

IN THE HIGH COURT OF JUDICATURE OF MADRAS
(Special Original Jurisdiction)

W.P.NO. 163 of 2021

G. Sundarrajan

Old No 29/2, New No 6/2,

12th Avenue, Vaigai Colony

Ashok Nagar, Chennai - 83

...Petitioner

Vs

Union of India &Ors.

...Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT No.1
UNION OF INDIA MINISTRY OF ENVIRONMENT,
FOREST AND CLIMATE CHANGE

I, R.Hemanth Kumar, S/o R.KrishnaRao, aged about 57 years, working as Deputy Director General of Forests in the Integrated Regional Office of the Ministry of Environment, Forests and Climate Change at Chennai do hereby solemnly affirm and sincerely state as follows:

1. I state that, I am working in the Ministry of Environment, Forest and Climate Change (hereinafter referred as MoEF&CC), Integrated Regional Office at Chennai and as such I am well acquainted with the facts of the case from the records available in the office. I am authorized to file this Counter affidavit on behalf of the respondent No.1 herein.

2. I state that, the National Green Tribunal (NGT) was established under the National Green Tribunal Act, 2010 (19 of 2010) in 2010 for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. The Tribunal has five (5) places of sittings namely Delhi, Bhopal, Kolkata, Pune and Chennai.

3. It is stated that Section 4 of the NGT Act, 2010 provides for a full time Chairperson and not less than ten, but subject to a maximum of twenty, full time Judicial Members and similar number of Expert Members. The process for filling up of vacancies for the post of Expert Members was initiated on 08.11.2019 by the Ministry of Environment, Forest and Climate Change (MoEF&CC) and an advertisement was published in the National Dailies on 09.11.2019 for inviting applications from the eligible candidates for appointment to the Six (6) vacant posts of Expert Members in the NGT. Thereafter, a Screening Committee was constituted in accordance with the extant NGT Rules, 2010 (as amended in July, 2012) for scrutinizing the applications received in the Ministry, vide order dated 06.01.2020. Further, the Screening Committee short-listed the candidates for Interaction/ interview for consideration of the Search-cum-Selection Committee.

4. In the meantime, the Department of Revenue, Ministry of Finance notified the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 vide notification dated 12.02.2020 for 19 Tribunals, including the National Green Tribunal. In terms of Rule 4 of the said notification, the Hon'ble Minister, EF&CC requested Hon'ble Minister, Law and Justice to seek nomination of the Chairperson of the Search-cum-Selection Committee (SCSC) from the Hon'ble Chief Justice of India for selection of Expert Members in the NGT.

5. It is stated that the Ministry of Law and Justice vide letter dated 01.06.2020, communicated the name of a sitting Judge, Supreme Court of India as nominated by Hon'ble Chief Justice of India to chair the Search-cum-Selection Committee for appointment to the post of Expert Members in the NGT. On receipt of nomination for Chairperson, the SCSC was constituted by issuing a formal order dated 04.06.2020 by the MoEF&CC. As per the provisions of the Rules, 2020 mentioned above, the SCSC comprises of the Hon'ble Chief Justice of India or his nominee as the Chairperson and the Chairperson of National Green Tribunal (NGT), Secretary, MoEF&CC and Secretary, Department of Personnel & Training (DoPT) as Members.

6. The meetings of the duly constituted SCSC were held on 25.06.2020 and 13.07.2020. The Committee decided to invite sixteen (16) candidates for virtual interaction on 25.07.2020, based on the profiles of the applicants and their experience. The Committee after interacting with the candidates and subsequent deliberations recommended names of six (6) candidates for consideration of the Appointments Committee of the Cabinet (ACC) after obtaining the report of the Intelligence Bureau. The DoPT/ACC vide communication dated 12.12.2020 conveyed approval of the ACC of three (3) candidates for appointment as Expert Members in the NGT. The names approved by the ACC are reproduced below:

- (1) Dr. Arun Kumar Verma,
- (2) Ms. GirijaVaidyanathan&
- (3) Dr. K. Satyagopal.

7. It is stated that the candidates are recommended by the SCSC on the basis of their fulfillment of the eligibility conditions with respect to their experience, expertise in dealing with administrative as well as environmental matters during the tenure of their service.

Further, Rule 3 of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of

Service of Members) Rules, 2020 stipulates the qualifications for appointment of Expert Members of the NGT as under:

“a person shall not be qualified for appointment as Expert Member, unless he, - (a) has a degree or Post-graduation degree or Doctorate Degree in Science and has an experience of twenty-five years in the relevant field including five years ‘ practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or (b) has administrative experience of twenty years including experience of five years in dealing with environmental matters in the Central Government or a State Government or in a reputed National or State level institution”.

8. It is stated that as per the Bio Data of Respondent No. 3, Ms. GirijaVaidyanathan, IAS, (Retd.) considered by the SCSC, she had worked in various capacities at different levels in the Government of Tamil Nadu, as follows:

- (i) Secretary (equivalent to Joint Secretary level of Govt. of India) in the Department of Forest and the Department of Environment for 3 years 6 months;

- (ii) Collector (equivalent to Deputy Secretary level of Government of India), Madurai District for 1 year;
- (iii) Chief Secretary of Tamil Nadu (equivalent to Secretary to the Government of India) for more than 2 and a half years – the Chief Secretary is the supervisor of all Departments of the State Government, including the Forest and Environment Departments;
- (iv) Member Secretary (equivalent to Additional Secretary in the Government of India) State Planning Commission for 1 year 3 months – apart from involving formulation of Plans of all Departments covering various Schemes and Projects implemented by different Departments, the State Planning Commission also addresses policy issues related to Environment and Forests;
- (v) Chairperson and MD (equivalent to Additional Secretary of Government of India) Power and Energy for 7 months – Energy covers all the environmental and energy policies of various projects. All the Energy and Power projects have to comply with extant environmental laws and duly address very important component of environment; and she also held the concurrent charge of Principal Secretary (equivalent to Additional Secretary of Government of India), Infrastructure Development

Department during these 7 months – dealing with Urban Development issues.

9. It is stated that she had an experience of working for 9 years in various Departments and State Planning Commission related directly to environment and forest subjects apart from handling District Administration and other Departments of the Government of Tamil Nadu during over 36 years of Government service, finally retiring as the Chief Secretary of Tamil Nadu.
10. The SCSC considered these qualifications and experience and found these postings as having the requisite experience in dealing with environmental matters in the State Government. Therefore, the averments made by the Petitioner that the Respondent No. 3, Ms. GirijaVaidyanathan, does not possess the requisite experience of 5 years in dealing with the environmental matters are not maintainable and hence denied.
11. The answering Respondent reserves the right of filing an additional affidavit as and when required during the proceedings.

12. Under these circumstances, it is humbly prayed that this Hon'ble Court may be pleased to dismiss the present Writ Petition with cost, in the interest of Justice and/or pass any other order as it may deem fit.

Solemnly affirmed and duly signed }
in my presence at Chennai this }
the 4thday of March, 2021 } BEFORE me

Advocate