



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.3695 OF 2025

Miss Pritam Dinkar Adhav
Age 42 years, Occ : Business
R/at 23, Indrayani Society,
Deolali Camp, Nashik

... Petitioner

Versus

1. Union of India
Through its Defence Secretary
Ministry of Defence
Government of India
101-A, South Block,
New Delhi 110011.
2. The Deolali Cantonment Board
A Board incorporated under the
Provisions of the Cantonments Act,
2006, through its
Chief Executive Officer
Having address at Connaught Road,
Deolali Cantonment, Nashik-422401.
3. The Principal Director
Defence Estates, Ministry of
Defence, Southern Command,
Pune, having address at
Kondhwa Road, Near ECHS
Polyclinic, Pune Cantonment,
Pune, Maharashtra 411 001.
4. The Director General, Defence
Estates, Southern Command

SQ Pathan

Raksha Sampada Bhawan, Ulaan
Baatar Marg, New Delhi – 110010.

5. Mr. Sachin Suresh Thakre
Age 54 years, Occ : Business
R/at. Shivraj Bungalow,
Indrayani society, Deolali Camp
Nashik – 422 401.

... Respondents

Mr. A.A.Kumbhakoni, Senior Advocate with Mr. Tejas D.
Deshmukh, Mr. Ronak Utagikar & Mr. Onkar Somvanshi i/b
Mr. Sagar Kursija for the Petitioner

Ms. Sangeeta Yadav for the Respondent Nos.1, 3 and 4

Mrs. Neeta Masurkar for the Respondent No.2

Mr. Rajiv Patil, Senior Advocate with Mr. Ajinkya Jaibhave i/b
Ms. Anusha Pradhan Jaibhave for the Respondent No.5

CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.
RESERVED ON : 8th AUGUST 2025
PRONOUNCED ON : 3rd NOVEMBER 2025

JUDGMENT (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 Rule. Mr. Khandeparkar, Senior Counsel waives
service on behalf of the Respondent Nos.1, 3 and 4. Mrs. Neeta

SQ Pathan

Masurkar waives service on behalf of the Respondent No.2. Mr. Rajiv Patil, Senior Counsel waives service on behalf of the Respondent No.5.

3 Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

4 At the outset, I may note that I am delivering a separate judgment, as my learned Sister and I have taken divergent views on the issues arising in the petition, and consequently, on the conclusion.

5 By this petition, the Petitioner has impugned the Notification dated 06.03.2025, issued by the Ministry of Defence, whereby the Petitioner's name, as a nominated member of the Cantonment Board, Deolali, was substituted with that of Respondent No.5–Sachin Thakre. The Petitioner, therefore, seeks quashing and setting aside of the said Notification. Consequently,

SQ Pathan

the Petitioner also seeks a direction to the Respondents to restore the Notification dated 03.01.2025, issued by the Respondent No.1, insofar as it nominates the Petitioner as a member of the Deolali Cantonment Board.

6 A few facts which have a bearing on and are necessary for deciding this petition, are as under: -

On **05.02.2021**, the Central Government (Respondent No.4) issued a notification varying the constitution of certain Cantonment Boards, which included the 2nd Respondent-Board.

On **12.11.2021**, the Central Government issued a notification nominating civilian members to certain Cantonment Boards, which included the 2nd Respondent-Board. Accordingly, the Petitioner was nominated as a member of the 2nd Respondent-Board, with effect from 12.11.2021 till 10.02.2022.

SQ Pathan

On **07.02.2022**, the Central Government, by a further notification again varied the constitution of the 2nd Respondent-Board, with effect from 11.02.2022, for a further period of six months.

On **05.08.2022**, the Central Government by a further notification again varied the constitution of 2nd Respondent-Board, for a further period of six months, with effect from 11.03.2022.

Pursuant thereto, vide Notification dated **07.02.2023**, the Petitioner came to be nominated again as a member of the 2nd Respondent-Board, for a period of six months, with effect from 11.03.2023.

It appears, and this fact is not disputed, that vide Notification dated 17.02.2023, the Central Government notified holding of ordinary elections to certain Cantonment Boards;

SQ Pathan

however, by a subsequent Notification dated 17.02.2023, the same came to be rescinded, and hence, elections could not be held.

Hence, vide Notification dated **03.08.2023**, the Central Government, by a further Notification, varied the constitution of the 2nd Respondent-Board for a period of six months, with effect from 11.08.2023.

Accordingly, the Central Government, vide Notification dated **04.08.2023**, nominated the Petitioner as a member of the 2nd Respondent-Board for a period of six months, with effect from 11.08.2023.

Again, by a further Notification dated **30.01.2024**, the Central Government, varied the constitution of the 2nd Respondent-Board, for a period of one year, with effect from 11.02.2024.

SQ Pathan

Accordingly, vide Notification dated **31.01.2024**, the Petitioner came to be nominated as a member of the 2nd Respondent-Board for a period of one year, with effect from 11.02.2024.

Pursuant thereto, the 2nd Respondent-Board, in its meeting, considered and noted the Notification dated **03.01.2025**, appointing the Petitioner as a member of the said Board, for a period ending 10.02.2026.

It appears that thereafter, Respondent No.4 was requested, vide email dated **29.01.2025**, to give a recommendation for nomination of Respondent No.5 to the 2nd Respondent-Board.

Vide communication dated **30.01.2025** issued by the office of the Respondent No.4 to Respondent No.3, the latter was called upon to examine the issue of recommendation of the Respondent No.5 and to give its opinion thereon. Accordingly,

SQ Pathan

Respondent No.3 sent a letter dated 31.01.2025 to the 2nd Respondent-Board, forwarding the communication dated 30.01.2025, for necessary action.

On **24.02.2025**, the Petitioner took oath as a member of the 2nd Respondent-Board, in a meeting of the said Board.

Pursuant to the oath, the Petitioner has been functioning as a nominated member of the 2nd Respondent-Board. The Petitioner has thus been functioning as a member of the said Board since 2021.

It is the Petitioner's case that she learnt that the process for nominating Respondent No. 5 was under consideration due to political interference, although her tenure was to end on 10.02.2026. Pursuant to the said information, the Petitioner applied under the Right to Information Act, 2005, seeking certain documents pertaining to the process of

SQ Pathan

nomination of Respondent No. 5 in her place. The Petitioner received the documents sought, including the opinion of the President of the 2nd Respondent-Board, which clearly opined that there was no reason to replace the Petitioner as the nominated member of the said Board.

However, on **06.03.2025**, the Central Government issued a notification substituting the Respondent No.5 as a nominated member of the 2nd Respondent-Board in place of the Petitioner.

7 Being aggrieved by the same, the Petitioner has filed this petition, challenging the aforesaid Notification.

SUBMISSIONS OF MR. KUMBHAKONI, Learned Senior Counsel for the Petitioner:

8 Mr. Kumbhakoni assailed the impugned notification dated 06.03.2025, on several counts:

SQ Pathan

(i) That once the Central Government had notified the varied constitution of the Respondent No. 2–Deolali Cantonment Board, vide Notification dated 03.01.2025 (with effect from 11.02.2025), for a period of one year, i.e., till 10.02.2026, pursuant to Section 13(3) of the Cantonments Act, 2006, (the Petitioner’s tenure was to continue until 10.02.2026), the impugned Notification dated 06.03.2025, issued under the very same provision, ‘substituting’ the Respondent No.5 in place of the Petitioner, was *ex facie* illegal, and without any jurisdiction/power / authority.

(ii) That the power to vary the constitution of the Board, does not include the power to ‘substitute’ a member, more particularly, when a specific power to remove a member is provided under the Act.

(iii) That under the Cantonments Act, the power to vary,

i.e., to appoint a new person as a nominated member, would arise; only - (a) where a nominated member is sought to be removed, as provided under Section 34 of the Act; and (b) where a vacancy arises.

Thus, unless and until the Petitioner is removed from her post, or the seat becomes vacant, the question of nominating the Respondent No. 5 in place of the Petitioner does not arise.

(iv) That nomination could have been done only 'in consultation with the General Officer Commanding-in-Chief, the Command (GOC-in-C)', and no such consultation was undertaken. He submits that infact, the Respondent No. 2 Board had clearly opined that the name of the Respondent No.5 could be considered only after the expiry of the present Board's term on 10.02.2026.

(v) That two other members of the Board, appointed vide earlier Notification dated 03.01.2025, have not been

SQ Pathan

replaced/substituted and that the Petitioner, without any valid reason, has been singled out by the said substitution. That the said act, therefore, smacks of arbitrariness and is wholly without jurisdiction/ power/ authority. Further, the Petitioner was not even issued a show cause notice, resulting in a clear breach of the principles of natural justice.

(vi) That unless a specific power is conferred under the Act for ‘substitution’, which is completely absent, the impugned Notification has to be considered as one issued without any power/authority of law. The mere power to appoint/nominate will not, by itself, include the power to ‘substitute,’ since the power to nominate arises only in two contingencies:

- (a) on removal; and
- (b) on a resultant vacancy.

(vii) That though the impugned Notification is styled as an ‘amendment’ by way of ‘substitution,’ in fact and in law, it

amounts to a 'removal' of the Petitioner, which has been done without following the due procedure, much less the one prescribed under Section 34 of the Cantonments Act.

(viii) That the language employed in Sections 34 r/w 35 of the Act, i.e., the 'power of removal', applies equally to 'any member,' including a nominated member, and not merely to an elected member.

(ix) That when the Act contains a specific provision for the 'removal' of 'any member' under Section 34, there is no scope whatsoever for importing into the Act any provision of the General Clauses Act. That no doubt, the 'power to appoint' includes the 'power to remove'; however, when the statute itself expressly provides the grounds and procedure for removal, including adherence to the principles of natural justice under Section 34(4), the provisions of the General Clauses Act cannot be invoked or read into the Cantonments Act.

(x) That the principle of the ‘Doctrine of Pleasure’ and/or ‘Doctrine of At-Will’ will have no application, having regard to the clear and unambiguous provisions of the Act; that the said doctrine will apply only where the same is expressly incorporated in the statute/Act; or where it can be read into by necessary implication, by virtue of the language employed in the statute; and that if the said doctrine were to be read despite there being a specific provision under the Act, the same would amount to legislating, which cannot be done.

(xi) That the impugned Notification has been issued without application of mind and constitutes an arbitrary exercise of power.

(xii) Without prejudice to the aforesaid grounds, it is submitted that no satisfaction, as contemplated under Section 13(1) of the Act, has been recorded by the Central Government.

SQ Pathan

9 Mr. Kumbhakoni, in support of his submissions,
placed reliance on the following judgments:

- (i) *Bhanwarlal v. State & Ors.*¹
- (ii) *B. Krishan v. Union of India & Ors.*²
- (iii) *Ramesh Bhauraoji Girde & Anr. v. State of Maharashtra & Ors.*³
- (iv) *State of Madhya Pradesh v. Ajay Singh & Ors.*⁴
- (v) *Jeevanrao Vishwanathrao Gore v. State of Maharashtra & Ors.*⁵
- (vi) *Dnyaneshwar Digamber Kamble v. State of Maharashtra & Ors.*⁶
- (vii) *B. P. Singhal v. Union of India & Anr.*⁷
- (viii) *Supertech Ltd. v. Emerald Court Owner Resident Welfare Association & Ors.*⁸
- (ix) *Shaikh Mahemud s/o. Shaikh Maheeb v. State of Maharashtra.*⁹

1 2001 SCC OnLine Raj. 72.
 2 2004 SCC OnLine Del. 936.
 3 1983 SCC OnLine Bom. 309.
 4 (1993) 1 SCC 302.
 5 2015 SCC OnLine Bom. 3383.
 6 2016 (1) Mh.L.J. 602.
 7 (2010) 6 SCC 331.
 8 (2023) 10 SCC 817.
 9 2021 (5) Mh.L.J. 391.

**SUBMISSIONS OF MR. ANIL SINGH, Learned A.S.G., on
behalf of Respondent Nos.1, 3 and 4:**

10 Per contra, Mr. Anil Singh, learned A.S.G., also took us through the various provisions of the Cantonments Act with which we are concerned. He opposed the petition on the following grounds:

(i) That Section 13(1) of the Act deals with the power of the Central Government, and that the satisfaction of the Government is a pre-requisite only for varying the constitution of the Board, either on account of military operations or for the administration of the Cantonment. It is submitted that the Petitioner has not assailed the decision to vary the constitution of the 2nd Respondent-Board under Section 13(1) of the Act in the present petition.

SQ Pathan

(ii) that the Petitioner herself was a nominated member pursuant to notifications issued from time to time (varying the constitution of the Board) under Section 13 of the Act, right from 2021 until she was substituted in terms of the impugned notification. It is contended that once the constitution of the Board is varied by a declaration through a notification, the Central Government has the right to nominate a member not being a person in the service of the Government, in consultation with the GOC-in-C. It is further contended that the right to nominate includes the right to replace or substitute the nominee, and that the said right vested in the Central Government is absolute and unfettered.

(iii) That the Central Government's power to nominate a person under Section 13(3) of the Act includes the power to remove such person. Reliance is placed on Section 16 of the General Clauses Act, 1897, which contemplates that where, by any Central Act or Regulation, a power to make any appointment

is conferred, then, unless a different intention appears, the authority having for the time being, power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. Reliance is also placed on Section 21 of the General Clauses Act, which provides that where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws, is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

(iv) That reliance placed by the Petitioner on Section 34 of the Act is devoid of merit and is misconceived. It is submitted that the Petitioner was not removed under Section 34 of the Act; that the Petitioner, being a nominee of Respondent no. 1, was merely substituted by Respondent No. 5, since the office held by the Petitioner was at the pleasure of Respondent No. 1. Thus, it was

SQ Pathan

contended that the Petitioner had no vested right to continue holding the office.

(v) That the Petitioner was replaced by Respondent no. 5 after due consultation with the authorities as contemplated under the Act. Reliance was placed on the correspondence between the Chief Minister, Maharashtra, and the Ministry of Defence during the period 20.01.2025 to 10.02.2025, leading to the issuance of the impugned communication dated 06.03.2025.

(vi) That the Petitioner's argument regarding the need for three separate steps, namely, removal, vacancy, and then nomination, is misconceived, as that would require the issuance of three separate notifications, which is clearly not contemplated under the Act.

(vii) That the satisfaction of the Central Government is required only for varying the constitution of the Board and not its

SQ Pathan

composition. It is further contended that once the notification varying the constitution is published, the Board shall comprise three members, one amongst them being a nominee of the Central Government; and that once the nominee i.e., the Petitioner in the present case, ceases to enjoy the confidence or pleasure of the Government, it was open for the Government to nominate another member, i.e., Respondent no. 5, in place of the Petitioner; and that the said right of the Central Government is unfettered.

11 Mr. Singh, learned ASG placed reliance on the following judgments in support of his aforesaid submissions:

- (i) *Om Narain Agarwal & Ors. v. Nagar Palika Shahjahanpur & Ors.*¹⁰
- (ii) *Lekhraj Sathramdas Lalvani v. N. M. Shah, Deputy Custodian cum Managing Officer, Bombay & Ors.*¹¹
- (iii) *Krishna s/o. Bulaji Borate v. State of Maharashtra & Ors.*¹²

10 (1993) 2 SCC 242.

11 1965 SCC OnLine SC 8.

12 (2001) 2 SCC 441.

- (iv) *Bharat Singh & Ors. v. State of Haryana & Ors.*¹³
- (v) *Akella Lalitha v. Konda Hanumantha Rao & Anr.*¹⁴
- (vi) *Ramhari Dagadu Shinde & Ors. v. State of Maharashtra & Ors.*¹⁵
- (vii) *Som Dutt & Ors. v. State of Haryana & Ors.*¹⁶
- (viii) *State of Maharashtra v. Shaikh Mahemud & Anr.*¹⁷
- (ix) *B. P. Singhal v. Union of India & Anr. (supra)*
- (x) *Dr. Aasif G. Shaikh v. Industry, Energy and Labour Department, State of Maharashtra & Ors.*¹⁸

12 Mr. Rajiv Patil, learned Senior Counsel, appearing for the Respondent No.5, and Ms. Masurkar, learned Special Counsel, appearing for the Respondent No.2 supported the submissions advanced by Mr. Singh, learned A.S.G. Mr. Patil also placed reliance on the following decisions:

- (i) *Om Narain Agarwal (supra)*
- (ii) *Ram Lok & Ors. v. State of H.P. & Anr.*¹⁹

13 (1988) 4 SCC 534.

14 2022 SCC OnLine SC 928.

15 2023 SCC OnLine Bom. 1215.

16 2016 SCC OnLine P&H 9456.

17 (2022) 18 SCC 573.

18 2016 SCC OnLine Bom. 8135.

19 CWP No.144 of 2023 dated 12th April 2023 (High Court of Himachal Pradesh Shimla)

(iii) *Krishna v. State of Maharashtra (supra)*

(iv) *PU Myllai Hlychho & Ors. v. State of Mizoram & Ors.*²⁰

ANALYSIS:

13 Keeping in mind the provisions of the Cantonments Act, with which we are concerned, and the judgments relied upon by the parties, two questions essentially arise for our consideration:

(i) Whether the Cantonments Act is a complete code in itself; and, if so, whether the power of the Central Government to nominate a member to the Board, or to vary the constitution of the Board, includes the power to substitute a nominated member without resorting to Section 34 of the said Act; and whether the General Clauses Act would have any application ?

²⁰ (2005) 2 SCC 92.

(ii) Whether the ‘Doctrine of Pleasure’ applies to the provisions of the Act; that is to say, whether the Central Government can remove/appoint/ substitute any member at its will/pleasure?

14 At the outset, I may note that it is well settled that the application or invocation of the General Clauses Act would arise only where, and when, there is a dispute or conflict between statutes, or inconsistencies within a particular statute. The very object of the General Clauses Act is to standardize legal language and principles by providing uniform definitions, common rules for interpretation, and standard clauses for Central Acts and Regulations, thereby preventing ambiguities and inconsistencies across various statutes. It acts as a single reference for terms and rules that would otherwise need to be repeated in many individual laws, thereby ensuring consistency in legal interpretation. The General Clauses Act is an important statute and is resorted to in order to ensure clarity and consistency; it

serves as an essential reference for legal draftsmen and contributes to continuity and coherence within the broader legal framework.

15 Thus, the first two questions that beg an answer are;
(i) Is there any ambiguity in the Cantonments Act warranting the application of the General Clauses Act or resort to its provisions? and (ii) whether an authority vested with the power to nominate also enjoys the power to remove, keeping in mind the provisions of the Cantonment Act? My answer is in the negative, for the reasons stated hereunder:

16 The aforesaid questions/issues can be answered and resolved after considering the relevant statutory provisions of the Cantonments Act.

17 While Mr. Kumbhakoni urges us to interpret Section
13 of the Act, requiring the `satisfaction of the Central

Government’ as a pre-requisite, namely, for military operational interests or for the administration of the cantonment, whilst exercising its power to vary not only the constitution of the Cantonment Board, but also for nominating a member under Section 13(3) of the Act, Mr. Singh would want us to hold that there is no element of satisfaction required to change the composition of the Board, and that the satisfaction contemplated under Section 13 is only for varying the constitution of the Board.

18 Sections 13, 34 and 35 of the Cantonment Act with which we are concerned read thus:

“13. Power to vary constitution of Boards in special circumstances. -

(1) Notwithstanding anything contained in section 12, if the Central Government is satisfied,—

(a) that by reason of military operations, it is necessary, or

(b) that, for the administration of the cantonment, it is desirable, to vary the constitution of the Board in any cantonment under this section, the Central Government may, by notification in the Official Gazette, make a declaration to that effect.

(2) Upon the making of a declaration under sub-section (1), the Board in the cantonment shall consist of the following members, namely: -

- (a) the Officer Commanding the station,*
- (b) the Chief Executive Officer, and*
- (c) one member, not being a person in the service of the Government, nominated by the Central Government in consultation with the General Officer Commanding-in-Chief, the Command.*

(3) The nomination of a member of a Board constituted under this section, and the vacancy in the membership thereof shall be notified by the Central Government in the Official Gazette.

(4) The term of office of a Board constituted by a declaration under sub-section (1) shall not ordinarily extend beyond one year:

Provided that the Central Government may from time to time, by a like declaration, extend the term of office of such a Board by any period not exceeding one year at a time:

Provided also that the Central Government shall forthwith direct that the term of office of such a Board shall cease if, in the opinion of the Central Government, the reasons stated in the declaration whereby such Board was constituted or its term of office was extended, have ceased to exist.

(5) When the term of office of a Board constituted under this section has expired or ceased, the Board shall be replaced by the former Board which, but for the declaration under sub-section (1) or sub-section (4), would have continued to hold

office, or, if the term of office of such former Board has expired, by a Board constituted under section 12.”

“34. Removal of members.-*(1) The Central Government may remove from a Board any member thereof, who-*

(a) becomes or is found to have been at the time of his election or nomination subject to any of the disqualifications specified in sub-section (2) of section 28 or in section 29; or

(b) has absented himself for more than three consecutive meetings or three months (whichever is later) of the Board and is unable to explain such absence to the satisfaction of the Board.

Explanation.-In computing the aforesaid period of three consecutive months, no account shall be taken of any period of absence with the leave of the Board; or

(c) has knowingly contravened the provisions of section 32; or

(d) being a legal practitioner, acts or appears on behalf of any other person against the Board in any legal proceeding or against the Government in any such proceeding relating to any matter in which the Board is or has been concerned or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Board against such person; or

(e) has himself done or aided or abetted encroachments and illegal constructions on defence land in

contravention of the provisions of this Act and the rules and bye-laws made thereunder.

(2) The Central Government may remove from a Board any member who, in the opinion of the Central Governments, has so abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interests.

(3) The General Officer Commanding-in-Chief, the Command may, on receipt of a report from the Officer commanding the station remove from a Board any military officer nominated as a member of the Board who is, in the opinion of the Officer commanding the station, unable to discharge his duties as a member of the Board and has failed to resign his office.

(4) No member shall be removed from a Board under sub-section (1) or sub-section (2) of this section unless he has been given a reasonable opportunity of showing cause against his removal.”

“35. Consequences of removal.-(1) A member removed under clause (b) of sub-section (1) or under sub-section (3) of section 34 shall, if otherwise qualified, be eligible for re-election or re-nomination.

(2) A member removed under clause (c) or clause (d) of sub-section (1) of section 34 shall not be eligible for re-election or nomination for the period during which, but for such removal, he would have continued in office.

(3) A member removed under sub-section (2) of section 34 shall not be eligible for re-election or nomination until the expiry of three years from the date of his removal.”

19 Having analysed the aforesaid provisions, I am of the opinion that Section 13(3) cannot be read in isolation but must be harmoniously construed with Section 13(1), which mandates the recording of satisfaction for varying the constitution of the Board. Such satisfaction is a condition precedent, not only for varying the constitution but also for effecting nomination of a member under Section 13(3). To hold otherwise would render Section 13(1) nugatory and permit arbitrary substitutions, which are impermissible in law.

20 The scheme of Section 13 indicates that the power to ‘vary the constitution’ of the Board and the power to ‘nominate members’ are distinct yet interlinked. The Legislature has consciously employed separate sub-sections to ensure that the process of reconstitution remains controlled by express

satisfaction of the Central Government, and that the power of nomination under sub-section (3) does not operate in isolation or permit arbitrary substitution of members. Any contrary interpretation would blur the statutory distinction and defeat the purpose of requiring satisfaction under sub-section (1).

21 The satisfaction contemplated under Section 13(1) is a condition precedent to the exercise of power by the Central Government to vary the constitution of the Board. Such satisfaction must be founded upon relevant material demonstrating that variation is necessary or expedient in the public interest. In the present case, the impugned Notification does not disclose any such satisfaction, nor is there material to indicate that the same was recorded before substituting the Petitioner. The absence of such satisfaction vitiates the exercise of power at its inception. It is well settled that when a statute makes the formation of satisfaction a jurisdictional pre-requisite, its non-existence renders the action void. The power to nominate under

Section 13(3) cannot be read as an independent or unfettered power divorced from the requirement of satisfaction under subsection (1). This principle has been consistently recognised, *inter alia*, in *Barium Chemicals Ltd. v. Company Law Board*²¹, and *Rohtas Industries Ltd. v. S.D. Agarwal*²², wherein the Supreme Court held that statutory “satisfaction” must be real, based on objective material, and not a mechanical exercise of power.

22 Undisputedly, the Central Government, by issuing notifications as contemplated under Section 13(1) of the Act, varied the constitution of the Deolali Cantonment Board. Such notifications were issued from time to time, as the term of office of the Board constituted by such declaration under Section 13(1) of the Act, cannot ordinarily extend beyond one year. It is also uncontested that, these notifications varying the constitution of the Board are not under challenge. Admittedly, the Petitioner herself was nominated as a member under Section 13(2) of the

21 AIR 1967 SC 295

22 (1969) 1 SCC 325

Act, pursuant to the Notification varying the constitution under Section 13(1) of the Act. Her term was extended from time to time, till finally, by the impugned Notification of 06.03.2025, she was replaced/substituted by the Respondent No.5. The difficulty with the impugned action, however, is that while varying the constitution of the Board was permissible, the substitution of the Petitioner midway during her notified tenure is unsupported by any provision of law. The Act provides for the removal of a nominated member only in accordance with Section 34 of the Act. The impugned notification is, therefore, vitiated for want of authority.

23 Mr. Kumbhakoni contends that the Petitioner has a vested right to continue to hold office till the expiry of her term. According to him, she can be removed only by following the procedure provided under Section 34 of the Act, pertaining to the 'removal of members'. He submits that the Petitioner was not given any notice of removal, nor was there any reason recorded

by the authorities to cause her removal. I find force in this contention.

24 Section 34 provides a complete code for the removal of members, which includes the issuance of a show cause notice and adherence to the principles of natural justice. The Petitioner's substitution without compliance with Section 34 amounts to her removal in substance, even if described as a 'substitution'. The authorities could not have bypassed the safeguards under Section 34 by resorting to Section 13(3), which only permits the nomination of a member in consultation with the General Officer Commanding-in-Chief. Infact, the Act does not contemplate the substitution of an existing member without due process. First and foremost, the contention that the Petitioner was removed prior to the expiry of her term is well-founded. There is nothing in Section 13(3) which makes the tenure of such a nominee "at pleasure" of the Government. The doctrine of pleasure is conspicuously absent from the statute and cannot be read into it.

In the absence of such a provision, the tenure of a nominated member, once notified, cannot be curtailed except in accordance with law. In the present case, the Petitioner's tenure was fixed till 10.02.2026. Her substitution on 06.03.2025 without notice, reasons, or a vacancy notification, is arbitrary, illegal and violative of the Act as well as of the principles of natural justice. The impugned notification is therefore liable to be quashed.

25 In substance, therefore, what is described as 'substitution' operates as a removal, for it terminates an existing tenure before its natural expiry. The law attaches importance to the effect of an act rather than its form- '*substantia non verba spectanda*'. Hence, nomenclature cannot disguise the true legal character of the impugned action.

26 In so far as the second contention is concerned, a plain reading of Section 34 of the Act makes it clear that the Central Government is vested with the power to remove from the

Board any member on the grounds specified in the said Section. Section 35 of the Act provides for the consequences of removal. Mr. Kumbhakoni draws our attention to sub-clauses (2) and (3) of Section 35 of the Act, which contain a disqualification for ‘re-election or re-nomination’ of a removed member. Relying on the word ‘re-nomination’ included in the said sub-clause, Mr. Kumbhakoni contends that the consideration of the eligibility of a nominated member contemplated under Section 35(2) and (3) of the Act clearly demonstrates the intention of the Legislature to bring a nominated member also within the scope and ambit of Section 35 of the Act. Hence, according to him, even the removal of a nominated member must be done only under Section 34 of the Act.

27 The legal maxim ‘*qui potest constituere, potest destituere*’ i.e. he who can appoint, can dismiss, is not an unfettered power in public law. In Indian Law, the general

principle is that the power to appoint includes the power to suspend/remove, as per Section 16 of the General Clauses Act. However, this is qualified with “*unless a different intention appears*”. Thus, the question of a nominated member’s removal at the ‘will’ of the Government, is therefore, qualified by the specific provisions of the parent statute, viz., the Cantonments Act.

28 Perused the provisions of Sections 34 and 35 of the Act carefully. On a plain reading, it is evident that the said Sections provide a complete code for the removal and the consequences of the removal of a member, including a nominated member, from the Board. They explicitly address the removal of nominated members, establishing a clear limitation on the Central Government’s power. The use of the word ‘any member’ in Section 34 makes no distinction between an elected or a nominated member.

29 A perusal of Section 34 of the Act, with which we are concerned, clearly reveals the intention of the Legislature. Section 34 vests power to the Central Government to remove 'any member', whether elected or nominated, under this Act, after affording such member an opportunity of being heard. The intention of the Legislature is clear and unequivocal, i.e., no member of the Board should be arbitrarily removed, and that the removal can take place only after complying with the procedure contemplated therein.

30 Once the statute prescribes the grounds and procedure for removal, such removal cannot be effected dehors Section 34. A critical part of Section 34 is the requirement that no member can be removed without being given a 'reasonable opportunity of showing cause against such removal'. This prevents the Government from removing a member arbitrarily 'at will'. In the facts of the present case, there is no allegation made against the Petitioner of having committed any infraction

mentioned in Section 34 of the Act. In such circumstances, the replacement/substitution of the Petitioner, without recourse to Section 34, is clearly unsustainable.

31 Mr. Kumbhakoni has also raised a contention that there was no satisfaction of the Central Government prior to replacing the Petitioner, as required under Section 13(1) of the Act. There is merit in the said submission. A bare reading of Section 13(1) of the Act makes it clear that the satisfaction of the Central Government is a condition precedent to varying the constitution of the Board. The record placed before us does not disclose any such satisfaction having been arrived at, much less recorded, prior to the issuance of the impugned notification. The subsequent correspondence relied upon by the Respondents cannot cure this inherent defect.

32 Once it is determined that the Central Government has the authority to nominate a person to the varied Board, the

power to amend, vary, or rescind such nomination follows. However, this power under Section 16 of the General Clauses Act cannot be exercised in a manner contrary to or inconsistent with the specific safeguards contained in the parent statute. Section 34 of the Act governs the removal of any member, whether elected or nominated. It lists the grounds and procedure for removal and thus overrides any assumption that the appointment of a nominated member confers an unlimited power of removal 'at will', on the Central Government. Section 34 contemplates 'due process', thus, preventing removal at the simple 'will' of the Government. Where the Act prescribes a manner of removal, the same must be scrupulously followed. In the present case, the Central Government could not have invoked Section 16 of the General Clauses Act to remove the Petitioner without recourse to Section 34 of Cantonments Act.

33 It is well settled that the General Clauses Act is a subsidiary interpretative statute. Its provisions operate only where

the parent enactment is silent or ambiguous. Where the parent statute, as in the present case, expressly provides for the manner and grounds of removal, the application of Sections 16 and 21 of the General Clauses Act stands excluded by necessary implication.

34 Admittedly, the Petitioner was nominated vide Notification dated 03.01.2025 for a period of one year, i.e., till 10.02.2026. There is thus no reason why a nominated member should be treated differently or unfairly from an elected member, thereby permitting the Government to change the nomination of a member at its will and pleasure, contrary to the procedure contemplated under Section 34. Thus, the power to appoint a nominated member to a Cantonment Board does not include the power to remove the said member 'at the will' of the Central Government. No doubt, the Government holds the authority to remove nominated members; however, such power is explicitly constrained by the grounds and procedural safeguards specified in the Cantonments Act, particularly, Section 34. This ensures that

removal is based on justifiable cause and not on the arbitrary discretion of the Government. Thus, the power to remove a nominated member is addressed specifically in Section 34 and the same is not dependent on the 'doctrine of pleasure' and as such it requires valid reasons and due process.

35 In this context, it would be apposite to refer to the decision of the Rajasthan High Court in *Kanta Devi and Another v. State of Rajasthan and Others*²³, wherein the said Court was called upon to consider whether the State Government, after nominating members to a Municipal Board under the Rajasthan Town Municipalities Act, could subsequently cancel the said nomination and substitute other persons in their place. The Court, after examining the relevant provisions of the Act and the General Clauses Act, held that once the power of nomination is exercised, the same stands exhausted, and the nominated members acquire the status of 'members nominated under the

23 1956 SCC OnLine Raj 37 : AIR 1957 Raj 134

Act'; that the Government, therefore, cannot rescind or substitute such nominations save in accordance with the express procedure prescribed for removal under the statute. It was further held that Section 21 of the General Clauses Act, which confers the power to amend, vary, or rescind a notification, has no application to such appointments, as the Act manifests a contrary legislative intention by expressly providing for removal under Section 14 thereof. After considering the submissions advanced, the Court, in paragraph 10, held as under:

“10. Now what is the intention of the Act with which we are concerned? That intention, in our opinion, can be gathered from sec. 14 of the Act. That section gives power to the Government to remove any member elected or nominated under this Act after giving him an opportunity of being heard and after such inquiry as it deems necessary, if such member has been guilty of misconduct etc. The intention of the Legislature obviously was that no member of the Board should be arbitrarily removed and that the removal should only take place after a certain procedure had been gone into. In so far as an elected member is concerned, it would not be possible for the Government to remove him unless the procedure provided by sec. 14 of the Act is gone through, whether the elected member has taken the oath and whether the term of the Board has begun or not. The same section viz., sec. 14 applies also to nominated members, and we fail to see why we should put the nominated member in a less advantageous position and why we should hold that there is a reserve in

*Government to change the nomination before the term of the Board begins or the member takes the oath of office. If it was the intention of the Legislature to make a difference between an elected member and a nominated member in this connection, we should have found sec. 14 in two parts - one providing for elected members and the other providing for nominated members and there should have been a specific provision that a nomination of a member may be cancelled by the Government before he takes the seat of office or before the term of the Board begins. **We have no doubt that after the appointment is made and a member is nominated to the Board by the Government under sec. 9, he becomes a "member nominated under this Act", and just as "a member elected under the Act", cannot be stopped from taking his seat after subscribing to the oath, so also "a member nominated under the Act must have the same rights under sec. 14 of the Act.** The two applicants, therefore, became "members nominated under this Act" when they received the orders of nomination on or about the 28th of January 1956. The publication of the order of nomination in the Gazette was, as we have already said, a directory matter and would in no way affect the validity of the order of nomination. We are, therefore of opinion that **the Government having exercised its power under sec. 9 to make a nomination once exhausts that power and cannot nominate another person to the same seat. A second order nominating some other person and cancelling an earlier order of nomination would, therefore, be beyond the jurisdiction of the Government** and the first order must take effect unless it is shown that the first order was issued by mistake of fact, as for example, where the Government nominates A and B as members and somebody in the office issues an order in favour of C and D. Barring such a case, where the first order would amount to no order at all, it is not open to the Government to change the order of nomination once made under Section 9. This is so because the person nominated immediately on the passing of such order becomes "a member, nominated under this Act" and, thereafter he cannot be prevented from taking his seat after subscribing to the oath and can only be removed under sec.14. This section clearly provides a different intention and, therefore, it is not open to the*

Government to exercise the power of removal implied in the power of appointment under sec.16 of the General Clauses Act without recourse to procedure under sec.14 of the Act.”
(emphasis supplied)

36 Learned senior counsel for the respective parties and the learned A.S.G. have relied upon various judicial pronouncements. However, it is not necessary to advert to each of them, as there is no dispute as to the propositions of law enunciated therein. The only question is whether those principles are applicable to the facts of the present case, which must be examined in the context of the statutory framework and the factual matrix before us.

37 No doubt, there is a distinction in the mode of appointment of elected and nominated members, but the removal of both is governed by the same provision, i.e., by resorting to Sections 34 and 35 of the Act. Infact, a plain reading of Section 34 clearly shows that it applies to the removal of “any member”,

irrespective of the type of appointment, i.e., whether elected or nominated.

38 It further provides various grounds for the removal of members and, in sub-section (4) of Section 34, makes it mandatory to provide a reasonable opportunity of showing cause against removal of such member of the Board, as contemplated under sub-sections (1) and (2) of Section 34.

39 Thus, when the provision is clear and unambiguous, the question of invocation of Section 16 of the General Clauses Act, does not arise. It is well settled that Section 16, which provides that the power to appoint includes power to suspend/dismiss, would apply only unless a different intention appears. The intention of the Legislature in Section 34 is clear, that the provision governing removal of members covers both elected and nominated members.

40 In *Om Narain Agarwal v. State of Madhya Pradesh*²⁴, the Supreme Court upheld removal of nominated municipal members at the State's pleasure. That reasoning rested on the U.P. Municipalities Act, 1916, which expressly provided that nominated members hold office during the State's pleasure. No such provision exists in the Cantonments Act, 2006.

41 The contrast with statutes such as the Army Act, 1950 (Section 14), the U.P. Municipalities Act, 1916, and the Nagaur Improvement Trust Act, 1936, all of which expressly incorporate the doctrine of pleasure, underscores its deliberate omission in the Cantonments Act.

42 The principle that appointments terminable at pleasure exclude natural justice has been affirmed in *Krishna v. State of Maharashtra*²⁵ and *State of U.P. v. U.P. State Law Officers*

24 (1970) 2 SCC 554

25 (1995) 2 SCC 345

*Association*²⁶. Yet, those cases involved offices expressly held at pleasure. By contrast, where a statute provides a fixed tenure and a removal procedure, as in the Cantonments Act, the doctrine of pleasure cannot be implied. *Joginder Singh Verma v. State of Himachal Pradesh*²⁷ makes this distinction clear, holding that statutory offices with fixed terms cannot be subjected to implied pleasure unless expressly provided.

43 In *Som Dutt (supra)*, paragraphs 29 and 30, the Punjab and Haryana High Court clarified that pleasure can only be implied where appointments rest solely on governmental discretion and no minimum tenure is fixed. Para 29 reads thus:

“29. The Court held that even where the statute itself does not in express terms provide for the pleasure doctrine, it can be inferred by implication in matters of appointment and removal of Chairman and other high public offices in certain situations viz (i) where appointment is to be made by the Government by nomination on the subjective satisfaction of the

26 (2004) 8 SCC 1

27 (2011) 3 PLR 215

Government; and (ii) when there is no minimum term of office in the statute.”

Both the above conditions are absent in the present case. The Petitioner was appointed for a fixed term ending 10.02.2026, and Section 34 expressly provides the removal procedure.

44 The doctrine of pleasure in India is also circumscribed by constitutional principles. The Constitution Bench held in ***B.P. Singhal (supra)*** in paragraph 22 observed that *“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 the public good”*. For statutory offices like the Petitioner’s, where tenure and removal are codified, compliance with Sections 34 and 35 is mandatory, and invocation of an implied pleasure doctrine is impermissible.

45 The interpretation advanced by the Respondents, if accepted, would vest the Executive with an unguided power to terminate a statutory tenure, which would be inconsistent with the constitutional guarantees of fairness and non-arbitrariness under Articles 14 and 21. The rule of law demands that even in the exercise of administrative discretion, the action must be just, fair, and reasonable. The procedural safeguards in Section 34 embody these very constitutional values.

46 For the reasons recorded above, the notification dated 06.03.2025 substituting the Petitioner with Respondent No.5 is unsustainable in law. The Petitioner's premature removal was effected without adherence to Section 34 of the Cantonments Act, 2006, which prescribes grounds and procedure for removal of both elected and nominated members. The invocation of Section 13(1) or the General Clauses Act cannot override this self-contained code, and the doctrine of pleasure can apply only

where the statute expressly so provides or where such intention can be clearly implied.

47 Mr. Kumbhakoni's submission that despite there being no provision for substitution of a nominated member under the Act, the Petitioner was substituted by Respondent No. 5 through the impugned notification, merits consideration. There is merit in the said submission. The act of the Respondent No. 1 in substituting the Respondent No.5 in place of the Petitioner, appears to be clearly beyond its jurisdiction. Once the power has been exercised by nominating the Petitioner to the Board, the Respondent No.5 could not have been nominated to the same post, without following due procedure as contemplated under the Act.

48 It is trite that where a statute prescribes a particular manner of doing an act, it must be done in that manner or not at all. The Respondent No.1, in bypassing the procedure prescribed under Section 34, has committed a jurisdictional error rendering

the impugned action *void ab initio*.

49 The petition, therefore, deserves to succeed on the aforesaid grounds, namely, that the Petitioner's removal was not in accordance with the procedure contemplated under Section 34, and hence, it is not necessary to consider the other issues raised.

50 Accordingly, I pass the following order:

(i) The Notification dated 06.03.2025 issued by the Ministry of Defence, Government of India, substituting the Petitioner with Respondent No.5 as a nominated member of the Deolali Cantonment Board, is quashed and set aside. The impugned action is declared arbitrary, illegal, and contrary to Sections 13(1) and 34 of the Cantonments Act, 2006.

(ii) The Petitioner is restored to the office of nominated member of the Deolali Cantonment Board and shall be

SQ Pathan

entitled to discharge her functions for the remainder of her fixed tenure, which continues until 10.02.2026.

(iii) It is further declared that satisfaction of the Central Government under Section 13(1) is a mandatory condition precedent for varying the constitution of the Board, and that removal of any member, whether elected or nominated, must strictly conform to the procedure under Section 34. Non-compliance with these provisions renders any substitution null and void.

51 The Rule is made absolute in the above terms. No order as to costs. Petition stands disposed of accordingly.

52 All concerned to act on the authenticated copy of this Judgment.

REVATI MOHITE DERE, J.

SQ Pathan

JUDGMENT:- (*Per Dr. Neela Gokhale, J.*)

1. **Rule.** Rule made returnable forthwith. By consent of the parties, the petition is taken up for final hearing.

2. The present petition assails Notification dated 6th March 2025 issued by the Ministry of Defence substituting the name of the Petitioner, a nominated member of the Cantonment Board, Deolali with the name of the Respondent No.5 namely one Mr. Sachin Suresh Thakre. The impugned Notification is issued under Section 13(3) of the Cantonments Act, 2006 (41 of 2006) (for short 'Act') read with the Notification of the Government of India in the Ministry of Defence dated 31st December 2024. By way of the impugned Notification, an amendment was made by the Central Government, in its Notification dated 3rd January 2025 replacing the Petitioner with the Respondent No.5.

I. BRIEF FACTUAL MATRIX

3. The facts of the case, in brief, are that:

a. The Central Government by its Notification dated 5th February

2021 varied the constitution of the Deolali Cantonment Board along with certain other Boards. Pursuant thereto, by Notification dated 12th November 2021, the Petitioner was nominated as a member of the Cantonment Board by the Central Government in exercise of the power vested in it under Section 13(3) of the Act. The notification declared her nomination to be w.e.f. 12th November 2021 till 10th February 2022 or till the constitution of the Board under Section 12 of the Act.

b. Another Notification dated 7th February 2022 once again varied the constitution of the Deolali Cantonment Board w.e.f. 11th February 2022 for a period of six months. The Petitioner was re-nominated as a member of the varied Board. By a third Notification dated 5th August 2022, the constitution of Board was again varied w.e.f. 11th August 2022 for a further period of six months followed by Notification dated 8th August 2022 re-nominating the Petitioner. It is pertinent to note that the Notification makes no mention of the minimum tenure of the Petitioner.

c. Another Notification dated 6th February 2023 varied the constitution of the Board w.e.f. 11th February 2023 for a period of six

months, followed by a Notification dated 7th February 2023 re-nominating the Petitioner. This Notification is also silent on the tenure of the Petitioner. Thereafter, by Notifications dated 3rd August 2023 and 30th January 2024, the constitution of the Board was once again varied. By Notifications dated 4th August 2023 and 31st January 2024, the Petitioner was nominated as a member of the varied Board without specifying any minimum tenure. Another Notification varying the constitution of the Board was published on 31st December 2024.

d. Pursuant to the variation of the Board, the Petitioner came to be nominated as member of the Deolali Cantonment Board by Notification dated 3rd January 2025 w.e.f. 11th February 2025. This Notification is also silent on the tenure of the Petitioner. All the above Notifications concerned several Cantonment Boards including Deolali Cantonment Board and various persons were nominated to the respective Boards.

e. Pursuant to a consultative process between the Defence Ministry and the General Officer Commanding-in-Chief ('GOC-in-C') as contemplated under Section 13(2)(c) of the Act, a Notification dated 6th March 2025 (the Impugned Notification), was issued replacing the

Petitioner as nominated member on the Board, with the Respondent No.5. Aggrieved by this substitution the Petitioner has filed the present petition for the reliefs as prayed.

4. By order dated 13th March 2025 this Court issued notice to the Respondents. The Petitioner had urged this Court to pass urgent ad-interim order in terms of staying the impugned Notification dated 6th March 2025. For reasons recorded in the said order, this Court was not inclined to grant any ad-interim relief to the Petitioner. Consequently, the Respondent No.5 was inducted as a nominated member by the impugned Notification w.e.f. 6th March 2025, who till date continues to discharge his functions as nominated member of the Deolali Cantonment Board under Section 13(3) of the Act.

5. The Petitioner assailed order dated 13th March 2025 passed by this Court refusing stay to the impugned Notification before the Apex Court, by filing Special Leave Petition (Civil) No.7389 of 2025. By order dated 20th March 2025, the Supreme Court dismissed the SLP observing that it was not inclined to interfere with the order dated 13th March 2025. However, the Apex Court requested this Court to dispose off the present petition within a period of two months from

the date of receipt of the copy of its order. The Apex Court also clarified that it had not expressed any opinion on the merits of the case. In this manner, the petition is placed before us for hearing.

6. Mr. A. A. Kumbhakoni, learned Senior Counsel appeared for the Petitioner. Mr. Anil Singh, learned Additional Solicitor General represented the Union of India and the authorities of the Defence Estates of the Ministry of Defence. Ms. Neeta Masurkar, learned counsel, represented the Deolali Cantonment Board and Mr. Rajiv Patil, learned Senior Counsel represented the Respondent No.5.

II. SUBMISSIONS OF THE PARTIES

A. Submissions of the Petitioner:

7. Mr. Kumbhakoni submitted on behalf of the Petitioner as under:

7.1) There is no specific power conferred on the Central Government by the Act, for substitution of a nominated member. Mere power to appoint/nominate will not by itself include the power to substitute.

7.2) Substitution requires three things (a) removal of the Petitioner;

(b) resultant creation of vacancy; and (c) nomination of the Respondent No.5. Thus, unless and until, the Petitioner is removed from her post, rendering the post vacant, there is no occasion for nomination of Respondent No.5.

7.3) The term of the Petitioner allegedly expires only on 10th February 2026 and the procedure under Section 34 of the Act providing for removal of member is not followed. The Petitioner was not issued a show cause notice and there is a breach of principles of natural justice.

7.4) There was no consultation of the Central Government with the GOC-in-C.

7.5) Other two members of the Board appointed vide original Notification dated 3rd January 2025 are not substituted and the Petitioner is singled out for such substitution, which is without jurisdiction.

7.6) Mr. Kumbhakoni submits that no separate satisfaction is recorded by the Central Government while replacing the nominated member with another.

7.7) The impugned Notification is issued without application of mind and is an arbitrary exercise of power. The doctrine of pleasure has no role to play in the present matter as the term is not expressly used in the provision.

7.8) Mr. Kumbhakoni, learned counsel for the Petitioner placed reliance on the following judgments:

- (i) *Bhanwarlal v. State & Ors.*¹
- (ii) *B. Krishan v. Union of India & Ors.*²
- (iii) *Ramesh Bhauraoji Girde & Anr. v. State of Maharashtra & Anr.*³
- (iv) *State of Madhya Pradesh v. Ajay Singh & Ors.*⁴
- (v) *Jeevanrao Vishwanathrao Gore v. State of Maharashtra & Ors.*⁵
- (vi) *Dnyaneshwar Digamber Kamble v. State of Maharashtra & Ors.*⁶
- (vii) *B. P. Singhal v. Union of India & Anr.*⁷
- (viii) *Supertech Ltd. v. Emerald Court Owner Resident Welfare Association & Ors.*⁸

1 2001 SCC OnLine Raj. 72.
 2 2004 SCC OnLine Del. 936.
 3 1983 SCC OnLine Bom. 309.
 4 (1993) 1 SCC 302.
 5 2015 SCC OnLine Bom. 3383.
 6 2016 (1) Mh.L.J. 602.
 7 (2010) 6 SCC 331.
 8 (2023) 10 SCC 817.

(ix) *Shaikh Mahemud s/o. Shaikh Mahebub v. State of Maharashtra.*⁹

B. Submissions of the Respondent Nos. 1, 3 and 4

8. Mr. Anil Singh, learned Additional Solicitor General, submitted on behalf of the Respondent Nos.1, 3 and 4 as under:

8.1) Mr. Singh took us through the provisions of the Cantonment Act.

According to him, Section 13(1) of the Act deals with the power of the Central Government to vary the constitution of the Board in special circumstances. Satisfaction is a pre-requisite only for varying the constitution of the Board, in respect of the necessity to vary by reason of military operation or for administration of the cantonment. No further satisfaction is required to nominate a member to the varied Board.

8.2) The decision to vary the constitution of the Board under Section 13(1) of the Act is not assailed in the present petition. The Petitioner herself was nominated pursuant to the declaration of the Notification from time to time, to vary the constitution, right

⁹ 2021 (5) Mh.L.J. 391.

from 2021 till she was substituted in terms of the impugned Notification.

8.3) Once the constitution of the Board is varied by declaration of a Notification, the right to nominate a member follows. The provision itself vests the right with the Central Government, to nominate a member not being a person in the service of the Government, in consultation with the GOC-in-C. The right to nominate includes the right to replace and substitute the nominee. This right of the Central Government is unfettered and absolute.

8.4) The Central Government's power to nominate a person under Section 13(3) of the Act includes the power to remove such person. Mr. Singh placed reliance on Section 16 of the General Clauses Act, 1897 which provides that where, by any Central Act/Regulation, a power to appoint is conferred, then unless a different intention appears, the authority having the power to appoint shall also have the power to suspend/dismiss the said person appointed.

- 8.5) Mr. Singh also placed reliance on Section 21 of the General Clauses Act which provides that a power to issue a Notification includes the power to amend, vary or rescind the Notification.
- 8.6) The Petitioner's contention regarding applicability of Section 34 of the Act is misconceived. The Petitioner is not removed under Section 34 of the Act. She, being a nominee of the Respondent No.1 is substituted by the said Respondent, since she held office at the pleasure of the Respondent No.1. She has no vested right to continue holding such an office.
- 8.7) Section 34 of the Act contemplates removal of a member on the ground of misconduct or other reasons specified therein. In the present case, the Petitioner being the nominee of the Central Government, was simply replaced by the Respondent No.5. There is no allegation made against the Petitioner. Section 34 of the Act applies only when there is a removal for cause.
- 8.8) The Petitioner was replaced after due consultation with the authorities required under the Act. Mr. Singh has placed on record correspondence of the Ministry of Defence, Union of

India and the competent Army Authorities between 20th January 2025 and 10th February 2025 leading to the issuance of the impugned Notification dated 6th March 2025.

8.9) The argument of the Petitioner regarding removal, vacancy and nomination is misconceived as that would result in issuance of three Notifications which is not contemplated under the Act.

8.10) The satisfaction of the Central Government is only required to vary the constitution of the Board and not the composition of the Board pursuant to the said variance. Once the Notification to vary is published, the Board will comprise of three members, one amongst them is the nominee of the Central Government, which in this case was the Petitioner. Once she ceases to enjoy the confidence/pleasure of the Government, the Government has an unfettered right to replace her by nominating another member at will.

8.11) Mr. Singh, learned Additional Solicitor General for the Respondents, placed reliance on the following judgments:

(i) *Om Narain Agarwal and Others. v. Nagar Palika*

*Shahjahanpur and Others.*¹⁰

- (ii) *Lekhraj Sathramdas Lalvani (in both the appeals) v. N. M. Shah, Deputy Custodian cum Managing Officer, Bombay & Ors.(in both the appeals)*¹¹
- (iii) *Krishna s/o. Bulaji Borate v. State of Maharashtra & Ors.*¹²
- (iv) *Bharat Singh & Ors. v. State of Haryana & Ors.*¹³
- (v) *Akella Lalitha v. Konda Hanumantha Rao & Anr.*¹⁴
- (vi) *Ramhari Dagadu Shinde & Ors. v. State of Maharashtra, Through its Chief Secretary & Ors.*¹⁵
- (vii) *Som Dutt and Others. v. State of Haryana and Others.*¹⁶
- (viii) *State of Maharashtra v. Shaikh Mahemud & Anr.*¹⁷
- (ix) *B. P. Singhal v. Union of India & Anr. (supra)*
- (x) *Dr. Aasif G. Shaikh v. Industry, Energy and Labour Department, State of Maharashtra through its Secretary, Mantralaya, Mumbai-32 & Ors.*¹⁸

C. Submissions of Respondent No. 5

9. Mr. Rajiv Patil supported the submissions made by the Additional Solicitor General and placed reliance on the following

10 (1993) 2 SCC 242.

11 1965 SCC OnLine SC 8.

12 (2001) 2 SCC 441.

13 (1988) 4 SCC 534.

14 2022 SCC OnLine SC 928.

15 2023 SCC OnLine Bom. 1215.

16 2016 SCC OnLine P&H 9456.

17 (2022) 18 SCC 573.

18 2016 SCC OnLine Bom. 8135.

decisions:

- (i) *Om Narain Agarwal (supra)*
- (ii) *Ram Lok & Ors. State of H.P. & Anr.*¹⁹
- (iii) *Krishna v. State of Maharashtra (supra)*
- (iv) *PU Myllai Hlychho & Ors. v. State of Mizoram & Ors.*²⁰

D. Submissions of Respondent No.2

10. Ms. Masurkar, appearing for the Respondent No.2, also supported the arguments advanced by Mr. Singh and relied on the same decisions cited by him.

III. POINTS FOR DETERMINATION:

11. The following questions arise for determination in the present petition.

- (i) Whether the tenure of a nominated member under Section 13(2) (c) of the Act is co-terminus with the varied Board ?
- (ii) Whether a person nominated to be a member of the varied Cantonment Board can be replaced/substituted in exercise of the

¹⁹ CWP No.144 of 2023 dated 12th April 2023 (High Court of Himachal Pradesh, Shimla)

²⁰ (2005) 2 SCC 92.

doctrine of pleasure by the Central Government or Whether such a member, nominated under Section 13(2)(c), can be removed only under Section 34 of the Act ?

(iii) Once the satisfaction requisite is met to vary the constitution of a Cantonment Board under Section 13(1) of the Act, whether a further and separate satisfaction is contemplated under Section 13(2)(c) of the Act, to nominate/substitute/replace a member of such varied Board ?

IV. ANALYSIS:

12. The Cantonments Act of 1924 was replaced by the present Act of 2006. The object of the Cantonments Act involves administration of Cantonments and meeting the aspirations and needs of the residents of the cantonment area and to provide for (i) greater democratization; (ii) reservation of seats in Cantonment Boards for women, SC & ST; (iii) better financial management; (iv) extension of centrally sponsored development scheme to such areas; and (v) management of defence land and their audits, etc.

13. Under the Act, when any place is declared as a cantonment by the Central Government, a Board shall be constituted within a period

of one year. This period is extendable by a further period of six months for reasons to be recorded in writing. Section 10 of the Act provides for establishment of a Cantonment Board for every cantonment, which shall be a body corporate. Cantonments are divided into four categories as per the strength of the population in each cantonment. The Deolali Cantonment, which is the subject matter of the present proceeding, falls under Category-I, the population of the cantonment exceeding 50,000 people.

14. Cantonment Boards have a unique composition that includes both elected civilian members and nominated military officials. This hybrid structure ensures that the interests of civil population are represented while also safeguarding the military's functional requirement within these strategic areas. While Cantonment Boards are deemed to be municipalities under clause (e) of Article 243P of the Constitution of India, only for the purpose of receiving grants and allocations; or implementing Central Government schemes of social welfare, public health, hygiene etc., they are distinct from other local bodies administered by the State Governments. The Cantonment Boards are administered by the Central Government through the

Defense Ministry.

15. The Defense Ministry of the Central Government exercises oversight on the Board to maintain a delicate balance as it provides financial assistance and controls the administrative functions through the Director General of the Defense Estates ('DGDE'). Thus, the Central Government is also vested with the power to vary the constitution of the Boards in special circumstances. While the regular Cantonment Board constituted under Section 12 of the Act, comprises of both elected civilian members and nominated military officials, a Board varied by the Central Government in special circumstances comprises of 3 members, one of whom is a civilian nominated by the Central Government.

16. For easy and immediate reference, the relevant provisions of the Cantonments Act, 2006 are extracted as under:

"12. Constitution of the Cantonment Boards –(1) Cantonments shall be divided into four categories, namely:-

(i)

(ii)

(iii)

(iv)

(2)

(3) *In Category I Cantonments, the Board shall consist of the following members, namely:-*

- “(a) the Officer Commanding the station as ex officio or, if the Central Government so directs in respect of any cantonment, such other military officer as may be nominated in his place by the General Officer Commanding-in-Chief, the Command;*
- (b) the District Magistrate or an Executive Magistrate not below the rank of Additional District Magistrate nominated by him;*
- (c) the Chief Executive Officer;*
- (d) the Health Officer ex officio;*
- (e) the Executive Engineer ex officio;*
- (f) three military officers nominated by name by the Officer Commanding the station by order in writing;*
- (g) eight members elected under this Act.”*

“13. Power to vary constitution of Boards in special circumstances. —

(1) Notwithstanding anything contained in section 12, if the Central Government is satisfied,—

- (a) that by reason of military operations, it is necessary, or*
- (b) that, for the administration of the cantonment, it is desirable, to vary the constitution of the Board in any cantonment under this section, the Central Government may, by notification in the Official Gazette, make a declaration to that effect.*

(2) Upon the making of a declaration under sub-section (1), the Board in the cantonment shall consist of the following members, namely: —

- (a) the Officer Commanding the station,*
- (b) the Chief Executive Officer, and*

(c) one member, not being a person in the service of the Government, nominated by the Central Government in consultation with the General Officer Commanding-in-Chief, the Command.

(3) The nomination of a member of a Board constituted under this section, and the vacancy in the membership thereof shall be notified by the Central Government in the Official Gazette.

(4) The term of office of a Board constituted by a declaration under sub-section (1) shall not ordinarily extend beyond one year:

Provided that the Central Government may from time to time, by a like declaration, extend the term of office of such a Board by any period not exceeding one year at a time:

Provided also that the Central Government shall forthwith direct that the term of office of such a Board shall cease if, in the opinion of the Central Government, the reasons stated in the declaration whereby such Board was constituted or its term of office was extended, have ceased to exist.

(5) When the term of office of a Board constituted under this section has expired or ceased, the Board shall be replaced by the former Board which, but for the declaration under sub-section (1) or sub-section (4), would have continued to hold office, or, if the term of office of such former Board has expired, by a Board constituted under section 12.”

“34. Removal of members.—*(1) The Central Government may remove from a Board any member thereof, who—*

(a) becomes or is found to have been at the time of his election or nomination subject to any of the disqualifications specified in sub-section (2) of section 28 or in section 29; or

(b) has absented himself for more than three consecutive meetings or three months (whichever is later) of the Board and is unable

to explain such absence to the satisfaction of the Board.

Explanation.—In computing the aforesaid period of three consecutive months, no account shall be taken of any period of absence with the leave of the Board; or

(c) has knowingly contravened the provisions of section 32; or

(d) being a legal practitioner, acts or appears on behalf of any other person against the Board in any legal proceeding or against the Government in any such proceeding relating to any matter in which the Board is or has been concerned or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Board against such person; or

(e) has himself done or aided or abetted encroachments and illegal constructions on defence land in contravention of the provisions of this Act and the rules and bye-laws made thereunder.

(2) The Central Government may remove from a Board any member who, in the opinion of the Central Government, has so abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interests.

(3) The General Officer Commanding-in-Chief, the Command may, on receipt of a report from the Officer Commanding the station remove from a Board any military officer nominated as a member of the Board who is, in the

opinion of the Officer Commanding the station, unable to discharge his duties as a member of the Board and has failed to resign his office.

(4) No member shall be removed from a Board under sub-section (1) or sub-section (2) of this section unless he has been given a reasonable opportunity of showing cause against his removal.”

“35. Consequences of removal.— *(1) A member removed under clause (b) of sub-section (1) or under sub-section (3) of section 34 shall, if otherwise qualified be eligible for re-election or re-nomination.*

(2) A member removed under clause (c) or clause (d) of sub-section (1) of section 34 shall not be eligible for re-election or nomination for the period during which, but for such removal, he would have continued in office.

(3) A member removed under sub-section (2) of section 34 shall not be eligible for re-election or nomination until the expiry of three years from the date of his removal.”

17. Section 13(1) of the Act thus, enables the Central Government to vary the constitution of the Board, if it is satisfied that (a) by reason of military operation or (b) for proper administration of the cantonment, it is so required. Once, the Central Government is

satisfied of the necessity to vary the constitution of a Board pertaining to the aforesaid two reasons, it shall make a declaration to that effect by issuing a Notification in the Official Gazette. The term of office of such a Board under Section 13(1) of the Act shall not ordinarily extend beyond one year. Consequently, the composition of the existing Board constituted under Section 12 of the Act is altered. In addition to two *ex-officio* members, the Central Government, in consultation with the General Officer Commanding-in-Chief nominates a third member, not being in the service of the Government. The Section does not provide for a minimum tenure of the nominated member of the varied Board. Resultantly, successive Notifications nominating the Petitioner as member of the varied Board have not provided a minimum tenure.

18. As stated herein above, the short controversy involves an interpretation of the relevant provisions of the Cantonment Act. Admittedly, the Central Government by successive Notifications contemplated under Section 13(1) of the Act, varied the constitution of the Deolali Cantonment Board. Such declaration of Notification/s was made from time to time as the statute restricted the tenure of the

office of the Board to be less than one year. Admittedly and obviously, there is no challenge to the Notifications varying the constitution of the Board as the Petitioner herself was nominated a member of such a varied Board. She enjoyed successive re-nominations from time to time till finally by the impugned Notification of 6th March 2025, she was replaced by the Respondent No.5.

19. The entire grievance of the Petitioner, as presented by Mr. Kumbhakoni, revolves around the presumption that the Petitioner has a minimum tenure, co-terminus with that of the Board. He submits that, she has a vested right to continue to hold office till the expiry of the term of the varied Board. A plain reading of Section 13 of the Act does not indicate any minimum tenure of members of a varied Board, least of all a nominated member. The Petitioner's argument that her tenure is co-terminus with that of the Board is not reflected in the language of the provision. Furthermore, there is a difference between a Board constituted under Section 12 and that constituted under Section 13(1) of the Act, the latter being constituted in special circumstances. Section 13(4) provides for a term of office of the varied Board to not ordinarily extend beyond one year, however, there is no

mention regarding tenure of an individual member of such a Board. One example also highlights the legislative intent. The Officer Commanding the station is an *ex-officio* member of the varied Board. It is quite possible that such an *ex-officio* member who is a military officer, may be posted to another station, during the tenure of the varied Board, requiring another to take over his place, which renders the assertion of a co-terminus tenure, otiose.

20. On the contrary, Section 14 of the Act provides for the term of office of members appointed or nominated to the original Board constituted under Section 12 of the Act but is prominently silent on the tenure of a member, nominated under Section 13(2)(c) of the Act, such as the Petitioner. In the absence of any minimum tenure prescribed for nominated members of the varied Board under Section 13(2)(c), the tenure of such a nominee is at the pleasure of the Central Government, considering the oversight and administrative authority vested in the Cental Government over Cantonment Boards. The Petitioner's complaint of her unjust removal, midway during the tenure of the varied Board has no substance. Even, the notification/s nominating her as member of the varied Board is silent in that regard.

She cannot claim a minimum tenure, where there is none. Thus, the contention that she was removed prior to the expiry of her term is misconceived. Point no (i) is determined accordingly.

21. Points for determination no. (ii) and (iii) are interlinked and hence, dealt with together. Mr. Kumbhakoni urges us to interpret Section 13 of the Act as requiring satisfaction of the Central Government to exercise its power to vary constitution of the Cantonment Board, to also apply to the power of the Central Government to nominate/replace a member under Section 13(2)(c) of the Act. On the other hand, Mr. Singh would want us to hold that the satisfaction required under 13(1) is limited to the act of varying the constitution of the Board which is distinct from varying the composition of the Board.

22. Mr. Kumbhakoni's contention thus, follows that there was no satisfaction recorded by the Central Government prior to replacing the Petitioner. A plain reading of Section 13 as a whole, clearly demonstrates that sub-section (2) of Section 13 is a follow-through to the act of the Central Government in declaring the variation of the Board. Once the Board stands varied upon the satisfaction of Central

Government, the members mentioned in 13(2)(a), 13(2)(b) and 13(2)(c) take office. The nominated member is one of the three members of a varied Board. 'Satisfaction' is a pre-requisite only to exercise the power to vary the constitution of the Boards in special circumstances. Once the Notification is issued, change in composition follows and separate satisfaction is not contemplated. Section 13(3) of the Act merely requires the nomination of a member to be made in consultation with the GOC-in-C and notified in the Official Gazette. Moreover, the other two members are *ex-officio* members. Hence, question of separate satisfaction in relation to the composition of the varied Board does not arise. It is trite that intention of the legislature must be found by reading the statute as a whole. Every clause of a statute should be construed with reference to context and the other clauses of the Act, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. It is a settled principle of interpretation of statutes that to ascertain the meaning of a clause in a statute, the court must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself. Mr. Kumbhakoni's contention that separate and additional satisfaction is a requisite to nominate/replace a member of a

varied Board is not fathomed from any part of the provision. His contention that the impugned Notification is bad in law, for want of any satisfaction recorded by the Central Government, while replacing the Petitioner with the Respondent No.5 as the nominated member of the Board, fails to impress.

23. Once, it is determined that the Central Government has the authority to nominate a person to the varied Board, the power to amend, vary, rescind, etc. follows. Mr. Anil Singh has invited our attention to Section 21 of the General Clauses Act, 1897 which provides that a power to issue Notification, orders, rules or bye-laws includes the power, exercisable in a like manner to add to, amend, vary any such Notification, order, rules or bye-laws so issued. Once, the Central Government has nominated a person to be a member on the Board by issuing a Notification, the power to vary or amend the said Notification is also within the power of the Central Government. The Central Government has done precisely this in the present case. The Petitioner was nominated for the 4th or 5th time as a member, on the constitution of the Board being varied, by Notification dated 31st December 2024 with effect from 3rd February 2025. This Notification

was superseded by the impugned Notification of 6th March 2025 replacing the Petitioner with the Respondent No.5. The nominating authority is fully empowered to nominate a person and to rescind or cancel his/her nomination and nominate any other person. Suffice to say that the present case is not that of appointment but of nomination. There is a difference between the two. It is the pleasure of the nominating authority, and no right accrues to the nominee to hold office for a particular period. This is also clear from Section 21 of the General Clauses Act, 1897. There is no infirmity in the exercise of legitimate power by the Central Government under the Act, to substitute the Petitioner with the Respondent No. 5

24. I have gone through the decisions relied upon by the learned counsel carefully. In *State of Maharashtra Vs. Shaikh Mahemud (supra)*, the Supreme Court while dealing with an issue involving cancellation of nomination of a member of Waqf Board, set aside the Judgment and Order passed by the High Court, as unsustainable. The High Court had held that the term of office of a member of the Waqf Board under Section 15 of the Waqf Act cannot be curtailed except in the case of disqualification under Section 16 or removal under Section 20 and that the cancellation of appointment was arbitrary. The

Supreme Court, while reversing the finding of the High Court observed as under: -

“8. It is relevant to point out that the appointment of the first respondent was by the method of nomination by the State Government in terms of clause (c) of sub-section (1) of Section 14. The appointment under both categories (election or nomination) should be by a notification issued by the State Government and published in the Official Gazette. This is by virtue of sub-section (9) of Section 14. Sub-section (9) of Section 14 reads as follows:

14. Composition of Board.-

* * *

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

9. It is true that Section 15 prescribes a term of office of five years for the members of the Board, from the date of the notification issued under Section 14(9). This Section 15 reads as follows:

15. Term of office. - The members of the Board shall hold office for a term of five years from the date of notification referred to in sub-section (9) of Section 14.

*10. Though Section 14(9) is common to the appointment under both categories and though Section 15 speaks about the term of office of members appointed by a notification under Section 14(9), **nomination always stands on a slightly***

*different footing than election. Perhaps, as per the scheme of the Act, it may not be possible for the State Government to breach the process of election from each of the electoral colleges under clause (b) of sub-section (1) of Section 14, by curtailing the term of office of such elected members. **But the same logic cannot be extended to nominated members. In other words, it may not be possible to hold that there is no elbow space for the State Government in the cases of nomination covered by clauses (c),(d) or (e).***”

Emphasis supplied

25. In *Om Narain Agarwal (supra)*, the Supreme Court while dealing with the doctrine of pleasure as applicable to nominated members, also observed as under: -

“(11) 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.

(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.”

26. Thus, in ***Om Narain Agrawal (supra)***, the Supreme Court clearly held that when a person is appointed by the State in exercise of its power of 'doctrine of pleasure', it is not necessary that such an appointee should continue for the entire period and he can be removed at any time while exercising power of 'doctrine of pleasure'.

27. The aforesaid judgment has been consistently followed by various High Courts. In ***Krishna vs. State of Maharashtra***

(supra), the Supreme Court, held that once the doctrine of pleasure is accepted, neither principles of natural justice would step in, nor any question of giving an opportunity before removal would arise. As no stigma is cast by removal of the Petitioners, therefore, there is no question of opportunity of hearing.

28. Mr. Kumbhakoni, then contended that the doctrine of pleasure cannot be invoked in the present matter since there is no express provision in the Act. According to him, the statute must expressly provide for application of the said doctrine. On this aspect, the Punjab and Haryana High Court, while deciding a similar issue in *Som Dutt (supra)* observed as under: -

“(29) The Court held that even where the statute itself does not in express terms provide for the pleasure doctrine, it can be inferred by implication in matters of appointment and removal of Chairman and other high public offices in certain situations viz (i) where appointment is to be made by the Government by nomination on the subjective satisfaction of the Government (ii) when there is no minimum term of office in the statute.

(30) It was observed as under:

35. It is true that in the aforesaid case before the Supreme Court the fourth proviso to Section 9

incorporated the pleasure doctrine in express terms and the learned counsel for the petitioners have, therefore, argued with vehemence that if the statute itself does not provide, in express terms, for pleasure doctrine in the matter of removal of Chairman, the doctrine cannot be invoked at all. This Court does not accept the aforesaid contention and holds that a statute can provide for pleasure doctrine for removal of Chairman and holders of such high offices by necessary implication, through the following indicia:

(i) If the appointment to the office of Chairman or such other high offices in a public Corporation/Board is to be made by the State Government by nomination and the appointment is left to the subjective, satisfaction of the Government, the Court would be inclined to read the pleasure doctrine into the provisions of the statute not merely for the pure appointment, but also for the purpose of removal. The principle underlying Section 17 of the Bombay General Clauses Act, 1904 and Section 16 of the General Clauses Act, 1897 in pari materia would apply, and, therefore, the power to appoint would include the power to remove, unless a different intention appears in the statute.

(ii) If the statute provides for Governmental control by empowering the Government to give directions or instructions to the concerned Board/Corporation, that would be a strong indication that the holders of the office of Chairman and other high offices were intended to be agents of the Government and, therefore, they can be removed at the pleasure of the Government.

(iii) *Absence of a minimum term-of office in the statute justifies applicability of the pleasure doctrine in the matter of removal of Chairman and other high public offices. If the statute provides for a minimum term of office, that would militate against applicability of the pleasure doctrine in the matter of removal.*

The Court will, therefore, have to apply the aforesaid tests for ascertaining the intention of the Legislature whether or not the statute incorporates the pleasure doctrine for removal of the holders of high offices like Chairman, Vice-Chairman and Directors. The rationale for referring to the aforesaid decision of the Apex Court at the outset was only to show that there need not be any judicial resistance to reading into a statute pleasure doctrine in the matter of removal from high offices like Chairman. Directors, etc. once the first test indicated above is fulfilled. Thereafter the burden of proving that the doctrine would not apply in the facts of a given case would be on the Petitioner.”

29. The said High Court also reiterated the decision in ***Joginder Singh Verma Vs. State of Himachal Pradesh***²¹ and observed as under:

“37. The court negated the argument that in the absence of any provision in the notification of the appointment enabling curtailment of tenure, the nomination could not be recalled before the expiry of three years. It held that as the nomination of a person as Chairman of the Board depended on the pleasure of the Government, the person so nominated neither had a fundamental right nor a statutory right to continue beyond the pleasure of the State Government. It was observed:

²¹ 2013 (3) Him. L. R. 1666

11. *The argument of the petitioner that the provisions of General Clauses Act cannot be invoked in respect of exercise of power under Section 18 of 1996 Act, in our opinion, is untenable. Further, the argument of the petitioner that the State Government cannot recall the nomination once made, until the expiry of three years from the appointment of a person as Chairperson of the Board because the notification dated 31st March, 2012 (Annexure P-1) does not provide for that option, in our opinion, is also devoid of merits. Similarly, the argument of the petitioner that there is express provision in the shape of Rule 252 of the Rules of 2008 regarding filling up of existing vacancies, it should necessarily follow that the State Government cannot withdraw the nomination before expiry of three years and only in case of casual vacancy in the office of Chairperson, it can nominate another person in that office for the remainder period is also untenable. As noted above, a person is nominated as Chairperson, by the Government, in exercise of power flowing from Section 18 of the Act read with Rule 251 of the Rules. Indisputably, the nomination of a person as Chairman of the Board depends on the pleasure of the Government. The person so nominated neither has a fundamental right nor a statutory right to continue beyond the pleasure of the State Government. Once the pleasure of the State Government ceases to exist, nothing prevents the State Government to recall such person from the office of Chairperson and to install another competent and suitable person as Chairman. Since it is a provision regarding pleasure of the State Government, the State Government is not required to follow principles of natural justice, so as to give opportunity to the person, who is to be removed*

and replaced by another person nor the Government is required to record reasons in that behalf. It is a matter entirely of subjective satisfaction of the Government, of which judicial review is not possible. Nor the person who is to be removed can claim any right to continue in the office inspite of the decision of the Government to remove him. Notably, the scheme of the Act or the Rules do not require giving him opportunity of hearing.”

30. Once again, reference may also be made to the decision of Supreme Court in ***State of U.P. v. U.P. State Law Officers Association***²², a case relating to appointment of Chief Standing Counsel and other Government Advocates. The Court held that the appointments of Government Counsel having not been shown to be made by following any procedure and on merit they had no cause to complain on their termination in the same manner. It observed as under:

“19The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure, can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the

²² (1994) 2 SCC 204

same door. This is more so when the order of appointment itself stipulated that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.”

31. In **PU Myllai Hlychho (supra)**, the Supreme Court held that when the appointment is at the pleasure of Vice Chancellor, the petitioners therein were not required to be heard prior to their removal and there is no violation of principles of natural justice.

32. Thus, what can be deduced from the aforesaid judgments is that the scope of judicial review in the matters relating to appointments where the doctrine of pleasure is attracted is extremely limited. The contours of judicial review are confined to finding out if the exercise of the power was "arbitrary, capricious or *mala fide*". There is no requirement of any notice preceding exercise of the power or to assign any cause for exercise of the power. In exercise of the doctrine of

pleasure nonetheless, the principles of natural justice have no application.

33. The Constitution Bench of the Apex Court in *B. P. Singhal (supra)* while deciding a reference made to it in a petition raising a question of public importance involving the interpretation of Article 156 of the Constitution held 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.”

The Supreme Court summarized its conclusions in Paragraph 83 of the

said decision.

“83.....

(iv) As there is no need to assign reasons, any removal as a consequence of withdrawal of the pleasure will be assumed to be valid and will be open to only a limited judicial review. If the aggrieved person is able to demonstrate prima facie that his removal was either arbitrary, mala fide, capricious or whimsical, the Court will call upon the Union Government to disclose to the Court, the material upon which the President had taken the decision to withdraw the pleasure. If the Union Government does not disclose any reason, or if the reasons disclosed are found to be irrelevant, arbitrary, whimsical, or mala fide, the Court will interfere. However, the court will not interfere merely on the ground that a different view is possible or that the material or reasons are insufficient.”

34. In the facts of the present case, there is no provision in the Cantonment Act, placing fetters on the powers of the Central Government while exercising its pleasure doctrine, save and except to follow the consultation process. In these circumstances, it cannot be said that the power exercised by the Central Government in issuing the impugned Notification is a colorable exercise of power.

35. Mr. Kumbhakoni, on the basis of the Petitioner’s presumptive

grievance of being pre-maturely removed/replaced, has then argued that removal can be effected only by following the procedure provided under Section 34 of the Act pertaining to the 'removal of members.' He argues that she was neither given any notice of removal, nor was there any reason recorded by the Authorities to cause her removal. This argument is without substance, for the very reason that the Petitioner is a nominated member of the varied Board and her nomination stands withdrawn at the will of the nominating authority. As already discussed hereinabove, her tenure is not co-terminus with that of the varied Board. She was not removed for having committed any infraction, as specified in Section 34 of the Act. Hence, there is no requirement of giving the Petitioner a show cause notice or any opportunity of being heard. The Supreme Court in *State of U.P. and Ors. (supra)*, held that a person who is appointed at the pleasure of the Government and then came to be removed by the same pleasure, cannot claim that the order of removal has been passed in breach of principles of natural justice.

36. In so far as this contention is concerned, a plain reading of Section 34 of the Act makes it clear that under the said provision, a

member may be removed for cause. The removal under this section is with a stigma, while removal/replacing the Petitioner by the nominating authority is removal without any stigma attached. If the argument of Mr. Kumbhakoni is to be accepted, then removal of a member nominated under Section 13(2)(c) of the Act could only be under stigma, which is not the legislative intent.

37. In the facts of the present case, there is no allegation made against the Petitioner that she has committed some infraction mentioned in Section 34 of the Act. There is also no stigma attached to her replacement by another member. The Petitioner is a member, nominated to the Board, pursuant to the notification varying the constitution of the Board. The change in composition of a regular Board follows such variance. Hence, if a nominated member is sought to be replaced at the pleasure of the nominating authority, no cause is required for such replacement. The Petitioner is not replaced on any ground mentioned in Section 34. The said provision is wholly inapplicable to the replacement of the Petitioner.

38. The Central Government's power to nominate a member pursuant to a Notification varying the constitution of the Board is

distinct from appointment of a member under Section 12 of the Act. Section 13(1) of the Act is invoked in special circumstances and begins with a non-obstante clause. For reasons to be recorded, the regular Board under Section 12 is superseded by the Special Board under Section 13 by notification. The procedure under Section 34 of the Act pertaining to the removal of a member applies only when any member is to be removed for cause. There is no allegation made against the Petitioner as having committed any infraction or misconduct as provided under Section 34 of the Act. The replacement of the Petitioner with the Respondent No.5 neither casts any stigma nor leads to any penal consequences. This clearly reveals the doctrine of pleasure which is implicit in the provision. It is open for the courts, while interpreting any provisions of the statute if so intended to read implicitly, in the absence of any explicit words that subserve the intent of the legislature.

39. Much is made of the word 'nomination' and 're-nomination' respectively appearing in Sections 34 and 35 of the Act by Mr. Kumbhakoni. In this regard, the constitution of the Board under Section 12 must be kept in mind. The regular Board constituted under

Section 12 also comprises nominated members from the military. The reference to ‘nomination’ and ‘re-nomination’ in Section 34 and 35 of the Act is regarding the nominated members comprising the regular Board. The varied Board under Section 13 of the Act is constituted in ‘special circumstances.’ Thus, the procedure for removal of any member under Section 34 of the Act and the consequences of removal as provided in Section 35 of the Act do not apply to the removal/replacement of the Petitioner in the present matter. The provisions do not lead any credence or strength to Mr. Kumbhakoni’s arguments.

40. Mr. Kumbhakoni’s argument regarding breach of principles of natural justice must also fail as replacing a nominated member is the unfettered right of the nominating authority. Once the doctrine of pleasure is held to apply, such removal neither offends any Article of the Constitution nor the same is against any public policy or democratic reforms 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 member before their removal, nor their removal puts any stigma on the performance or character of the nominated member. It is done purely on other

considerations. In any case, the Petitioner's nomination itself was not based on any considerations of merits or otherwise, hence there cannot be a legitimate grievance at the time of removal. The Petitioner, at this stage, cannot compare her position with that of an elected or appointed member and selectively seek a level playing field to claim parity with such members only insofar as removal process is concerned, once having accepted the nomination on considerations other than contesting an election or being an ex-officio military officer. For the aforesaid reasons, these contentions are without merit and the impugned Notification replacing the Petitioner with the Respondent No. 5 is valid.

41. In order to satisfy the conscious of the court regarding the consultation process followed and that the substitution was not *mala fide*, Mr. Anil Singh placed on record the entire correspondence initiated firstly from the office of the Chief Minister of Maharashtra by letter dated 20th January 2025 with the Raksha Mantri recommending the Respondent No.5 to be nominated as member of the varied Board. At the time of writing the letter, it appears that the Chief Minister was under the impression that the tenure of the Petitioner was to expire at the end of January. Thereafter, there is a

flurry of letters emanating from the office of various military authorities including the GOC-in-C with the Ministry of Defence. All the correspondence clearly indicates consultation. Whether material placed before the authorities concerned was adequate or reasons sufficient to justify substitution of the Petitioner with Respondent No.5 is not so relevant as long as there was consultation, as required by the statute. Indeed, once it is established that it was the subjective view of the Defence Ministry of the Central Government to exercise its pleasure of substituting the Petitioner with the Respondent No.5, pursuant to consultation between the authorities as required, this Court will not interfere merely because a different view may be possible.

42. In light of the series of decisions of the Supreme Court and other High Courts, it is clear that nomination cannot be compared to any other regular appointment or appointment to a constitutional office. The efficacy of what is sought to be achieved by nomination cannot be taken away when it comes to de-nomination. It is for this reason that the legislature has avoided and /or not stipulated any procedure, which otherwise could have been provided when it comes

to withdrawing of the nomination. It would not be a correct reading of the provision, if the court supplants and /or reads into the provision something that the legislature has expressly avoided to incorporate. In exercise of power of judicial review, the mandate of what has been provided by legislature must be accepted and is paramount. It is only when a provision creates ambiguity or is likely to create an anomalous situation, the constitutional Court would be required to step in and undertake an exercise of interpretation of the statute. However, in my reading of the relevant provisions, as discussed herein above, I do not find any such need that arises when the language of the statute is plain, clear and unambiguous, pertaining to the intention of the legislature. Any other interpretation would defeat the intention. Free play of the consequences brought about by the provision certainly should be avoided and the principles of law in this regard are well settled. In this view of the matter, the question for determination as stated in Paragraph 11 herein above is answered accordingly.

V. CONCLUSION:

43. I, therefore, have no hesitation in holding that while satisfaction of the Central Government is required to vary the constitution of the

Board under special circumstances under Section 13(1) of the Act, composition of the varied Board follows. There is no pre-requisite or condition precedent required for nominating/replacing a member under 13(2)(c). The act of nomination affecting the composition of the Board is distinct from the power of the Central Government to vary the constitution of the Board. The power to nominate includes the power to substitute. Section 34 of the Act regarding removal of member does not apply to the substitution/replacement of a nominated member of the Board, unless the said member is being removed on one or more of the grounds specified in Section 34 of the Act. Hence, the argument of Mr. Kumbhakoni that if a particular thing is statutorily required to be done in a particular manner, it must be done in that manner or not at all, does not apply to the facts of the present case.

44. Finally, on facts, it is Mr. Kumbhakoni's case that the alleged 'removal' of the Petitioner is an arbitrary exercise of power by the Authorities. Like Mr. Singh, he has also drawn our attention to the letter dated 20th January 2025 of the Chief Minister of Maharashtra addressed to the Raksha Mantri of the Government of India conveying

that since the term of nominated member of Deolali Cantonment, i.e., the Petitioner, is expiring at the end of January 2025, the Respondent No.5 be appointed as nominated member of the Cantonment. We have already dealt with this correspondence herein above and it is not necessary to reiterate the same again. However, Mr. Kumbhakoni has vociferously argued that the correspondence between the authorities shows that the real intention of the Chief Minister of Maharashtra was to allow the Petitioner to continue till expiry of her alleged tenure, we once clarify in this regard.

45. The entire Act is silent on the role of the Chief Minister of the State of the concerned Board. Much was argued by Mr. Kumbhakoni that the Chief Minister's letter demonstrates his intent in nominating the Respondent No.5 only after expiry of the tenure of the Petitioner. It is pertinent to note that in the entire statute, there is no role attributed to the Chief Minister in the said process. It is the discretion of the Central Government in consultation with the GOC-in-C that propels the decision to nominate a person as member of the Board. The GOC-in-C and the Ministry of Defence are the only persons concerned since the nomination of a member is to a Cantonment

Board, which is primarily concerned with military administration. It is a local government body providing civic administration for the cantonment area, which is primarily a military zone. These Boards themselves operate under Ministry of Defence and the Director General of Defence Estates. This being so, it is only logical that the Defence Ministry and the local command GOC-in-C are involved in the decision-making process of nominating a member to the Board. The intention of the Chief Minister of the State has no bearing on the exercise of powers by the Central Government in consultation with the GOC-in-C in nominating a member to the Board. It may be that a suggestion from the Chief Minister of the State may factor consideration while identifying an appropriate member to be nominated. But the consideration ends there. Hence, there is no arbitrary exercise of powers on the part of the Central Government in discharging its legitimate function under the Act.

46. Considering the aforesaid discussion, there is no infirmity in the Notification dated 6th March 2025 impugned herein. In any case, the Respondent No.5 is serving on the Board since the date of Notification as interim relief sought by the Petitioner was refused.

Even the Apex Court was not inclined to intervene in the rejection of the interim relief application. There is no violation of any fundamental right of the Petitioner to be substituted by another nominee by the Central Government. The petition is thus, dismissed.

47. Rule is accordingly discharged.

48. Petition accordingly stands disposed of.

(DR. NEELA GOKHALE, J.)

P.C.

1 The present writ petition was heard by us.

2 We have delivered separate judgments expressing
divergent views on certain points arising for determination in this
matter.

3 In view of the aforesaid difference of opinion, and having
regard to the provisions of Chapter I, Rule 7 of the Bombay High
Court (Appellate Side) Rules, 1960, read with Section 98 of the Code
of Civil Procedure, 1908, and Clause 36 of the amended Letters Patent
of the Bombay High Court, the papers of the present writ petition be
placed before the Hon'ble the Chief Justice for appropriate orders.

4 The Registry to take necessary steps in that regard.

DR. NEELA GOKHALE, J.

REVATI MOHITE DERE, J.

SQ Pathan