

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.163 of 2021

G.Sundarrajan

... Petitioner

Vs.

1. Union of India
rep. by the Secretary to Government
Ministry of Environment, Forests and
Climate Change
Parayavaran Bhavan
CGO Complex
Lodhi Road, New Delhi 110 003.

2. Union of India
rep. by the Secretary
Department of Personnel & Training
Ministry of Personnel, Public Grievances & Pensions
Government of India
North Block, New Delhi 110 001.

3. Girija Vaidyanathan ... Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records in the order bearing

No.09/27/2020-EO (SM.II) dated 12.12.2020 issued by the second respondent and quashing the same so far as it concerns third respondent.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.R.Sankaranarayanan
Additional Solicitor General
for respondents 1 & 2

Mr.M.Santhanaraman
for respondent-3

ORDER

(Made by the Hon'ble Chief Justice)

The matter pertains to the appointment of the third respondent as the expert member on the Southern Regional Bench on the National Green Tribunal.

2. The petitioner questions the expertise of the third respondent and suggests that the third respondent does not meet the statutory eligibility criteria to be appointed as an expert member. In course of today's hearing, the petitioner has also questioned the procedure adopted in appointing the third respondent.

3. The principal contention of the petitioner is recorded in the interim order passed on April 09, 2021. According to the petitioner, since the applicable rules pertaining to the appointment of members of the tribunal do not indicate any special qualifications to be possessed by the expert member, Section 5 of the National Green Tribunal Act, 2010 should be seen to be the repository of all the qualifications as a self-contained provision. Section 5(2) of the Act is of relevance in the present context:

"5. Qualifications for appointment of Chairperson, Judicial Member and Expert Member.—

(1)

(2) A person shall not be qualified for appointment as an Expert Member, unless he,—

(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen 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 fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.

(3) ...

(4) ... "

4. As is evident, the provision is couched in a negative sense, implying that unless a person possesses the qualifications indicated in clause (a) or a person possesses the qualifications indicated in clause (b), the person would not be qualified for appointment as an expert member. It is further apparent that the "or" between clauses (a) and (b) is disjunctive and an expert member may be one who has expertise in the subject and requisite practical experience in terms of clause (a) or, has the requisite administrative experience including the experience in dealing with environmental matters as specified in clause (b).

5. The present case is covered by clause (b) of Section 5(2) of the Act, as it is the administrative experience of the third respondent which has weighed in her favour. The petitioner, however, says that even clause (b) has two limbs and though the petitioner has no reservations regarding the third respondent having administrative experience of 15 years, the petitioner claims that the third respondent does not have experience of five years in dealing with environmental matters either as Secretary to the Union or as Secretary to the State or in any reputed National or State level institution. The controversy, if any, is restricted to whether the third respondent qualifies under the second limb of clause (b) of Section 5(2) of the Act.

6. At the time that the interim order was passed, the extensive documents subsequently filed on behalf of the third respondent were not on record. What was available on record was the third respondent's affidavit and in paragraph 5 thereof, she claimed to have 38 years of administrative experience. In the third respondent's attempt to justify that she also qualified under the second limb of clause (b) of Section 5(2) of the Act, the third respondent's affidavit

indicated the various departments which the third respondent headed or was associated with.

7. As would be evident from the interim order of April 09, 2021, the Court noticed that the third respondent had been engaged as Secretary to the State Government in the Environment and Forest Department from December, 2001 to August, 2002 and also that the third respondent had chaired the Tamil Nadu Pollution Control Board from November, 2003 to May, 2005. However, the fact that the third respondent was the Principal Secretary to the State Government in the Health and Family Welfare Department in two stints, totalling about 30 months and the third respondent had been the Commissioner of Land Administration for more than 40 months and Chief Secretary to the State Government for another 30 months did not count much with this Court at the interim stage, notwithstanding the assertion in the third respondent's affidavit that in course of the third respondent heading the Health and Family Welfare Department and discharging duties as the Commissioner of Land Administration and as Chief Secretary, she had dealt with environmental issues pertaining to bio-medical waste disposal issues, forest-related

matters and restoration of waterways and environment.

8. The more detailed documents filed by the third respondent reveal that while the third respondent was the Secretary to the Government in the Health and Family Welfare Department, it was her responsibility to implement the Bio-medical Waste (Management and Handling) Rules and she chaired the State Level Advisory Committee in such regard. It also appears that for 11 months, the third respondent dealt with matters pertaining to storage and usage of disposable plastic across the State and, as the Chief Secretary, headed the Steering Committee in such regard. Under a subsequent State Government order of September 20, 2018, the third respondent, as the Chief Secretary, had also to deal with matters pertaining to the use of plastic in course of storage, supply and sale of goods. The third respondent also relies on an order dated July 28, 2015 passed by the Southern Zone Bench of the National Green Tribunal, by which the third respondent as Chief Secretary was required to co-ordinate and ensure that the restoration work in terms of the relevant order was completed. It is evident that the order dated July 28, 2015 pertained to the restoration of some streams and

rivers and action being suggested against institutions and persons responsible for discharging effluence or sewage into the Cooum river. For similar purpose, the third respondent relies on an order passed by the same Bench of the National Green Tribunal of February 13, 2019, by which the third respondent as Chief Secretary was directed to remain present before the Tribunal and be responsible for implementing the orders passed by the Tribunal.

9. In short, the endeavour on the part of the third respondent is to demonstrate that the third respondent more than meets the second limb of qualification under clause (b) of Section 5(2) of the Act. The submission on behalf of the third respondent is that since the provision in the statute requires the candidate to have experience in dealing with environmental matters for a particular period of time, the extent of the candidate's involvement in dealing with environmental matters and related issues are irrelevant as long as it is found that during a total period of five years out of an administrative tenure of at least 15 years, the candidate had dealt with environmental matters. The petitioner, however, suggests that since what would amount to environmental matters is not indicated in

clause (b), the expression should take colour from the words in parenthesis in clause (a) of Section 5(2) of the Act. The relevant words in Section 5(2)(a) of the Act pertain to pollution control, hazardous substance management, environmental impact assessment, climate change management, biological diversity management and forests services.

10. The Union says that there is no denying that if a candidate does not meet the statutory eligibility criteria, such candidate cannot be selected to be appointed as the expert member of a specialised body as the National Green Tribunal. The Union, however, says that broadly speaking, the experience in environmental matters, as indicated by the third respondent in her affidavit, covers a period of five years and while the Court, in exercise of its jurisdiction under Article 226 of the Constitution, is perfectly justified in ascertaining whether the objective criteria had been fulfilled, the subjective assessment of the suitability of the candidate may not be available for scrutiny under judicial review. However, the Union clearly says that it is for the Court to be satisfied that the third respondent herein complied with both limbs of clause (b) of Section 5(2) of the Act to

be found eligible.

11. The second aspect of the matter has to be referred to, more in passing than at any great length. Upon the Union seeking to rely on the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 framed in exercise of the powers conferred under Section 184 of the Finance Act, 2017, the petitioner is quick to point out that the said Rules of 2020 would have no manner of application in respect of the impugned appointment since the advertisement issued on November 8, 2019 inviting applications to the posts of expert members stipulated in the third paragraph thereof that the NGT (Manner of Appointment of Judicial and Expert Members, Salaries, Allowances and other Terms and Conditions of Services of Chairperson and Other Members and Procedure for Inquiry) Rules, 2010 would apply. Indeed, the petitioner is encouraged even to question the process of selection as, according to the petitioner, the 2010 Rules provide for a Screening Committee to vet the applications before a Selection Committee would choose the persons to be appointed on the tribunal. The petitioner points out that in the

present case, the procedure under the 2010 Rules appears to have been given a go-by and the procedure under the 2020 Rules adopted.

12. It is the further submission of the petitioner that the rules that would be applicable as at the date of publication of the advertisement for inviting applications would be the rules that need to be followed and any subsequent amendment during the currency of the selection process would not affect the matter. At any rate, the petitioner contends that the said Rules of 2020 do not indicate that the rules pertaining to the National Green Tribunal stood amended thereby and the Rules of 2010 must still be seen to be in existence and matters pertaining to the NGT to be covered thereby, rather than the more generalised Rules of 2020.

13. On such aspect of the matter, the Union says that even clause (3) of the notice of November 8, 2019 inviting applications for the posts of expert members indicated that the educational qualifications, eligibility criteria and the like would be governed by the provisions of the Rules of 2010 "as amended from time to time". The Union points out that following the protest from all over

regarding the manner of appointment of members and expert members on tribunals, the comprehensive Rules of 2020 came to be formulated and by virtue of the Supreme Court dictum in the case reported at (2020) 8 MLJ 584 (SC) (*Madras Bar Association v. Union of India*), all appointments to tribunals made after February 1, 2020 must necessarily be in accordance with the said Rules of 2020. In such regard, paragraph 52 of the judgment has been placed.

14. The objection raised by the petitioner as to the procedure cannot be countenanced. Apart from the advertisement having indicated that the rules as amended would apply, the Supreme Court dictum in the *Madras Bar Association* case is clear and unequivocal: appointments made to tribunals after the Rules of 2020 had come into effect would necessarily be governed by such Rules.

15. There can be no doubt that specialised tribunals require expert members who would be adept at dealing with the everyday issues that arise before such tribunal. Indeed, the primary reason for taking several matters out of the domain of the civil Courts and parking them with tribunals was the perceived lack of expertise of

regular Judges in dealing with specialised matters. It is, thus, of crucial importance that the expertise of the expert member of the tribunal be not diluted either in how the eligibility criteria are framed or in the selection of any candidate.

16. Apart from the factual basis to sustain her appointment, the third respondent has quite openly indicated the composition of the Search-cum-Selection Committee in this case. It must be noticed that the Committee of four in this case comprised a sitting Supreme Court Judge nominated by the Chief Justice of India, a retired Supreme Court Judge in his capacity as the Chairperson of the NGT and two Secretaries to the Union Government. The emphasis on such aspect by the third respondent is not lost on this Bench: the underlying suggestion is that the composition of the Search-cum-Selection Committee was such that the matter is way above the head of this Court for this Court to go into the propriety of the selection. Be that as it may.

17. The said Rules of 2020 specify the qualifications necessary for an expert member of the NGT. The 19th entry in the Schedule to

the Rules of 2020 reflects both clauses (a) and (b) of Section 5(2) of the Act in some form, though it is evident that clause (b) of paragraph 3 under the 19th entry provides for greater administrative experience than what clause 5(2)(b) indicates. However, as to whether it is permissible to tinker with the statutory conditions, does not fall for consideration in this case since, quite indisputably, the third respondent meets the enhanced overall experience criterion stipulated in the 2020 Rules as she has nearly 38 years' experience in administration.

18. Ultimately, it boils down to the second limb of clause (b) of Section 5(2) of the Act which is ad idem with the second limb of clause (b) of paragraph 3 under the 19th entry in the Schedule to the 2020 Rules. The issue is whether the third respondent in this case has five years' experience in dealing with environmental matters in the Central or State Governments or in any reputed National or State level institution.

19. Since the third respondent served her entire tenure in the State, the issue narrows down to whether the administrative duties

discharged by the third respondent in her long career in this State included five years in dealing with environmental matters. On the basis of the statements contained in the counter-affidavit filed by the third respondent - which have not been detracted from the petitioner - the third respondent has nine months' experience heading the Environment and Forest Department and 19 months experience as Chairman of the State Pollution Control Board. There can be no doubt that both these positions pertained to environmental matters and the third respondent has to be given credit for such periods.

20. As the Secretary in the Health and Family Welfare Department, there were many tasks that the third respondent would have performed, but it does appear that bio-medical waste disposal management was also a part of her brief. Matters like the critical manner of disposing of different kinds of waste, particularly, bio-medical waste, received attention only over the last few decades when the third respondent was actively in service and there is no doubt that the third respondent must have been involved in setting up the ground rules for the disposal of bio-medical waste in the State. Thus, without looking into the tenuous association of the third

respondent as the Chief Secretary with environmental matters and without giving credence to the number of times that the third respondent may have attended the National Green Tribunal or passed by the building, the two and a half years spent by the third respondent as Secretary in the Department of Health and Family Welfare together with the nearly 28 months combined in the Environment and Forest Department and as the Chairperson of the Pollution Control Board, the third respondent appears to have covered almost the entirety of the five years of requisite experience and, at any rate, if given the benefit the nearest integer of any fraction. Further, there is a presumption that the aspect of the third respondent's experience in dealing with environmental matters would have engaged the attention of the exalted committee tasked with the duty of selection. It also goes without saying that an informed decision of the relevant committee also commands a degree of deference.

21. As a consequence, it cannot be said with any element of certainty that the negative mandate of Section 5(2) of the Act would be attracted to hold that the third respondent is not qualified to be an

expert member.

22. It is an entirely different matter as to whether the mere administrative experience as evident from the second limb of clause (b) of Section 5(2) of the Act should be regarded as equivalent to the real expertise which is indicated in clause (a) of the same provision, but that is a matter which is truly above this Court's head and within the exclusive domain of the Parliament.

23. For the reasons aforesaid, the third respondent is not found to be ineligible to be appointed as the expert member on any Bench of the National Green Tribunal. The petition, W.P.No.163 of 2021, ultimately fails. It goes without saying that the interim order of April 09, 2021 stands vacated. There will be no order as to costs. As a consequence, WMP Nos.218 and 221 of 2021 are closed.

24. Though the matter is over, there are many aspects that may require to be pondered over in larger public interest. For a start, the extent of a bureaucrat's involvement in environmental matters, which would count towards his experience of five years in such

regard, may require to be spelt out with more clarity for such person to be regarded the equivalent of a real expert as indicated in Section 5(2)(a) of the Act. After all, the adjudicatory wing of the sovereign has been divested of its authority to deal with matters pertaining to environment on the perceived lack of specialised or domain knowledge of the members who man it.

(S.B., CJ.) (S.K.R., J.)
17.04.2021

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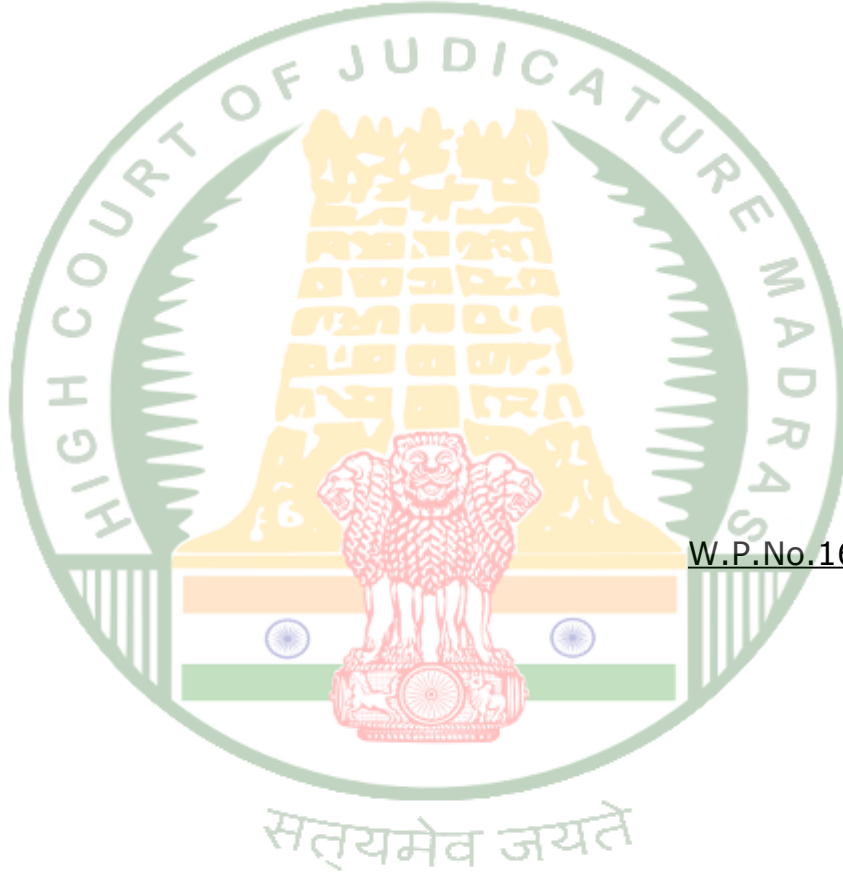
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