

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11408/2009

SANJEEV MANCHANDA Petitioner
Through Mr. Rajiv Nayar, Senior Advocate with
Mr. Yogesh Khanna, Advocate.
versus

UOI & ORS. Respondents
Through Ms. Manisha Dhir with Ms. Preeti Dalal,
Advocate for Respondent No. 1.
Mr. Sudhir Nandrajog, Senior Advocate with Ms. Indrani
Ghosh, Advocate for Respondent No. 2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

% **ORDER**
19.11.2009

1. This petition, styled as a Public Interest Litigation, has been filed by a practising advocate, purportedly representing a large section of the bar of the Company Law Board (CLB), challenges the appointment of Respondent no. 2 as Member (Technical) of the CLB.

2. In terms of the Company Law Board (Qualifications, Experience and other conditions of Service of Members) Rules, 1993 ('Rules'), a person shall not be qualified for appointment as Technical Member unless he / she :

- (a) is, or has been, a Member of the Central Company Law Service (Accounts Branch) / Indian Company Law Service (Accounts Branch) and is holding, or has held, a post in Senior Administrative Grade in that service for at least three years; or
- (b) is, or has been, a Joint Secretary to the Government of India under the Central Staffing Scheme or any other post under the Central Government carrying a scale of pay which is not less than that of Joint Secretary of the Government of India, for at least three years and has adequate knowledge of and experience in dealing with the problems relating to Company Law; or
- (c) is, or has been, for at least fifteen years in practice as a Chartered Accountant under the Chartered Accountants Act, 1949; or

- (d) is, or has been, for at least fifteen years in practice as a Cost Accountant under the Cost and Works Accountants Act, 1959; or
- (e) has, for at least fifteen years, working experience as a Secretary in whole time practice as defined in clause (45A) of Section 2 of the Companies Act, 1956 and is a member of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.

3. The selection of Respondent no. 2 as Member (Technical) was made by a Selection Committee under the Chairmanship of a sitting Judge of the Supreme Court of India that held its meeting on 21st April, 2005. The recommendations of the Selection Committee were considered by the Competent Authority in the Ministry and were accepted. A proposal was then sent to the Appointment Committee of the Cabinet which also accepted the proposal and approved the appointment of Respondent no. 2.

4. On 4th July, 2005 a Memorandum was issued by the Ministry of Company Affairs, Government of India disclosing the proposal of the Central Government to appoint the Respondent no. 2 who was, at that time, working as the Commissioner of Income Tax (Appeals), Delhi as Member (Technical), Company Law Board. It was stated in the Memorandum if Respondent no. 2 was willing to accept the offer of appointment she should convey her acceptance to the Ministry within two weeks. Respondent No. 2 was appointed as Member (Technical), CLB by a Notification dated 4th January, 2006.

5. It has been explained in the counter affidavit filed on behalf of the Union of India that the Respondent no. 2 meets the qualifications for appointment as Member (Technical). At the time of her appointment, she was a Member of the Indian Revenue Service and holding a post equivalent to that of the Joint Secretary to the Government of India. Respondent no. 2 had held the office of Commissioner of Income Tax (Appeals) and had acquired knowledge and experience of various legislations including the Companies Act, 1956. It is pointed out that the IRS officers have a good grounding in Company Law and are required to undergo departmental examinations as IRS Probationers on various subjects which include Company Law. The syllabus for the Assistant Commissioners of Income Tax for the departmental examinations required to

be undergone by them during their training has been annexed to the affidavit. It is further pointed out that two-thirds of the direct tax collection comes from the corporate sector and without an adequate knowledge of Company Law, IRS Officers such as Respondent no. 2 would be able to carry out their duties efficiently.

6. In the above background, the present petition which alleges that the appointment of Respondent no. 2 as Member (Technical) CLB was illegal, is in our view wholly without merit. It has been urged by Mr. Rajiv Nayar, learned Senior counsel for the Petitioner, that since the Rules required a candidate for appointment as Member (Technical) CLB to have “adequate knowledge and experience in dealing with problems relating to the Company Law” the Respondent no. 2 was not qualified. The contention is that given her background of being a member of the IRS, and having worked as an Income tax Officer and later as CIT (Appeals), she cannot be expected to have adequate knowledge and experience in Company Law. We reject this contention as being wholly misconceived. As explained by the Union of India in its affidavit, a sizeable proportion of the direct tax cases pertain to the corporate sector. It would be virtually impossible for an Income Tax Officer or CIT (Appeals) to discharge her functions without an adequate knowledge of Company law. The fact that prior to the amendment of the relevant Rules in 1999, the requirement was that a Member (Technical) should have “adequate knowledge of, and experience in dealing with problems relating to commerce, industry, economics, taxation or law” and that after the amendment in 1999, the requirement was that of having “adequate knowledge and experience in dealing with problems relating to the Company Law” does not, in our view, make any difference as far as Respondent no. 2 is concerned. She fully satisfies the requirement of the relevant Rule even after its amendment in 1999.

7. It was sought to be urged by Mr. Nayar, learned Senior counsel that the Selection Committee was misled about the qualification of Respondent no. 2. We are unable to accept this submission. Respondent no. 2 was qualified for appointment as Member (Technical) and the Selection Committee was certainly not misled in that regard. The reliance placed in this regard by Mr. Nayar on the decision of the Supreme Court in **District Collector and Chairman, Vizianagaram Vs. M. Tripura Sundari Devi,**

(1990) 3 SCC 655 is to no avail. The facts of the present case are entirely different.

8. We also find substance in the objection raised by both Respondent no. 2 as well as Respondent no. 1 that the present petition is, apart from being vexatious and frivolous, also barred by laches. A challenge made to the appointment of Respondent no. 2 nearly four years after her appointment, without any explanation for the delay in raising such challenge ought not to be entertained.

9. This petition is, in our view, an abuse of the process of Court. It has constituted an unnecessary harassment of Respondent no. 2 who has had to answer a needless challenge to the validity of her appointment although she is fully qualified for such appointment.

10. We accordingly dismiss this petition with exemplary costs of Rs.25,000/- which will be paid by the Petitioner to the Delhi Legal Services Authority within a period of two weeks. The proof of payment of costs be placed on record.

CHIEF JUSTICE

S.MURALIDHAR, J

NOVEMBER 19, 2009

dk