

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

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Date of decision: 31st October, 2012

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W.P.(C) No.2782/2012

VEENA KALRA

..... Petitioner

Through: In person.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Manish Dhir, Adv.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This writ petition filed in public interest seeks a direction to the respondents “to make necessary and suitable amendments / modifications implementing the Guidelines laid down by the Supreme Court” in *Union of India Vs. R. Gandhi, President, Madras Bar Association* 2010 (5) SCALE 514, with respect to selection and appointment to the post of Member (Technical) in Company Law Board (CLB); a writ of *quo warranto* for quashing the appointment of respondent No.5 Mr. A. Bandopadhyay as Member (Technical) of the CLB in pursuance to the Office Order dated 30.04.2012, as being contrary to the Guidelines aforesaid, is also sought.

2. Notice of the petition was issued and a counter affidavit has been filed by the respondent No.1 UOI and the respondent No. 2 Ministry of Corporate Affairs and also by the respondent No. 5 Mr. A. Bandopadhyay and to which rejoinders have been filed by the petitioner. The counsels have been heard.

3. The counsel for the petitioner has drawn our attention to the notice dated 10.06.2011 inviting applications for the post of Members in CLB. The said notice *inter alia* states that as per the Company Law Board (Qualifications, Experience and Other Conditions of Service of Members) Rules, 1993, 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 to the Government of India, for at least three years and has adequate knowledge and experience in dealing with the problems relating to Company law.”*

4. The counsel for the petitioner has next invited our attention to the judgment *supra* of the Supreme Court, where it has been observed / held:

- (i) that while the Courts are exclusively manned by Judges, Tribunals can have a Judge as the sole member or can have a combination of a Judicial Member and a Technical Member who is an expert in the field to which the Tribunal relates;
- (ii) that the presence of Technical Member ensures the availability of expertise and experience related to the field of adjudication for which the special Tribunal is created, thereby improving the quality of adjudication and decision-making;
- (iii) that it is implied that only men of standing who have special expertise in the field to which the Tribunal relates, will be eligible for appointment as Technical members;
- (iv) that the fact that senior officers of civil services could function as Administrative Members of Administrative Tribunals, does not necessarily make them suitable to function as Technical Members in Company Law Tribunals or other Tribunals requiring technical expertise;
- (v) that the Tribunals cannot become providers of sinecure to members of civil services, by appointing them as Technical Members, though they may not have technical expertise in the field to which the Tribunals relates;

- (vi) that no logic can be found in members of general Civil Services being Members of Company Law Tribunals;
- (vii) that the candidates falling under Sub-sections 2(c) and (d) and Sub-sections 3(a) and (b) of Section 10FD of the Companies Act, 1956 have no experience or expertise in deciding company matters;
- (viii) that a member of Indian Company Law Service who has worked with Accounts Branch or officers in other departments who might have incidentally dealt with some aspect of Company Law cannot be considered as experts qualified to be appointed as Technical Members; and

The Supreme Court thus declared Parts IB and IC of the Companies Act, 1956, as then structured, as unconstitutional.

5. The counsel for the petitioner has urged that though Parts IB and IC of the Companies Act struck down by the Supreme Court pertain to National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) respectively, but CLB constituted under Part IA of the Companies Act has the same powers as NCLT and NCLAT and thus what has been held by the Supreme Court qua qualifications of Member (Technical) of NCLT and NCLAT would equally apply to CLB also. Reliance is also placed on *Dharam Godha Vs. Universal Paper Mills Ltd.* MANU/WB/0351/2012 where the learned Judge has lamented on outsourcing of judicial work, earlier before the Courts, to Tribunals

manned by bureaucrats or non judicial members with no legal training or acumen, thereby making justice a casualty. It is thus the contention of the counsel for the petitioner that the selection and appointment of the respondent No.5 Mr. A. Bandopadhyay as Member (Technical) of the CLB in contravention of the Guidelines laid down in the judgment supra of the Supreme Court is liable to be quashed.

6. The counsel for the respondents No.1&2 has argued that the entire petition is misconceived. It is contended that the judgment supra of the Supreme Court is in the context of qualifications of the Members of the NCLT and NCLAT and is not concerned with the qualifications of the Member (Technical) of the CLB. Attention is invited to Section 10E(2A) under Part IA of the Companies Act which provides that the Members of the CLB shall possess such qualifications and experience as may be prescribed. It is urged that in pursuance thereto, and in exercise of powers under Section 642 of the Companies Act, the Rules aforesaid have been framed and Rule 3(2) whereof is as under:

“(2) A person shall not be qualified for appointment as Technical Member unless he –

- (a) is, or has been, a Member of the Company Law Service (Accounts Branch) and is holding, or has held, a post in Super-Time Grade or Selection Grade in that service or a post in Grade I of that Service for at least eight years; or,*
- (b) is, eligible to be appointed as a Joint Secretary to the Government of India under the Central Staffing Scheme, or to any other post under the Central Government carrying a scale of pay*

which is not less than that of Joint Secretary to the Government of India, and has adequate knowledge of and experience in dealing with the problems relating to Company Law.”

7. It is thus argued that the notice aforesaid inviting applications for appointment to the post of Member (Technical) of the CLB was strictly in accordance with the Rules. It is yet further argued that the observations aforesaid of the Supreme Court qua eligibility of the Members of NCLT and NCLAT were in the context of the functions to be performed by NCLT and NCLAT and which are materially different from the functions of CLB. It is contended that NCLT and NCLAT are proposed to take over the functions not only of the CLB but also of The Board for Industrial and Financial Reconstruction (BIFR) and the Company Court. It is yet further contended that the Companies (Amendment) Bill, 2011 has duly incorporated the Guidelines laid by the Supreme Court in the judgment aforesaid relating to qualifications of the Members of NCLT and NCLAT. Our attention is also invited to ***Sanjeev Manchanda Vs. Union of India*** MANU/DE/3228/2009 also challenging the then appointment of a Member (Technical) of the CLB *inter alia* on the same grounds as in this petition and which challenge was dismissed with cost of ₹25,000/-.

8. The counsel for the petitioner in rejoinder has contended that what has been held by the Supreme Court qua the qualifications of Members of NCLT and NCLAT equally applies to the qualifications of Members of CLB. It is further urged that the first relief claimed in this petition is to

make suitable amendments / modifications for implementing the Guidelines of the Supreme Court.

9. We have considered the respective submissions. The counsel for the petitioner also does not dispute and it is clear as day light that the provisions which have been struck down by the Supreme Court in the judgment supra pertain to NCLT and NCLAT and not to CLB; that the qualifications for appointment to the post of Member (Technical) of CLB are governed by the Rules aforesaid and which Rules were not challenged before the Supreme Court and are not informed to have been challenged in any other proceedings; that the appointment of the respondent No.5 Mr. A. Bandopadyay as Member (Technical) of CLB is as per the said Rules.

10. The said Rules which are nearly 20 years old have not been challenged in the present petition also.

11. It cannot be lost sight of that the present is a petition filed in public interest seeking a writ of *quo warranto* i.e. of recalling the appointment of the respondent No.5 Mr. A. Bandopadyay to the post of Member (Technical) of CLB. The Supreme Court in ***Dr. Duryodhan Sahu Vs. Jitendra Kumar Mishra*** (1998) 7 SCC 273 and in ***B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association*** (2006) 11 SCC 731 has held Public Interest Litigations to be not maintainable in service matters. However, in ***N. Kannadasan Vs. Ajoy Khose*** (2009) 7 SCC 104 the Supreme Court has carved out an exception and held that an appointment to a public office may be

challenged in public interest even where the petitioner does not claim any right of appointment in himself; however the same can be done by showing usurpation of public office by a person not qualified to occupy the same or having been appointed without following the procedure prescribed in law. A writ of *quo warranto* does not lie if the alleged violation is not of a statutory provision.

12. Writ of *quo warranto* in the present case is sought by contending the respondent No.5 Mr. A. Bandopadhyay to be not qualified. However once we find the respondent No.5 Mr. A. Bandopadhyay to be qualified in terms of the Rules framed for the said purpose, no writ of *quo warranto* can be issued and particularly when there is no challenge even to the said Rules.

13. We reiterate that the petitioner in the present petition has not challenged the said Rules. The question, as to whether what has been held by the Supreme Court in relation to the qualifications of the Members of NCLT and NCLAT, applies to the Members of CLB, can be adjudicated only by challenging the Rules providing for the qualification of the Members of the CLB and which adjudication shall entail comparison of the functions of CLB and NCLT and NCLAT.

14. We do not deem it appropriate to entertain the aforesaid questions which do not arise in the present petition and dismiss this petition. We refrain from imposing any costs on the petitioner.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

OCTOBER 31, 2012
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