised by learned advocate Mr. Pahwa for the petitioner. The petition is thus dismissed. Notice is discharged."

5. As all these three LPAs have common question involved. They are heard together and with the consent of the learned advocates and at their request the matters are taken up for final hearing as this Court (Coram: Vijay Manohar Sahai & K.J. Thaker, JJ.) on 06.01.2014 passed an order, the relevant part of which reads as under:

"On the request made by learned counsel Mr. Rao and with the consent of the learned counsel for the respective parties, put up these appeals for admission/final disposal tomorrow."

6. The facts giving rise to these appeals are that the petitioners of SCA No. 10076 of 2013 were appointed as Government representatives by order dated 04.03.2013. It is the case of the appellant of LPA No. 973 of 2013 and LPA No. 1347 of 2013 that it objected to appointment of Government representatives on its Managing Committee. Despite that appointments were made and later on, the appointments came to be cancelled by order dated 18.06.2013. A copy of order appointing Government representatives (petitioners of SCA No. 10076 of 2013) is available at pages 34/1 to 34/5 (English translation), pages 29 to 34 (in Gujarati). So far as order dated 18.06.2013 is concerned the same is available at pages 44 and 45 in LPA No. 973 of 2013. Translation is available on pages 45/1 and 45/2. The relevant part of the order dated 04.03.2013 is at page 34/4, which reads as under:

"Therefore, I, Dilip Raval, IAS, Co-operation Commissioner and Registrar, Co-operative Societies, Gujarat State, Gandhinagar while exercising the powers conferred u/s. 80(2) of the Co-operative Societies Act, 1961, nominate following three members as Government representatives on the Managing Committee of the Rajkot District Co-operative Milk Producers Union Limited, Rajkot. The term of such Government representatives shall stand terminated automatically with the term of the Managing Committee of the Union.

During the course of the arguments learned senior advocate Mr. S.I. Nanavati appearing for the appellant in LPA No. 973 of 2013 submitted that the correct translation will be that, "term of such Government representatives shall come to an end automatically with the term of the Managing Committee of the Union."

7. Learned senior advocate Mr. B.B. Naik appearing for respondents No. 1, 2 and 3 consents for this change of phrase from "stand terminated" to "come to an end".

8. Controversy in all these matters revolve around sub-sections (1) and (2) of Section 80 of Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "the said Act"). Both these sub-sections are reproduced hereunder:

"80(1) Where the State Government has subscribed to the share capital of a society, directly or through another society, or has guaranteed the repayment of the

principal of and payment of interest on, debentures issued or loans raised by a society, the State Government shall, notwithstanding anything contained in the bye-laws of such society, have the right to nominate three representatives on the committee or such society, in such manner as may be determined by the State Government from time to time. The members so nominated shall hold office during the pleasure of the State Government, or for such period as may be specified in the order by which they are appointed. and any such member on assuming office shall have all rights, duties, responsibilities and liabilities as if he were a member of the committee duly elected."

(Emphasis supplied)

"80(2) Where the State Government is of the opinion that having regard to the public interest involved in the operation of a society it is necessary or expedient so to do, it may nominate its representatives on the committee of such society as if the State Government had subscribed to the share capital of the society and the provisions of sub-section (1) shall, so for as may be apply to such nomination.

(Emphasis supplied)

9. The controversy involved is what should be the exact meaning of the phrase, "The members so nominated shall hold office during the pleasure of the State Government", when it is read with the phrase, "or for such period as may be specified in the order by which they are appointed".

So far as sub-section (2) of Section 80 of the said Act is concerned it does not have the aforesaid phrase, but then it does say that the provisions of sub-section (1) of Section 80 of the said Act shall so far as may be applied to such nominations. Therefore, ipso facto, the aforesaid phrase is to be read in sub-section (2) of Section 80 of the said Act.

10. Learned senior advocate Mr. S.I. Nanavati appearing for the appellant in LPA No. 973 of 2013 and LPA No. 1347 of 2013 emphatically submitted that the pleasure doctrine is not a new term in the matter of appointment to the public office. The learned senior advocate submitted that the pleasure doctrine is inherited from English Law and it is not unknown by way of decisions that the power to appoint carries with it the power to remove, more particularly, when appointment is at pleasure, removal should necessarily be at pleasure.

The learned senior advocate for the appellant-Union submitted that the one who walks in an office at sweet will of the appointing authority must understand that he is liable to walk out at the sweet will of the appointing authority. The learned senior advocate for the appellant-Union submitted that though it sounds a little harsh, it can be appreciated on little closer analysis of the pleasure doctrine. The learned senior advocate for the appellant-Union submitted that whenever there is an appointment by the Government to a post which is governed by pleasure doctrine, it

is always without any competition between any other contenders to the post. Not only that in majority of cases where pleasure doctrine is applicable, neither age limit nor any educational qualification is prescribed. It is like old ''swayamwar'' where the appointing authority selects candidate for being appointed. The learned senior advocate for the appellant-Union submitted that it is unfortunate that such litigation is required to be brought to the Court. Otherwise, in good old days, the moment there was any change in the appointing authority and in many cases when it was conveyed to the appointed candidate that the appointing authority does not wish to continue him, the incumbent used to tender his resignation of his own without waiting for a minute, but now things have changed. Now even when one obtains an appointment under pleasure doctrine, drags the appointing authority to the court of law and the court is required to undertake that exercise of examining whether such removal is just and proper and whether that removal is to be upheld or is required to be quashed. The learned senior advocate for the appellant-Union submitted that the learned single Judge did not find favour with such and similar submissions made on behalf of the appellant-Union and has allowed the petition filed by the Government representatives appointed by the Government under pleasure doctrine and that is why the appellant-Union is before this Court. Not only that even the Government is before this Court by filing LPA No. 1252 of 2013.

11. The learned senior advocate for the appellant-Union submitted that if the phrase used in sub-section (1) of Section 80 of the said Act is closely read, it does give a very clear meaning to the phrase, "The members so nominated shall hold office during the pleasure of the State Government". Meaning thereby, the moment there is end of pleasure the appointee is expected to gracefully walk out of the office saying that, ''well now if you do not continue to have pleasure in my holding the office, I do not wish to continue in the office and I walk out of the office." The learned senior advocate for the appellant-Union submitted that emphasis is placed by the learned senior advocate appearing for respondents No. 1, 2 and 3 on the subsequent phrase saying that ''doctrine of pleasure'' comes to an end, in light of the subsequent phrase, i.e. "or for such period as may be specified in the order by which they are appointed", when in the order of appointment, period is specifically referred.

12. The learned senior advocate appearing for respondents No. 1, 2 and 3 submitted that sub-section (1) of Section 80 of the said Act gives two options to the appointing authority, (i) to appoint persons exclusively under the pleasure doctrine, and (ii) to appoint them for such period as may be specified in the order by which they are appointed. The learned senior advocate appearing for respondents No. 1, 2 and 3 invited attention of the Court to appointment order dated 04.03.2013 (pages 34/1 to 34/5) and submitted that, "The appointment order is very clear. It says that the term of such Government representatives shall come to end automatically with the term of the Managing Committee of the Union." Meaning thereby respondents No. 1, 2 and 3 are appointed for a term which will come to end only with the term of the Managing Committee of the Union and the pleasure doctrine is given a go-by.

13. This Court is of the opinion that if construction put forward by the learned senior advocate appearing for respondents No. 1, 2 and 3 is accepted it causes violence to the intent of the Legislature in two ways, (i) the pleasure doctrine becomes redundant, and (ii) the appointing authority becomes helpless once an appointment order is issued. The question is whether that could be the intention of the legislature when the appointment given to a person, who has entered into the office without any competition with other qualified candidates, the appointment is irrespective of educational qualifications, the appointment is given irrespective of the age. In such a situation, to give construction as advanced by the learned senior advocate appearing for respondents No. 1, 2 and 3 is found to be not acceptable.

14. The learned senior advocate appearing for the appellant-Union submitted that besides the pure question of law of interpretation of appointment order and the provisions of law, viz. sub-sections (1) and (2) of Section 80 of the said Act, certain factual aspects are required to be considered. In this regard, he has submitted that right from inception of the move of appointing representatives on the Managing Committee of the appellant-Union, the appellant-Union did register its objection before the State Government that these representatives be not appointed. The learned senior advocate appearing for the appellant-Union submitted that the appellant-Union did invite attention of the State Government along with reasons by making written representation that these persons are not required to be appointed as Government representatives on its Managing Committee. But then mat representation did not find favour with the Government and the representatives were appointed.

The learned senior advocate appearing for the appellant-Union submitted that any person, who is to be appointed as representative has to be a member of a co-operative society. In the present case, these representatives claim that they are members of Shree Nyara Mahila Dudh Utpadak Sahkarai Mandali Limited. The learned senior advocate appearing for the appellant-Union submitted that this membership has to be ''one year prior to the date of appointment''. In the present case, the date of appointment is 04.03.3013, and therefore, in the previous year, viz. from 02.03.2012 to 03.03.2013, one has to be a member. The learned senior advocate appearing for the appellant-Union invited attention of the Court to the Audit Report which is produced in LPA No. 1347 of 2013 (at pages 91 to 96). This Audit Report in its heading mentions number of members at the end of the year: 51. In that very heading, time of audit is shown to be 01.01.2012 to 31.02.2012. Along with this Audit Report, list of members is also produced at pages 97 and 98. English translation is at pages 98/1 to 98/3. The learned senior advocate appearing for the appellant-Union submitted that out of 51 members, not one member is male member. If Audit Report is from 01.01.2012 to 31.03.2012 and if the contention of the respondent is that he was a member on 02.03.2012, his name must find place in the list which is produced along with the Audit Report.

The learned senior advocate answers the aforesaid submission saying that the ''Audit'' was completed on 22.06.2012 and the bye-laws of the society, viz. Shree Nyara Mahila Dudh Utpadak Sahkarai Mandali Limited does not prohibit a ''male'' from being a member of the society. (Emphasis supplied)

Both these replies are made out of frustration. If the audit had completed on 22.06.2012 then there is all the more reason that the list of members ought to have contained 56 names and not 51 names. The submission that a ''male'' is not prohibited from being a member then a question remains unanswered as to why there is no other male member in the society and that why the name of the society is "Shree Nvara Mahila Dudh Utpadak Sahkarai Mandali Limited".

The Court restrains itself from going deeper into the matter, otherwise it is a fit case to inquire into. The Court is of the opinion that as these are highly disputed questions of facts, the Court leaves at that. The submissions having been made by the learned advocates, the same are dealt in the judgment and order. Otherwise, the matter could have been decided only on the basis of interpretation of Section 80(1) and (2) of the said Act.

15. Learned Government Pleader Mr. P.K. Jani appearing for the State Government submitted that if sub-section (1) of Section 80 of the said Act is read as suggested by the learned senior advocate for the respondents, the same will frustrate the object of legislation. The learned Government Pleader submitted that sub-section (1) of Section 80 of the said Act confers power on the Government to appoint its nominees in the circumstances when the Government has subscribed to the share capital of a society directly or through another society or has guaranteed repayment of the ''principal amount'', payment of interest on debentures issued or loans raised by a society. So far as sub-section (2) of Section 80 of the said Act is concerned, power to appoint Government nominee is conferred on the Government even when the aforesaid circumstances do not exist, viz. Government has not subscribed to share capital of the society or Government is not having any financial stake in the society. That is why wordings of sub-section (2) of Section 80 of the said Act are:

"Where the State Government is of the opinion that having regard to the public interest involved in the operation of a society it is necessary or expedient so to do, it may nominate its representatives on the committee of such society as if the State Government had subscribed to the share capital of the society

(Emphasis supplied)

16. Learned Government Pleader submitted that it is not in dispute that the pleasure doctrine is incorporated in so many words in sub-section (1) of Section 80 of the said Act, which is ipso facto made applicable to sub-section (2) of Section 80 of the said act. The learned Government Pleader submitted that the phrase, "or for such period as may be specified in the order by which they are appointed" is embodied with a view to see that appointment does not continue for an uncertain long period. This

phrase, "or for such period as may be specified in the order by which they are appointed" cannot be construed to mean that it curtails the pleasure doctrine. In fact, if it will be so construed, it will render "pleasure of doctrine" redundant which is specifically embodied in the said sub-section by the Legislature. The learned Government Pleader submitted that in fact, the interpretation advanced by the learned senior advocate for the respondents denudes the Government of its power to remove its own appointees. The learned Government Pleader submitted that it is an accepted principle of interpretation of Statute that even if two interpretations are possible, it is the duty of the Court to accept the one which does not render the doctrine of pleasure redundant, which is consciously embodied. That is the principle of harmonious construction pronounced by judicial pronouncements and the same has to be resorted to by this Court while interpreting the aforesaid phrase.

17. The learned Government Pleader relied upon a decision of this Court in the matter of Jagdishbhai Mafatlal Patel Vs. State of Gujarat, . The learned Government Pleader invited attention of the Court to paras 25 to 29, wherein the Court has considered various decisions and finally in para 30 observed as under:

"30. The sum and substance of the ratio laid down in the aforesaid case law is that if the Government has a right to nominate it includes right to recall or remove the nominated member. Nomination of new nominees for the existing nominees in the first committee of management within the maximum time limit, would in substance amount to replacement of nominees in the very first committee of management so long as the tenure of the said first committee cannot, by any stretch of imagination, be termed or regards as the constitution of a second committee of management. In fact there is nothing like 2nd committee of management is not over. The said replacement cannot, by any stretch of imagination, be termed or regarded as the constitution of a second committee of management either under the provisions of the Act or even under the provisions of the Companies Act, 1956 since the Board is supposed to be existing in perpetuity till the company and/or the society remains in existence.....

18. The learned Government Pleader submitted that a Letters Patent Appeal was filed against that judgment being LPA No. 21 of 2002 in SCA No. 3821 of 2001 which was dismissed by this Court [Coram: D.S. Sinha, Chief Justice (as he then was) & B.C. Patel, J. (as he then was)] vide judgment and order dated 15.04.2002.

19. The learned Government Pleader then relied upon a decision of this Court in the matter of Harisinh Pratapsinh Chavda Vs. Chimanbhai J. Patel and Others, . The learned Government Pleader invited attention of the Court to paras 9, 10, 11, 12, 13, 14, 15, 24 and 25. The learned Government Pleader invited specific attention of the Court to para 18, wherein the Court has recorded that:

"18. The court also relied on its earlier judgment rendered in Ghanshyam Singh Vs. Union of India and Others, against which SLP was dismissed by the Supreme Court.

Referring to the judgment of the Supreme Court in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, the court held that even in case of a normal Government function, there are certain areas of administrative actions and there are special occasion when a certain amount of freedom of action must be left with the Government in public interest. If such an action is taken, it cannot be said to be arbitrary, capricious, mala fide or unreasonable. After referring to a number of cases, the court concluded:

(Emphasis supplied)

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

Counsel for the petitioner, however, submits that compensation is not an adequate relief as the removal affects the dignity of the petitioner and the status of high office. As a matter of fact, the Counsel submits that the petition has not been filed to secure any monetary gain. It is well-settled principles of law that for merely vindicating the dignity of a person or an office no legal remedy is available. In any case the extra ordinary remedy of a writ petition cannot be invoked for vindicating one''s honour. Where it is within the absolute discretion of the Government to confer the alleged dignity or status, it is implied in the said discretion that so-called dignity or status can also come to an end in the exercise of the said discretion. It is the Government which in its discretion treated the petitioner as a prominent social worker of all India status and attributed adequate ''administrative and organisation abilities''. After all the petitioner has not objectively established that she possesses any such qualifications. The suitability for the appointment to the said office of the Chairman, Central Social Welfare Board is inseparably connected with the policy framework of the Government. Every loss of office whether high or low creates subjective feeling of loss of social position. Further the considerations of high administrative discretion and policy trenscend personal emotions of loss of status of the petitioner."
(Emphasis supplied)

20. The learned Government Pleader rightly emphasised the observations made by the Hon''ble the Apex Court in the sub-para reading as under:

"Counsel for the petitioner, however, submits that compensation is not an adequate relief as the removal affects the dignity of the petitioner and the status of high

office. As a matter of fact, the Counsel submits that the petition has not been filed to secure any monetary gain. It is well-settled principles of law that for merely vindicating the dignity of a person or an office no legal remedy is available. In any case the extra ordinary remedy of a writ petition cannot be invoked for vindicating one''s honour....."

In fact, the submissions made by the learned advocate for the appellant-Union is also on the same lines that the person, who walks in at the sweet will of the appointing authority shall remain ready to quit the office at the sweet will of the appointing authority.

In the present case, it is rightly pointed out by the learned Government Pleader that out of thousands and thousands of workers working in the field of cooperation, respondents No. 1, 2 and 3 were selected and they were appointed as Government representatives and now when the Government has come to the conclusion that their appointment is not required to be continued, unless a strong case is made out alleging mala fides, there is no question of granting any relief under Article 226 of the Constitution of India, which is a ''discretionary jurisdiction'' of the court.

21. The learned Government Pleader then invited attention of the Court to a decision of Delhi High Court in the matter of Ghanshyam Singh Vs. Union of India and Others, . The learned Government Pleader invited attention of the Court to para 1, which points out the facts of the case and then to paras 36 and 37. The learned Government Pleader submitted that para 36 very appropriately refers to the position of common law, which reads as under:

"The view of the Bar Council of India is on the other hand based on the very silence of the statute on this point. We are of the opinion that such silence indicates that the common law regarding the removal of the holder of an office remains unchanged. The statute does not, therefore, have to say that the Chairman of the State Bar Council would be removable by a resolution of no-confidence. The reason is that such power of removal is inherent in the Bar Council which elects its Chairman. The power given to the State Bar Council to elect its Chairman is the codification of only a part of the common law. Such codification does not change the other part of common law which implies in the State Bar Council the power to remove the Chairman so elected...."

The learned Government Pleader also invited attention of the Court to a decision in the matter of Bhut Nath Mete Vs. The State of West Bengal, . The said decision is referred to by this Court in a matter of Harisinh Pratapsinh Chavda (supra), wherein the learned Judge has rightly highlighted that,

"I am afraid this Court in the exercise of the powers under Article 226 of the Constitution cannot enter into those questions since essentially they are "political issues"....."

The Hon''ble the Apex Court has observed in the case of Bhut Nath Mete Vs. The State of West Bengal, that political issues are not ''justiciable'' issues and appeal should be to the ''polls'' and not to ''courts''. The Court cannot entertain political question since it has to adjudicate legal rights and liabilities in accordance with law.

22. The learned Government Pleader invited attention of the Court to para 16 of judgment in the case of Bhut Nath Mete Vs. The State of West Bengal, . The relevant part of para 16 reads as under:

"16. We have to reject summarily the last submission as falling outside the orbit of judicial control and wandering into the para-political sector. It was argued that there was no real emergency and yet the Proclamation remained un-retracted with on sequential peril to fundamental rights. In our view, this is a political not justiciable issue and the appeal should be to the polls and not to the courts. The traditional view, sanctified largely by some American decisions, that political questions fall out-side the area of judicial review, is not a constitutional taboo but a pragmatic response of the court to the reality of its inadequacy to decide such issues and to the scheme of the Constitution which has assigned to each branch of Government in the larger sense a certain jurisdiction....."

("Emphasis supplied)

23. The learned Government Pleader next invited the attention of the Court to a decision of the Hon''ble the Apex Court in the matter of Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others, . The learned Government Pleader invited attention of the Court to paras 11, 12 and 13 of the said judgment, which read as under:

"11. Section 39 deals with resignation by a member of the Board. Section 40 provides the grounds for removal of a member of the Board. Sub-section (5) of Section 40 deals with suspension of a member. From a perusal of the above provisions it is clear that the term of an elected or nominated member is coterminous with the term of the Board. The normal term of the Board is five years, but it may be curtailed as well as extended. If the term of the Board is curtailed by dissolution or supersession, the term of the member also gets curtailed. Similarly, if the term of the Board is extended, the term of the member is also extended. Apart from the curtailment of the term of a member of the Board by dissolution or supersession of the Board itself, the term of a member also gets curtailed by his resignation or by his removal from office. Section 40 specifically provides the grounds under which the State Government in the case of a city, or the prescribed authority in any other case, may remove a member of the Board. The removal under Section 40 applies to elected as well as nominated members. In respect of a nominated member, power of curtailment of term has now been given to the State Government under the fourth proviso to Section 9 added after the third proviso through the amending Act of 1990. In the cases before us, we are concerned with

the removal of nominated members under the fourth proviso to Section 9 of the Act and we are not concerned with the removal as contained in Section 40 of the Act. The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute. The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.

12. In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations. In Dr. Rama Mishra case (1992 All LJ 199) the High Court wrongly held that the pleasure doctrine incorporated under the fourth proviso to Section 9 of the Act was violative of the fundamental right of equality as enshrined in Article 14 and Article 15(3) of the Constitution. We are unable to agree with the aforesaid reasoning of the High Court. Clause (3) of Article 15 is itself an exception to Article 14 and clauses (1) and (2) of Article 15 of the Constitution. Under Article 14, a duty is enjoined on the State not to deny any person equality before the law or the equal protection of the laws within the Territory of India. Article 15(1) provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(2) provides that "no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainments; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public".

13. ....The nominated members of the Board fall in a different class and cannot claim equality with the elected members. We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government

and is bound to demoralise the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionaries in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralise or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office."

24. The learned senior advocate for respondents No. 1, 2 and 3 answered the aforesaid decisions by relying on a decision of the Hon''ble the Apex Court in the matter of Pratap Chandra Mehta Vs. State Bar Council of M.P. and Others, , saying that in para 81 of the said decision the Hon''ble the Apex Court has observed that,

"We are not able to accept the view taken by the High Court of Delhi in Bar Council of Delhi Vs. Bar Council of India, in saying that solely with the aid of the General Clauses Act, the power to elect would deem to include power to remove by a motion of no confidence, particularly, with reference to the facts and circumstances of the instant case....."

and submitted that reliance placed by the learned Government Pleader is not well founded.

The learned senior advocate for respondents No. 1, 2 and 3 next invited attention of the Court to a decision of this Court in the matter of Jagdishbhai Mafatlal Patel Vs. State of Gujarat, and submitted that the facts of the said case were different than the facts on hand, therefore, this decision is not applicable to the facts of this case. Last, but not the least, the learned senior advocate for respondents No. 1, 2 and 3 invited attention of the Court to a decision of the Hon''ble the Apex Court in the matter of B.P. Singhal Vs. Union of India (UOI) and Another, . The learned senior advocate for respondents No. 1, 2 and 3 submitted that the Constitution Bench in the said decision has considered various aspects of pleasure doctrine. In this regard, learned senior advocate for respondents No. 1, 2 and 3 invited attention of the Court to paras 12, 33, 34, 68, 69, 72, 76, 78, 79, 80, 81, 82 and 83(i) and (ii).

25. The learned senior advocate for respondents No. 1, 2 and 3 submitted that the Constitution Bench of the Hon''ble the Apex Court has pronounced in no uncertain terms that, ''even when appointment is under the doctrine of pleasure, removal should always be subject to judicial review''. The learned senior advocate for respondents No. 1, 2 and 3 also submitted that doctrine of pleasure is as such a concept of feudal society. Now when the society is governed by law, under the doctrine of pleasure the appointing authority cannot act in an arbitrary manner and cannot exercise power without there being justifiable reasons. The learned senior

advocate for respondents No. 1, 2 and 3 invited attention of the Court to para 22, which reads as under:

"22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by Rule of Law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for public good."

The learned senior advocate then invited attention of the Court to paras 33 and 34, which read as under:

"33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set up, when an office is held during the pleasure of any Authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.

34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an Authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the Authority, but can only be for valid reasons."

The learned senior advocate then invited attention of the Court to paras 68 and 69, which read as under:

"68. The petitioner contends that the removal of a Governor can only be for compelling reasons which is something to do with his capacity to function as a

Governor. According to the petitioner, physical or mental disability, acts of corruption or moral turpitude or behaviour unbecoming of a Governor like being involved in active politics, or indulging in subversive activities are valid reasons for removal. In other words, it is contended that there should be some fault or drawback in the Governor or in his actions before he could be removed from office.

69. On the other hand, it is contended by the respondents that removal need not only be for the reasons mentioned by the petitioner but can also be on two other grounds, namely, loss of confidence in the Governor or the Governor being out of sync with the policies and ideologies of the Union Government. There is thus a consensus to the extent that a Governor can be removed only for a valid reason, and that physical and mental incapacity, corruption and behaviour unbecoming of a Governor are valid grounds for removal. There is however disagreement as to what else can be grounds for removal. We are of the view that there can be other grounds also. It is not possible to put the reasons under any specific heads. The only limitation on the exercise of the power is that it should be for valid reasons. What constitute valid reasons would depend upon the facts and circumstances of each case."

The learned senior advocate then invited attention of the Court to para 17, wherein the Hon''ble the Apex Court has discussed English Law on the point.

26. The learned senior advocate for the respondents invited attention of the Court to para 76, which reads as under:

76. This Court has examined in several cases, the scope of judicial review with reference to another prerogative power-power of the President/Governor to grant pardon etc., and to suspend, remit or commute sentences. The view of this Court is that the power to pardon is a part of the constitutional scheme, and not an act of grace as in England. It is a constitutional responsibility to be exercised in accordance with the discretion contemplated by the context. It is not a matter of privilege but a matter of performance of official duty. All public power including constitutional power, shall never be exercisable arbitrarily or mala fide. While the President or the Governor may be the sole judge of the sufficiency of facts and the propriety of granting pardons and reprieves, the power being an enumerated power in the Constitution, its limitations must be found in the Constitution itself. Courts exercise a limited power of judicial review to ensure that the President considers all relevant materials before coming to his decision. As the exercise of such power is of the widest amplitude, whenever such power is exercised, it is presumed that the President acted properly and carefully after an objective consideration of all aspects of the matter. Where reasons are given, court may interfere if the reasons are found to be irrelevant. However, when reasons are not given, court may interfere only where the exercise of power is vitiated by self-denial on wrong appreciation of the full amplitude of the power under Article 72 or where the decision is arbitrary, discriminatory or mala fide [vide Maru Ram and Others Vs. Union of India (UOI) and

Others, , Kehar Singh v. Union of India, etc."

So far as paras 78, 79, 80, 81 and 82 are concerned they discuss the exercise of power under Article 156(1) of the Constitution and finally the Hon''ble the Apex Court has recorded its conclusions in para 83(i) and (ii), which read as under:

"83(i) We summarise our conclusions as under:

(i) Under Article 156(1), the Governor holds office during the pleasure of the President. Therefore, the President can remove the Governor from office at any time without assigning any reason and without giving any opportunity to show cause.

(ii) Though no reason need be assigned for discontinuance of the pleasure resulting in removal, the power under Article 156(1) cannot be exercised in an arbitrary, capricious or unreasonable manner. The power will have to be exercised in rare and exceptional circumstances for valid and compelling reasons. The compelling reasons are not restricted to those enumerated by the petitioner (that is physical/mental disability, corruption and behaviour unbecoming of a Governor) but are of a wider amplitude. What would be compelling reasons would depend upon the facts and circumstances of each case."

On careful consideration, this Court is of the opinion that the contents of paras 70 and 71 answer as to why this decision will not be applicable to the facts of the present case. Para 70 reads as under:

"70. We have however already rejected the contention that the Governor should be in sync with the ideologies of the Union Government. Therefore, a Governor cannot be removed on the ground that he is not sync or refuses to act as an agent of the party in power at the Centre. Though the Governors. Ministers and Attorney General, all hold office during the pleasure of the President, there is an intrinsic difference between the office of a Governor and the offices of Ministers and Attorney General. Governor is the Constitutional Head of the State. He is not an employee or an agent of the Union Government nor a part of any political team. On the other hand, a Minister is handpicked member of the Prime Minister''s team. The relationship between the Prime Minister and a Minister is purely political. Though the Attorney General holds a public office, there is an element of lawyer-client relationship between the Union Government and the Attorney General. Loss of confidence will therefore be very relevant criterion for withdrawal of pleasure, in the case of a Minister or the Attorney General, but not a relevant ground in the case of a Governor.
(Emphasis supplied)

This Court is of the opinion that in the present case the question is about appointment of Government representatives which by no means can be compared with the appointment of Governor, who is a ''Constitutional Head of the State''. Removal of Governor on the ground of ''end or pleasure'' and withdrawal of

representatives appointed by the Government on the ground that there is end of pleasure cannot be compared at all. The Court cannot ignore the fact that such representatives are appointed in two different situations, which are contemplated by the Legislature and reflected in sub-sections (1) and (2) of Section 80 of the said Act. In the present case, appointments are necessarily made under Section 80(2). Provisions of Section 80(1) are applicable when there is no financial stake of the Government in the Union (appellant). Withdrawal of such representatives on the ground that there is end of pleasure cannot be pitched so high so as to put them at par with the appointment of Governor-the Constitutional head of the State. At the most it could be in the close vicinity of appointment of Attorney General for which it is stated that there is an element of lawyer - client relationship. In the present case also when the Government appoints its representatives, those representatives are supposed to take care of the financial stake, if at all it is there or to take care of public interest involved in the operation of the society.

27. Coming to para 71 of the aforesaid judgment, it reads as under:

"71. When a Governor holds office during the pleasure of the Government and the power to remove at the pleasure of the President is not circumscribed by any conditions or restrictions, it follows that the power is exercisable at any time, without assigning any cause. However, there is a distinction between the need for a cause for the removal, and the need to disclose the cause for removal. While the President need not disclose or inform the cause for his removal to the Governor, it is imperative that a cause must exist. If we do not proceed on that premise, it would mean that the President on the advice of the Council of Ministers may make any order which may be manifestly arbitrary or whimsical or mala fide. Therefore, while no cause or reason be disclosed or assigned for removal by exercise of such prerogative power, some valid cause should exist for the removal. Therefore, while we do not accept the contention that an order under Article 156 is not justiciable, we accept the contention that no reason need be assigned and no cause need be shown and no notice need be issued to the Governor before removing a Governor."

(Emphasis supplied)

Once again the Hon''ble the Apex Court made it very clear that in the matter of appointment of Governor or removal of Governor by invoking the doctrine of pleasure, it has to be looked differently than the matter of appointment of Government representatives on Managing Committee of the Union like the appellant herein.

28. Coming to para 80 of the same judgment the Hon''ble the Apex Court did observe that,

"80. The extent and depth of judicial review will depend upon and vary with reference to the matter under review. As observed by Lord Steyn in Ex parte Daly [2001 (3) All ER 433], in law, context is everything, and intensity of review will depend

on the subject-matter of review. For example, judicial review is permissible in regard to administrative action, legislations and constitutional amendments. But the extent or scope of judicial review for one will be different from the scope of judicial review for other. Mala fides may be a ground for judicial review of administrative action but is not a ground for judicial review of legislations or constitutional amendments. For withdrawal of pleasure in the case of a Minister or an Attorney General, loss of confidence may be a relevant ground. The ideology of the Minister or Attorney General being out of sync with the policies or ideologies of the Government may also be a ground. On the other hand, for withdrawal of pleasure in the case of a Governor, loss of confidence or the Governor''s views being out of sync with that the Union Government will not be grounds for withdrawal of the pleasure. The reasons for withdrawal are wider in the case of Ministers and Attorney-General, when compared to Governors. As a result, the judicial review of withdrawal of pleasure, is limited in the case of a Governor whereas virtually nil in the case of a Minister or an Attorney General."

29. This Court is of the opinion that in case of appointment of representatives, whose educational qualification was not the criterion for appointment, who were not subjected to any age limit either minimum or maximum and no special attribute like experience in the concerned field was the basis for appointment, the appointment will be more closer to appointment of Ministers and Attorney General and not to that of the Governor. Therefore, in the opinion of this Court this decision is of no help to respondents No. 1, 2 and 3.

30. The learned senior advocate for respondents No. 1, 2 and 3 next relied upon a decision in the matter of Union of India (UOI) and Others Vs. Major S.P. Sharma and Others, . The learned senior advocate for respondents No. 1, 2 and 3 relied upon para 30 of the said judgment. The learned senior advocate for respondents No. 1, 2 and 3 submitted that the Hon''ble the Apex Court has made very clear that,

"30. ....This Court has affirmed that the modifications stated above had declared the ambit of judicial review to be limited to the issue of mala fides and arbitrariness....."

The learned senior advocate for respondents No. 1, 2 and 3 submitted that in the present case no reasons are set out in order dated 18.06.2013. Not only that though affidavits are filed, no reasons are set out in those affidavits for removal of respondents No. 1, 2 and 3 from the Managing Committee of the appellant-Union.

The judgment in question is dealing with removal of Major S.P. Sharma from the Armed Forces.

This Court in the case of Harisinh Pratapsinh Chavda Vs. Chimanbhai J. Patel and Others, has specifically drawn distinction between ''public office'' and ''civil post'' and for that reason any post. Therefore, the said decision is of no help to respondents No. 1, 2 and 3. So far as arbitrariness is concerned as discussed herein above this Court is of the opinion that once the doctrine of pleasure is held to be applicable to

the appointment of representatives on the Managing Committee of the Union, the Government will have power to withdraw that nomination and cancel appointment of the representatives.

31. Last, but not the least, learned senior advocate for respondents No. 1, 2 and 3 relied upon a decision of the Hon''ble the Apex Court in the matter of Brij Mohan Lal Vs. Union of India (UOI) and Others, . The learned senior advocate for respondents No. 1, 2 and 3 relied upon paras 90 and 91 which are in the nature of reproduction of reiteration of the observations made by the Hon''ble the Apex Court in the matter of B.P. Singhal Vs. Union of India (UOI) and Another, . The said judgment is considered hereinabove in detail, which applies to this judgment also.

32. In the result LPA No. 973 of 2013 filed by the appellant-Union is allowed. In view of the aforesaid discussion this Court is of the opinion that the judgment and order passed by the learned single Judge quashing order dated 18.06.2013 is required to be quashed and set aside. The same is accordingly quashed and set aside. In the result, LPA No. 1252 of 2013 filed by the State Government is also allowed. LPA No. 1347 of 2013 which is filed against the judgment and order dated 04.10.2013 of the learned single Judge in SCA No. 11421 of 2013, whereby the learned single Judge is pleased to dismiss the petition wherein order dated 04.03.2013 was challenged by the Union-appellant herein will not survive in view of the fact that this Court has allowed LPA No. 973 of 2013 and LPA No. 1252 of 2013. At the request of the learned senior advocate for the appellant, it is made clear that as in view of the judgment and order in LPA No. 973 of 2013, LPA No. 1252 of 2013, the grievance of the petitioners in SCA No. 11421 of 2013 does not survive, the learned advocate seeks permission to withdraw the same with a liberty to apply in case of difficulty. The permission is granted. The same is disposed of as withdrawn. Hence, the judgment and order rendered by the learned single Judge will not survive.

33. At this juncture, learned advocate for respondents No. 1, 2 and 3 requested that this judgment and order be stayed for some time to enable respondents No. 1, 2 and 3 to approach the Hon''ble the Apex Court. The Court having found no merit in the submissions, the request is declined. This Court by order dated 10.01.2014, has already restrained respondents No. 1, 2 and 3 from participating in the meeting of the appellant-Union, their withdrawal as representative has already become effective. Learned Senior advocate Mr. B.B. Naik submitted that even while continuing the same arrangement, viz. of not participating in the meeting of the appellant-Union, the order may be stayed so that the appointment of respondents No. 1, 2 and 3 continues on the Managing Committee of the Union. This Court is of the opinion that once the Court has come to the conclusion that the Government is right in cancelling their appointment by order dated 18.06.2013, the relief prayed for cannot be granted. Hence, this request is also rejected. In view of disposal of Letters Patent Appeals, Civil Applications No. 8492 of 2013, 11442 of 2013, 12243 of 2013 and 13350 of 2013 do not survive. Disposed of accordingly. Interim orders stand

vacated. Notice, if any, is discharged.