

W.P.No.163 of 2021
and W.M.P.No.221 of 2021

THE HON'BLE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY, J.

(Order of the Court was made by The Hon'ble Chief Justice)

Prima facie, the petitioner makes out a strong case that the third respondent herein does not meet the eligibility criteria for being appointed as an expert member of the National Green Tribunal.

2. Section 5(2) of the National Green Tribunal Act, 2010 has two limbs and if a person meets the eligibility criteria either in clause (a) or in clause (b), such person would qualify to be considered for appointment as an expert member. It is the common case that clause (a) of Section 5(2) of the Act would not apply to the case of the third respondent, but clause (b) would. Section 5(2)(b) provides for the candidate to have administrative experience of 15 years, including experience of five years in dealing with the environmental matters in the Central or a State Government or in a reputed National or State level institution.

3. There is no dispute that the third respondent has administrative experience of more than 15 years. However, it does not appear that the third respondent has experience of five years in dealing with the environmental matters in the Central or a State Government or in any reputed National or State level institution.

4. It must also be said that the expression "dealing with environmental matters" is not defined in the Act and every benefit of the doubt has to be given to a candidate who has been selected by personnel who are expected to understand what the relevant expression means and the nature of expertise that an expert member should possess. Section 5(2)(a) of the Act, in the use of expression "experience in the field of environment and forests", indicates several areas in parenthesis. These areas are "pollution control", "hazardous substance management", "environment impact assessment", "climate change management", "biological diversity management", and "forest conservation". Surely, if a candidate relies on clause (b) of the subsection in support of his candidature, he may indicate his experience in such fields as indicated in parenthesis in clause (a) to justify the

candidate having dealt with environmental matters within the meaning of the expression "dealing with environmental matters" appearing in clause (b).

5. Affidavits have been filed both on behalf of the Union and the third respondent. Paragraph 5 of the third respondent's affidavit indicates that she was a Secretary to the State Government in the Environment and Forest Department from December 2001 to August 2002 and she was the Chairman of Tamil Nadu Pollution Control Board from November 2003 to May 2005. Thus, it is evident that the third respondent has more than three and half years' experience in dealing with environmental matters. In addition, the third respondent indicates her being the Principal Secretary in the Health and Family Welfare Department for about 15 months, Commissioner of Land Administration for three and half years, Chief Secretary for two and half years, Commissioner of Sugar for three years and Joint Managing Director of the Tamil Nadu Civil Supplies Corporation for two and half years, apart from serving in the Finance Department for three years.

6. It is possible that the third respondent may have dealt with environmental matters in course of the various departments that she headed or was attached with, but it is necessary for the third respondent to indicate the same for the Court to be satisfied that the statutory eligibility criterion in such regard is met by the third respondent. More importantly, it must also be evident that such information as to the third respondent meeting the relevant eligibility criterion was before the Selection Committee. There may be an element of discretion in considering what may amount to dealing with environmental matters, but the Selection Committee could not have exercised any discretion to relax the relevant eligibility criterion in derogation of the statutory requirement.

7. The affidavit filed by the Union is rather vague on the aspect of the third respondent's qualification in such regard.

8. The matter will appear on April 16, 2021 for further consideration, particularly since it is submitted that learned Additional Solicitor-General appearing for the Union is unable to participate today even virtually. However, since it is submitted on behalf of the third

respondent that the third respondent is due to assume charge on April 19, 2021, there will be a stay on the third respondent's appointment till the disposal of this petition.

List on 16.04.2021.

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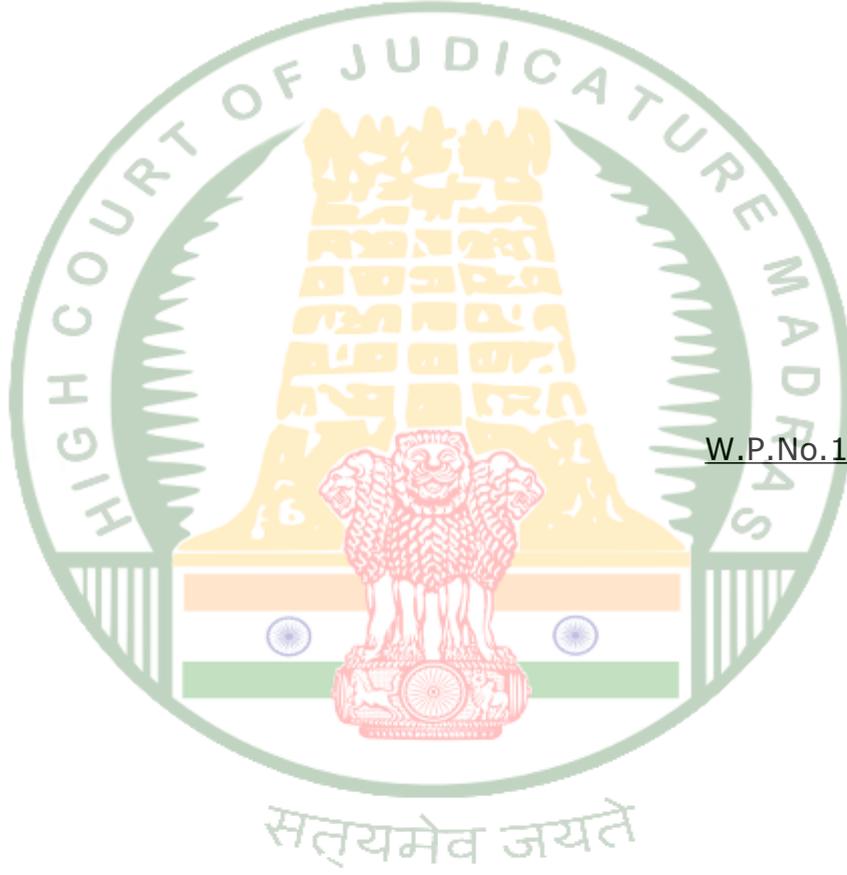
(S.B., CJ.) (S.K.R.,J.)
09.04.2021

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