

SYNOPSIS AND LIST OF DATES

The petitioner is the Managing Trustee of Poovulagin Nanbargal, a registered public trust, which aims at creating environment law awareness among the people of Tamil Nadu, promoting sustainable development, and campaigning for organic and safe food. The Trust also publishes a couple of monthly journals on environment and related issues. The petitioner is participating in several discussions and debates touching environment protection in the media and he is giving lectures to school and college students with a view to creating environmental awareness.

While dealing with the appointment of Chairpersons and Members of State Pollution Control Boards, the Hon'ble Court has in *Techi Tagi Tara v Rajendra Singh Bhandari* : (2018) 11 SCC 734 held: "We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such."

Since respondent no.3 who has not possessed the statutory qualifications was sought to be appointed to the post of Expert Member in the National Green Tribunal vide a notification dated 12.12.2020 issued by respondent no.2, the petitioner filed a public interest litigation viz. WP No.163 of 2021 in the Madras High Court for quashing the notification approving the selection of respondent no.3 for being appointed to the post of Expert Member in the National Green Tribunal.

Two contentions were raised before the Madras High Court:

(1) Respondent no.3 did not possess an experience of five years in environmental matters prescribed under Section 5 (2)(b) of the National Green Tribunal Act, 2010, and

(2) The selection process resulting in the selection of respondent no.3 for the post of Expert Member in the National Green Tribunal undertaken partly under the National Green Tribunal (Manner of Appointment of Judicial and Expert Members, Salaries, Allowances and Other Terms and Conditions of Service of Chairperson and Other Members and Procedure for Inquiry) Rules, 2010 (for short, **the NGT Rules 2010**) and partly under the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 (for short, **the Tribunal Rules, 2020**) would be violative of Articles 14 and 16 of the Constitution of India as per the law

laid down by the Hon'ble Court in P.Mahendran v State of Karnataka : (1990) 1 SCC 411 and in N.T.Devin Katti and others v Karnataka Public Service Commission and others : (1990) 3 SCC 157 and in a series of subsequent rulings of the Hon'ble Court.

The Madras High Court has negated both the contentions and dismissed Writ Petition No.163 of 2021 vide its order dated 17.4.2021. The Madras High Court has, after having come to the conclusion that respondent no.3 has put in only an experience of 4 years and 10 months in environmental matters and not statutorily prescribed 5 years' experience in environmental matters, still held that respondent no.3 has fulfilled the requirements of Section 5(2)(b) of the National Green Tribunal Act.

Secondly, the Madras High Court has also approved the selection process commenced under the NGT Rules, 2010 and concluded under the Tribunal Rules, 2020 by the Search-cum-Selection Committee comprising four members, and not by a Selection Committee constituted under the NGT Rules, 2010 comprising six members. Both the conclusions are erroneous in law.

Hence this Special Leave Petition.

IN THE SUPREME COURT OF INDIA
{Order XXI Rule 3(1) (a)}
CIVIL APPELLATE JURISDICTION
(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2021

[Arising out of the Impugned Final Judgment and Order dated 17.4..2021
passed by the High Court of Judicature at Madras in WP No. 163 OF
2021]

IN THE MATTER OF:

G. Sundarrajan
Old No 29/2, New No 6/2,
12th Avenue
Vaigai Colony
Ashok Nagar
Chennai - 83

vs

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

3. Mrs. Girija Vaidyanathan, IAS
Chief Secretary to Government of Tamil Nadu (Retired)
New No: 7, Old No: 4 Central Avenue
Kesava Perumalpuram
Chennai - 28

TO

**The Hon'ble Chief Justice of India And His Hon'ble Companion
Justices of The Hon'ble Supreme Court Of India**

The humble Special Leave Petition of the Petitioner above named:

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is filing the present Special Leave Petition against the impugned Final Order dated 17.04.2021 passed by the High Court of Judicature at Madras in Writ Petition No. 163 OF 2021 whereby the High Court had dismissed the Writ Petition.

2. QUESTIONS OF LAW

The following questions of law arise for consideration by this Hon'ble Court:

1. Can the High Court relax the qualifications and experience prescribed by the National Green Tribunal Act, 2010 for the post of Expert Member in the National Green Tribunal, when the Act does not contain any provision regarding such relaxation?

2. Can the High Court hold that the selection process resulting in the appointment of respondent no.3 as an Expert Member in the National Green Tribunal (NGT) is right, despite the fact that the selection process in question was commenced under one set of Rules existing on the date of advertisement and was completed by a different set of Rules which had come into force after the Screening Committee constituted under the old Rules had screened the applications and shortlisted the persons for interview?

3. Was the Search-cum-Selection Committee constituted by respondent no.1-Union of India under Rule 4 of the Tribunal, Appellate Tribunal and other Authorities (Qualifications,

Experience and other Conditions of Service of Members) Rules, 2020 competent to select respondent no.3 for the post of Expert Member in the National Green Tribunal pursuant to the advertisement dated 8.11.2019 issued by respondent no.1-Union of India?

3. **DECLARATION IN TERMS OF RULE 3 (2):**

The Petitioner states that no other Petition seeking leave to appeal has been filed by him against the final judgment and order of the Hon'ble Division Bench of the High Court of Judicature at Madras dated 17.04.2021 in G.Sundarrajan v Union of India and others.

4. **DECLARATION IN TERMS OF RULE 5**

The Annexures P/1 to P/8 produced along with the Special Leave Petition are true copies of the pleadings/documents, which formed part of the record of the case in the High Court below against whose order Special Leave to Appeal is sought for in this Petition.

5. **GROUND**

Leave to appeal is sought for on the following grounds:

A. That the High Court has erred in holding that "the third respondent is not found to be ineligible to be appointed as the expert member on any Bench of the National Green Tribunal" in the light of its finding in paragraph 20 of its order that the respondent had possessed an experience of only 4 years and 10 months in environmental matters. The High Court has observed in paragraph 20 of its order that "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 of the nearest integer of any fraction." Once Section 5 (2) (b) of the National Green Tribunal Act, 2010 has mandated that the candidates should possess an experience of five years in environmental matters for being considered for the post of Expert Member, the High Court has no jurisdiction to relax the said experience by giving "the benefit of the nearest integer of any fraction." More so, when Rule 5 (4) of the NGT Rules, 2010 provides that the Screening Committee while screening the applications shall ensure that the persons shortlisted for interview possess higher qualifications and experience as specified under Section 5 of the National Green Tribunal Act, 2010. The High Court has failed to appreciate that respondent no.3 could not have been shortlisted for interview by the Screening Committee. Therefore, the High

Court has erred in holding that respondent no.3 had possessed the experience of five years in environmental matters prescribed under Section 5 of the National Green Tribunal Act, 2010.

- B. That the High Court has erred in approving the procedure of selection resulting in the appointment of respondent no.3 as an Expert Member in the National Green Tribunal. Rule 3 of the National Green Tribunal (Manner of Appointment of Judicial and Expert Members, Salaries, Allowances and other Terms and Conditions of Service of Chairperson and other Members and Procedure for Inquiry) Rules, 2010 reads as under:

"3. Selection Committee: The Judicial Members and Expert Members of the Tribunal shall be appointed by the Central Government on the recommendation of a Selection Committee comprising the following namely:-

- (a) Sitting Judge of the Supreme Court

to be nominated by the Chief Justice

of India in consultation with the

Minister for Law and Justice

: Chairperson

- (b) Chairperson of the Tribunal

: Member

- (c) Director, Indian Institute of Technology

: Member

(By rotation)

- (d) An expert in Environmental Policy to be nominated by the Minister for Environment and Forests : Member
- (e) An expert in Forests Policy to be nominated by the Minister for Environment and Forests : Member
- (f) Secretary to the Government of India: Member Secretary in the Ministry of Environment and Forests”

The selection process was commenced on 8.11.2019 with the issuance of an advertisement for the post in question and screening of the applications and shortlisting of the persons for interview was done as per Rule 5 (1) to (5) of the NGT Rules, 2010. The aforesaid Selection Committee comprising six members, which was to continue the selection process, was impliedly substituted by the Tribunal Rules, 2020 which came into force on 12.2.2020. Column No.(4) against Sl.No.19 of the Schedule to the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules 2020 viz. “Composition of Search-cum-Selection Committee” for the National Green Tribunal reads as follows:

“Search-cum-Selection Committee for the post of the Chairperson, Judicial Member and Expert Member of the National Green Tribunal—

- (i) Chief Justice of India or any Judge of the Supreme Court nominated by him – Chairperson
- (ii) (a) in case of appointment of Chairperson, the Outgoing Chairperson of the National Green Tribunal – member; or
(b) in case of appointment of Judicial Member and Expert Member the Chairperson of the National Green Tribunal – member;
- (iii) Secretary to the Government of India, Ministry of Environment and Forest – member; and
- (iv) Secretary to the Government of India, Ministry of Personnel , Public Grievances and Pensions (Department of Personnel & Training) – member.”

After screening and shortlisting of the applications as per the then existing Rules viz. NGT Rules, 2010, the further selection process was undertaken as per the Tribunal Rules, 2020 by a Search-cum-Selection Committee comprising four members instead of a Selection Committee comprising six members. By approving this procedure, the High Court has ignored the law laid down by the Hon'ble Court in P.Mahendran v State of Karnataka : (1990) 1 SCC 411 and in N.T.Devin Katti and others v Karnataka

Public Service Commission and others : (1990) 3 SCC 157 and in a series of subsequent rulings of the Hon'ble Court. The High Court ought to have appreciated that the selection process which was commenced under one set of Rules existing on the date of advertisement could not have been continued from the stage of interview under a different set of Rules viz. the Tribunal Rules, 2020 which had come into force only after the Screening Committee, which was statutorily constituted under the old Rules, screened the applications and shortlisted the persons for interview. The High Court ought to have appreciated that there is no provision in Tribunal Rules, 2020 to the effect that the said Rules would also apply to pending selection like the one where respondent no.3 was selected for the post of Expert Member in the National Green Tribunal.

6. GROUND FOR INTERIM RELIEF:

Respondent no.3, who is ineligible to be considered for the post of Expert Member and whose application ought to have been rejected at the time of screening and shortlisting of applications, deserves to be restrained from functioning as an Expert Member in the National Green Tribunal. Continuance of an unqualified

person as an Expert Member in the National Green Tribunal would be destructive of public interest.

7. MAIN PRAYER:

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Grant Special Leave to Appeal against the final impugned order dated 17.4.2021 passed in Writ Petition No. 163 of 2021 by the High Court of Judicature at Madras:
- b) Pass any such other and further orders as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the case and in the interest of justice.

8. PRAYER FOR INTERIM RELIEF:

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

Grant an ex parte ad interim injunction restraining respondent no.3 from functioning as an Expert Member in the National Green Tribunal pending disposal of this Special Leave Petition.

Drawn by:

M. Radhakrishnan, Advocate

Drawn on:

Filed on:

Filed by: