

(1992) 09 BOM CK 0026**Bombay High Court (Goa Bench)****Case No:** Writ Petition No. 65 of 1992

Smt. Farrel Futado

APPELLANT

Vs

State of Goa and others

RESPONDENT

Date of Decision: Sept. 3, 1992**Acts Referred:**

- Companies Act, 1956 - Section 268, 274, 284, 408, 617
- Constitution of India, 1950 - Article 226, 68(1), 68(4)

Citation: (1993) 2 BomCR 561 : (1994) 80 CompCas 659**Hon'ble Judges:** S.H. Kapadia, J; E.S. Da Silva, J**Bench:** Division Bench**Advocate:** S.S. Kantak, for the Appellant; J. Dias and Z.F. Rebello, for the Respondent

Judgement

S.H. Kapadia, J.

By this writ petition the petitioner seeks to challenge the order dated January 30, 1992, issued by the State Government as published in the Official Gazette dated January 31, 1992, by which the petitioner was removed from the office as a director of the Economic Development Corporation and consequently as chairperson of the said board of Economic Development Corporation. By the said writ petition, the petitioner also seeks to challenge the nomination of respondent No. 3 as the director of the said corporation as a result of the vacancy caused by the removal of the petitioner and also nomination by the Government of respondent No. 3 as chairman of the said corporation for a period of three years from the date of the impugned notification.

2. Briefly, the facts giving rise to this writ petition are as follows :

(a) On March 29, 1990, the Government of Goa issued a notification, inter alia, accepting the resignation dated February 12, 1990, tendered by one Ramesh Chowgule as the director of the Economic Development Corporation of Goa, Daman and Diu Limited (hereinafter referred to for the sake of brevity as "the Corporation"). By the said

notification dated March 29, 1990, the petitioner came to be nominated as a director of the said Corporation in the place of Shri Chowgule and also as chairperson of the said corporation with immediate effect. At this stage, it may be noted that at the relevant time the petitioner was a Member of the Legislative Assembly (Velim).

(b) In the board meeting held on the March 30, 1990 of the corporation a resolution came to be passed by which the corporation approved the above nomination made by the Government in favour of the petitioner. At the said board meeting, the petitioner was also appointed the chairperson on the board of the said corporation and a resolution to that effect was passed unanimously by the corporation. The said Resolution No. 1795 reads as follows :

"Resolved that the appointment of Kum. Farrel Furtado, MLA, Velim, as director in place of Shri R. L. Chowgule, and also chairperson on the board of Economic Development Corporation of Goa, Daman and Diu Limited, vide Government Order No. 15/2/85-ILD, dated March 29, 1990, be and is hereby approved.

Resolved further that the managing director be and is hereby authorised to take all further necessary action in this regard."

(c) Thereafter an addendum was issued on November 29, 1990, by the Government by which it was notified that the appointment of the petitioner as the chairperson was for a period of five years with effect from March 29, 1990. The said addendum was to the above Government Notification No. 15/2/85-ILD dated March 29, 1990. The period of five years was due to expire on March 28, 1995.

(d) On December 20, 1991, a show-cause notice was issued by the Government by which certain irregularities came to be pointed out to the petitioner. The said irregularities have been enumerated in the said show-cause notice. Briefly the petitioner was charged for receiving honorarium regularly from the Corporation from April 1, 1990, till October 31, 1991, amounting to Rs. 44,200 which, according to the Government, was in contravention of article 68B of the articles of association of the said corporation, which, into alia, provided that a Member of the State Legislature appointed as chairman or other director shall not be paid salary but only travelling allowances. According to the said show-cause notice, the petitioner claimed travelling allowance/expenses between April 1, 1990, to October 31, 1991, for tours performed by the her outside the State amounting to Rs. 84,480.67 without submitting details of the work done by her for the development of the business of the corporation. By the said show-cause notice, it has been further alleged that as chairperson the petitioner took along with her on various occasions on tour outside the State her personal assistant by air without authorisation by the board of directors of the Corporation/Government for such air travel and thereby spending Rs. 25,793 in that regard. It has been further alleged that as chairperson, the petitioner engaged seven persons as personal staff authorised by the Government but she failed to set up an office of the corporation at Margao.

(e) By reply to the said show-cause notice dated January 20, 1992, the petitioner denied the said allegations mentioned in the show-cause notice. In answer to the irregularity mentioned in item No. 1 of the show-cause notice, the petitioner stated that she had received honorarium regularly from the corporation amounting to Rs. 44,200. According to petitioner, the charge was totally misconceived and untenable as she has received honorarium and not salary from the corporation and, therefore, there was no contravention of article 68B of the articles of association of the corporation. It is also pertinent to note that the petitioner in her reply to the said show-cause notice has referred to honorarium as compensatory allowance and the receipt of the amount to Rs. 44,200 has not been denied by the petitioner. She has further stated that she was appointed as chair-person for a period of five years from March 29, 1990, and that as chair-person she was deeply involved in revitalising various activities of the Corporation and it was in this circumstances that the corporation decided to compensate her suitably in the form of monthly honorarium in the sum of Rs. 2,900. As regards item No. 2 of the show-cause notice, the petitioner admitted that for her tours outside Goa, she claimed travelling expenses of Rs. 84,484,67. According to the petitioner, she was within her right under the said articles of association to claim the said amount as travelling expenses qua the tours and, therefore, there was no irregularity according to the petitioner. Similarly, as regards items No. 3 of the said show-cause notice, the petitioner has averred that the travel arrangements of her personal assistant were always made by the corporation and the air ticket of the said personal assistant was purchased by the corporation for which the petitioner is not liable or responsible. She further denied the contents of the said show-cause notice in item No. 4 by stating that she had informed the corporation of the work carried out by way of development and she did not fail in her duty as chairperson. She also relied upon the minutes of the board meeting held on October 5, 1990, in support of her case, namely, that the board had always appreciated her active involvement in revitalising the various activities of the corporation and efforts put in, in that regard, by the petitioner.

(f) As indicated above, by Order No. 15/2/85-ILD, issued by the Government, the petitioner came to be removed both as director of the corporation as also the chairperson of the corporation. The said order is dated January 30, 1992. The said order by way of recital refers to the above show-cause notice dated December 20, 1991, and also to the reply of the petitioner to the said show-cause notice which has been referred to hereinabove. Vide clause 3 of the said order dated January 30, 1992, the petitioner was informed that on careful consideration of the matter and after taking into account the comments of the managing director of the corporation and also after taking into account the facts and the records as available, the Government was of the opinion that the petitioner as the director and chairperson of the Board of Economic Development Corporation had misused her power and she had committed gross irregularities and thereby rendering herself liable for the removal from the office as director and consequential thereupon as the chairperson of the said corporation. By notification bearing even number and date, respondent No. 3 was appointed as director and

chairperson for a period of three years to fill in the vacancy caused by the removal of the petitioner, vide order dated January 30, 1992.

(g) It is against the said order of the removal dated January 30, 1992, as also the notification filling in the vacancy caused by the removal of the petitioner also dated January 30, 1992, that the petitioner being aggrieved has filed this petition under article 226 of the Constitution.

(h) Briefly, it may be mentioned that it is the case of the petitioner in the writ petition that the order of removal of the petitioner, which is the subject-matter of challenge in this petition, has been passed by the Government arbitrarily. It is the case of the petitioner that the said decision of the Government to remove the petitioner as the director and chairperson of the corporation was politically motivated. In that connection, the petitioner has referred to certain news report in Sunaparant dated November 20, 1991 (that is prior to the issuance of the above show-cause notice). The petitioner has relied upon the contents of the said report to indicate that the decision to remove the petitioner as director and chair-person was taken much prior to the issuance of the said show-cause notice. It was further submitted that a bare reading of the said report indicated that the decision to remove the petitioner was politically motivated. According to the news item/report in the above daily in Konkani, the Industries Minister, Shri Suresh Parulekar, had informed the said daily that the petitioner will be removed as the director and as chairperson of the said corporation for committing alleged irregularities during her tenure and to clean the corporation by removing the petitioner from the aforesaid position. The report also proceeds to state that the Industries Minister was seeking the opinion of the Law Department in that connection. The said Corporation came under the portfolio of the Industries Minister, which is not in dispute. The contents of the said report were relied upon by the petitioner to show that the decision to remove the petitioner was politically motivated and it was not in accordance with the due process of law. At this stage, it may also be relevant to note that the petitioner was a political activist. She was elected to the State Legislative Assembly on the Congress-I ticket at the elections held in January, 1990. She was a member of the Congress-I party at that time. On March 19, 1990, seven members of the State Legislative Assembly (seven MLAs, including the petitioner) belonging to the Congress-I party came out of the party as breakaway group and formed a separate political party known as Goan People's party. Consequently, the Government formed by the Congress-I fell into a minority. Thereupon, the said seven MLAs (including the petitioner) of the Goan People's party along with Maharashtrawadi Gomantak party were invited by the Governor to form the Government. The coalition was called the Progressive Democratic Front. The Government headed by the said Front collapsed in December, 1990. The above dates are relevant as they indicate that the petitioner came to be nominated as the director of the corporation as an MLA during the relevant period. She was appointed on March 29, 1990, when the coalition Government headed by the Front was in power. It is in this context that reliance was placed by the petitioner, in support of her case, that the decision to remove her was taken by the Congress-I

Government, which came to be formed on January 25, 1991, after the fall of the Progressive Democratic Front Government in December, 1990. In the circumstances, it was submitted that the impugned order of removal was arbitrary and it was issued with a mala fide intent and in the circumstances it was liable to be set aside.

3. Learned counsel appearing on behalf of the petitioner broadly submitted a two-fold contention :

Contention (a) : It was submitted that the petitioner was appointed as a director and consequentially chairperson on March 29, 1990, pursuant to the notification issued by the Government. The contention proceeds on the basis that the power to appoint the petitioner was duly exercised by the Administrator under article 68 of the articles of association of the corporation. However, there was no power vested in the Government to remove the petitioner as a director and as chairperson of the corporation. According to the petitioner, the said power vested in the board of directors of the company and the Government had no authority to remove the petitioner by the impugned order as a director and consequentially as chairperson. In this connection, it was also submitted that the removal of a director is contemplated u/s 284 of the Companies Act and had the procedure u/s 284 of the said Act been followed, the petitioner could not have been removed for the alleged acts of irregularities for the reason that the said acts of irregularities have been duly sanctioned by the board itself and on that ground no removal was possible. It was further submitted that the Government circumvented section 284 of the Companies Act by adopting a different method of issuing show-cause notice for termination, which was not permissible in the eye of law. Accordingly, it was submitted that the impugned order of removal was without authority of law and it was liable to be set aside under article 226 of the Constitution.

Contention (b) : The second contention of the petitioner was that in any event the impugned order of removal was ill-motivated, arbitrary and violative of the principles of natural justice inasmuch as no reasonable opportunity was given to the petitioner to put forth her case. It was submitted that the impugned order of removal has imposed a stigma particularly in view of clause 3 of the impugned order of removal, which has referred to misuse of power and gross irregularities being committed allegedly by the petitioner as a director of the corporation and as chairperson of the said corporation. It was submitted that in view of the said allegations of misuse of power and gross irregularities a proper inquiry ought to have been held and the petitioner should have been given reasonable opportunity to deny the allegations and to prove her case and in the absence of the said opportunity, the impugned order of removal was liable to be set aside.

4. Before dealing with the above two contentions raised by the learned counsel appearing for the petitioners, it would be relevant to refer to the memorandum of association as also the articles of association of the said corporation. It is not in dispute that respondent No. 2 corporation is a Government company as defined u/s 617 of the Companies Act. It is not

in dispute that the Government is the majority shareholder. It is not dispute that the IDBI is the other shareholder of the company. The said Economic Development corporation of Goa, Daman an Diu Limited is established to carry on the business of an investment company for providing financial assistance to industrial enterprises and also to enterprises carrying on other economic activities in the Union Territory of Goa, Daman and Diu. Article 1 is an interpretation clause which finds place in the articles of association of the said corporation. It defines the word "Administrator" to mean the Administrator of Goa, Daman and Diu. Article 2 states that respondent No. 2 corporation shall be a public limited company. Article 5 lays down that the authorised share capital of the company shall be rupees thirty crores divided into thirty lakhs equity shares of Rs. 100 each. Article 7 lays down that subject to the provisions of the Companies Act and the articles and subject to the directions of the Administrator, the shares shall be under the control of the board of directors. Article 45 deals with the right of the Administrator to appoint any person as his representative. It lays down that the Administrator, so long as he is a shareholder of the company may, from time to time, appoint one or more persons (who need not be a member of the company) to represent him at the meetings of the company. Article 67 finds place under Chapter XI which deals with the board of directors of the company. It lays down that the number of directors shall not be less than three and not more than 12. The said directors shall not be required to hold qualification shares. Article 68(1) lays down that one-third of the directors shall be appointed by the Administrator and such directors shall not be liable to retire by rotation (for the sake of brevity these directors are hereinafter referred to as "non-rotational directors"). Article 68(2) lays down that the remaining directors shall be appointed by the company in the annual general meeting who shall retire by rotation and such retiring directors shall be eligible for re-appointment. Article 68A, inter alia, lays down that the members of the board of directors shall be entitled to sitting fees for attending meetings of the board of directors as may be fixed by the board not exceeding Rs. 500 per meeting. Article 68A (2) provides that in addition to the remuneration payable to the directors under the Act, they may be paid travelling, hotel an other expenses properly incurred by them in connection with the business of the company. Article 68B lays down that notwithstanding anything in article 68A, if a Member of the State Legislature or Parliament is appointed as chairman or director, he shall not be paid salary but he shall be paid travelling allowances and such other allowances which may be payable to him for the purpose of meeting the personal expenditure incurred by him in attending the meetings of the board or in performing any other function as chairman or director, as the case may be. Article 68C deals with the appointment of special directors at the behest of the IDBI, with which we are not concerned in the present case. Article 70(10) deals with the power of the Administrator to issue directions either by way of general or special directives in the matter of investment or securities and also in the matter of investment and dealings in the financial aspects of the company. Article 74 deals with disqualification of directors. It lays down that the office of director shall become vacant if certain contingencies mentioned in articles 74(a) to 74(k) occur. For the purpose of this petition reliance is placed on article 74(j), which deals with removal of directors u/s 284 of the Act. Article 79 empowers the Administrator to

nominate from among the directors, a chairman as also vice-chairman to preside over the meetings of the board of directors. He has also the power to decide the period for which the chairman and the vice-chairman are to hold office.

5. Dealing with the above contention (a) raised on behalf of the petitioner, the above facts indicate that the Government was pleased to nominate the petitioner as the director of the corporation in the place of Shri Chowgule when the vacancy occurred. She was also appointed as the chairperson on and from March 29, 1990. Her appointment was in pursuance of article 68(4) read with article 79 of the above articles of association. This is indicated by the above notification dated March 29, 1990, read with the addendum dated November 29, 1990. Article 68(1) deals with appointment of non-rotational directors by the Government. The said directors are nominees of the Government. At this stage, it may be relevant to note that a non-rotational director is a category which is distinct from a rotational director under the Companies Act. This position has been spelt out clearly by certain departmental clarifications issued u/s 268 of the Companies Act. The said clarifications have been reproduced at pages 1260 and 1261 of the Guide to the Companies Act by A. Ramaiya - Twelfth edition 1992. The said clarifications indicate that a non-rotational director cannot be nominated by the equity shareholders on the board of a company. Such a right is vested only in the Government. If such a right was conferred on equity shareholders, the favoured group would retain its right to vote in electing the remaining directors in general meeting. The said clarification also indicates that the nomination of a non-rotational director is a matter of the articles of association or a matter of agreement between the company and the third party (that is the Government in the present case) and which requires the approval of the Government. If this concept is kept in mind it is clear that certain amendments came to be made to the articles of association by way of articles 68A, 68B, etc. Article 68(1) in contradistinction to article 68(2) clearly brings out the above concept when the former article deal with appointments of non-rotational directors to be appointed by the Administrator, whereas the remaining directors are required to be appointed by the company in the annual general meeting. Similarly, in the case of directors appointed by the company in the annual general meeting, the directors shall retire by rotation which is not the case in the matter of non-rotational directors. Similarly, under article 68(4) the Administrator shall have a right to fill in the vacancy in the office of the director caused by removal, resignation, death or otherwise. Reading article 68(1) with article 68(4), it is clear that the petitioner was appointed in the quota of non-rotational directors as a nominee of the Government. She was appointed by the Administrator as a director. It is also clear from the above provision of the article of association that an outer limit of five years' duration was prescribed in the matter of her appointment as chairperson.

6. It is now a well-settled principle of law laid down by various decisions of the apex court, that the power of appointment includes the power of removal. The power of removal in the present case flows from the right of appointment by the Administrator under article 68(1) of the articles of association. Once this aspect is kept in mind, it is clear that the

petitioner has not been removed by the board of directors u/s 284 of the Companies Act. It is a re-call of the nomination by the Administrator under article 68(1) read with article 68(4) of the articles of association. As a nominee of the Government, the petitioner represented the largest shareholder in the company and the Government was entitled to revoke the said nomination/appointment as a matter of right which flowed from articles 68(1) and 68(4) with regard to non-rotational director appointed by the Administrator. Section 284 of the Companies Act deal with removal of directors by the company. It requires a company to pass an ordinary resolution to remove a director (not being a director appointed by the Central Government u/s 408 of the Companies Act). Section 274 deal with disqualification of directors whereas section 284 of the Companies Act deals with removal of directors. In the present case, neither the show-cause notice nor the order of removal indicates any exercise of power u/s 284 of the Companies Act. The reason is obvious. The company has not removed its director but the Government or the Administrator has revoked the nomination, and as a consequence, the appointment which was earlier made under article 68(1) read with article 68(4) of the said articles of association stood terminated. A clear dichotomy is prevalent in the present case. The Government's right to revoke the appointment under article 68(1) is not the same thing as removal of a director by the company u/s 284 of the Companies Act. The two operate in different spheres. If this dichotomy is kept in mind, it is clear that power to revoke the appointment made under article 68(1) flows from the power to appoint under article 68(1) and it has nothing to do with the removal of a director u/s 284 of the Companies Act. The Government can always recall its nominee if it is satisfied that it is not in the interest of the company to continue the nominee to act on its behalf in the board of directors. It may be consequential that with the power to recall the nomination the petitioner ceases to be a director and chairperson. In the circumstances, there is no merit in the contention raised on behalf of the petitioner that the Government had no authority to issue the impugned order of removal under the said articles of association. There is also no merit in the contention of the petitioner that has the procedure u/s 284 of the Companies Act been followed, the petitioner could not have been removed and that the Government issued the impugned order of removal to circumvent section 284 of the Companies Act. Once the above concepts are kept in mind and once it is found that the two concepts operate in different spheres, there is no question of circumvention of the section 284 of the Companies Act. The learned Advocate-General has rightly submitted that the power of appointment will include the power of removal under article 68(1) read with article 68(4) of the articles of association. He has relied upon the judgments of the Supreme Court in that connection. However, it is not necessary to deal with those judgments as it is now a well-settled principle of law that the power to appoint includes the power to remove. However, one aspect needs to be clarified. It was submitted by the learned Advocate-General that, in the present case, the entire matter falls in the realm of contract. He submitted that the articles of association are an agreement between the persons who form the company. In the present case, the Government is the majority shareholder of the respondent No. 2 corporation. As a majority shareholder in a Government company, the Government is given a right to appoint non-rotational directors in contradistinction to

rotational director, appointed by the company at the annual general meeting. He further submitted that it is the Administrator who decides the period of tenure of the chairperson. He further submitted that the totality of facts mentioned above clearly indicate that the impugned action of removal flows from the power of appointment provision. Accordingly, it was submitted that the entire action is under the articles of association and it is a matter of contract and it is not a matter of statutory provision. In the circumstances, it was submitted that a writ petition under article 226 of the Constitution was not maintainable. In this connection, the learned Advocate-General relied upon certain judgments, both of the Bombay High Court as also of the apex court, to indicate that the articles of association and the rights which flow therefrom are not matters which confer any status in law in favour of the petitioner and the appointment of the petitioner was purely contractual. In this connection, he relied upon the judgment of the Bombay High Court in the case of [Major General Shanta Shamsher Jung Bahadur Rana Vs. Kamani Brothers Private Ltd. and Ors.](#); In that case, a suit was filed by the plaintiff, a joint managing director of the company for a declaration that the resolution passed by the board of directors removing the plaintiff was inoperative in law and that he was entitled to continue as a joint managing director and to exercise all rights and powers in that connection. The plea of the plaintiff was rejected by the High Court on the ground that such a declaration cannot be given u/s 42 of the Specific Relief Act. Section 42 provides for making a declaratory decree, that is, making a decree in respect of legal character or a legal status or in respect of right to property. It was held by the High Court that the expression "legal character" in section 42 was the same as a legal status. It was held that the managing director cannot be said to have a legal status because the powers or rights of the managing director flow from the agreement or resolution or the articles of association. It was further held that when rights were claimed under a contract, the same would not amount to legal status/legal character u/s 42 of the Specific Relief Act and as such a managing director cannot be said to have a legal status. To the same effect is the ratio of the judgment of the Supreme Court in the case of [Radhakrishna Agarwal and Others Vs. State of Bihar and Others.](#) The ratio of the said judgment proceeds to lay down that at the time of entry into the field of consideration of persons with whom the Government could contract, the Government acts in an executive capacity and it is bound by the obligations which arise in dealings between the State and the citizen. But after the State enters into the field of ordinary contract, the relations are no longer governed by constitutional provisions but by legally valid contracts in which case violation of article 14 does not arise. In the present case, we agree with the learned Advocate-General that right from the inception till the order of removal the entire transaction falls in the contractual realm. The articles of association are merely an agreement between the persons who form the company. The appointment of the petitioner under article 68(1) is also based on the contractual rights which are given to the Administrator. In the circumstances, the entire matter falls in the realm of contract and the impugned order of removal cannot be impugned by a writ petition under article 226 of the Constitution. Learned counsel for the petitioner, however, cited the judgment of the Supreme Court in [Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others.](#) The said case dealt with appointment

of a district Government counsel by the State Government. The question arose as to whether removal en bloc of all district Government counsel by the State Government was ultra vires article 14. The Supreme Court found that the presence of public element was attached to the office of the district Government counsel and, in the circumstances, it attracted article 14 of the Constitution. In that connection, it was observed that the requirements of article 14 and contractual obligations are not alien concepts but both the concepts can co-exist. The Constitution does not permit unfairness in any actions of the State in any sphere of activity (including in matters of contract). There is no dispute regarding the ratio of the said decision. In the present case, there is no presence of public element attached to the office of non-rotational director. Secondly, as mentioned hereinafter, we have come to the conclusion that reasons have been given in the show-cause notice which warranted the Government to revoke the appointment of the petitioner as chairperson prior to the expiry of the contract in 1995. The said reasons do not constitute grounds for removal of a director u/s 284 of the Companies Act. The said reasons are only to terminate the contract before 1995 and accordingly we have come to the conclusion that the impugned order of removal is not punitive in nature as alleged. The Government had adequate material to terminate the contract before 1995. In the circumstances, the ratio of the said judgment in the case of [Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others](#), does not apply to the present case. It may also be observed that the reliefs sought by the petitioner in effect amount to enforcement of the articles of association which cannot be granted in exercise of jurisdiction under article 226 of the Constitution. In this connection, the judgment of the Supreme Court in the case of Life Insurance Corporation of India v. Escorts Ltd. [1986] 59 Comp Cas 548; AIR 1986 SC 13

7. 70, squarely applied to the facts of the case. While dealing with the contention of maintainability of the petition, the apex court was pleased to observe in paragraph 102 (p. 637 of 59 Comp Cas) of the said judgment as follows :

"... if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligation or obligation arising out of the contract, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of the State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field... The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder"

8. The above paragraph is the relevant ratio of the judgment on the question of the maintainability of the writ petition. In the present case, the State has ventured into the corporate world by purchasing the shares of the corporation and the right which it has exercised regarding the appointment and the removal of the petitioner as a director is the right available to the Government as a shareholder qua non-rotational directors. In the circumstances, we fail to appreciate how a writ petition under article 226 of the Constitution could be entertained in the present case.

Contention (b) As regards this contention of the petitioner, there is no merit in the case of the petitioner that the Government has acted arbitrarily and with a mala fide intent. The show-cause notice to the petitioner clearly indicates that the Government as a shareholder came across certain alleged irregularities. By reply to the said show-cause notice, the said irregularities came to be denied. It is true that the impugned order of removal refers to misuse of power by petitioner and also to gross irregularities. However, reading the impugned order of removal as a whole, it appears that the matter was considered at length; the comments of the managing director were considered and it is only thereafter that the Government formed its opinion on the basis of the material before the Government. Learned counsel for the petitioner relied upon paragraph 3 of the impugned order and submitted that the said order was punitive in nature and it constituted a stigma on the character of the petitioner and, in the circumstances, rule of natural justice demanded a proper opportunity to be given to the petitioner, which was not given before passing the impugned order. It is a well-settled principle of law that when orders of removal are passed, the text of the order is not conclusive to decide whether it was by way of punishment or whether it was an order of simple discharge/revocation of appointment. The court is entitled to lift the veil by looking at all the surrounding facts to ascertain the true intent of the Government. Applying the above test, the facts in this case indicate that the petitioner was a political activist; that her appointment was to the post of director as she was an MLA at the relevant time; that her appointment was purely political; that her tenure as chairperson was for five years and that her tenure was governed by contract and not by statutory provision and if the Government seeks to terminate the contract before its due date of expiry in 1995 then the Government is bound to give reasons for terminating the contract before 1995 and in such a case, the Government does not act as a State or a statutory authority but as a shareholder. The reasons given in the show-cause notice do not constitute grounds of removal but they constitute the reason/material on the basis of which the Government decided to cancel the appointment of the petitioner as its nominee before the due date of expiry of the contract in 1995. Once it is held that there was sufficient material before the Government to revoke the contract before 1995 as borne out by the reasons given in the said show-cause notice then the said reasons constitute adequate material on the basis of which opinions formed by the Government to cancel the appointment before the expiry of five years. Once it is held that the said reasons constitute material for revocation of the appointment before expiry of the contract, then the order impugned will not constitute punishment or stigma and in the circumstances the impugned order cannot constitute

punishment as contended by learned counsel for the petitioner. It may also be noted that the petitioner had no vested right to continue as chairperson for five years. On the other hand, under article 68(1) and article 68(4) of the articles of association, the Government had absolute discretion in the matter of appointment and removal of nominees who represent the Government on the board of directors of the company as non-rotational directors. As the Government has exercised the said discretion based on adequate material, there is no reason to interfere with the exercise of the said discretion under article 226 of the Constitution. In the present case, the Government has exercised the discretion properly in terminating the contract before its due date of expiry. It does not constitute a ground of removal as alleged by the petitioner. There was no vested right in the chairperson to continue for the entire period of the contract and in the case of premature termination it is a well-settled principle of law that the right of the petitioner in such an eventuality was only to claim compensation for the unexpired period. In the circumstances, both in law as well as in the facts and circumstances of the case, there is no reason to interfere with the impugned order of removal as well as the impugned notification in favour of respondent No. 3 under article 226 of the Constitution.

9. A word of caution, however, is warranted. It is true that the Government has absolute discretion to re-call its nominee as a majority shareholder in Government companies but that discretion must be exercised based on adequate material. While drafting the orders of removal, the Government should be very careful. In cases where the Government intends to revoke the contract and not to remove its nominee by way of punishment, the Government's order of removal should be very precise and it should not create an apprehension in the public mind that the order of removal was on account of misconduct/irregularities committed by the person concerned.

10. In the circumstance, there is no merit in the writ petition. The writ petition fails. Rules are discharged with no order as to costs.