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

+ W.P.(C.) 7203/2012 and C.M. No. 18564/2012 (for stay)

STATE OF ODISHA

.... Petitioner

Through: Mr. Raju Ramachandran, Senior Advocate along with Mr. M.V. Katarki, Mr. R.S. Jena & Mr. S. Panda, Advocates.

versus

GOVT. OF INDIA AND ANR.

..... Respondents

Through: Mr. Rajeeve Mehra, ASG, Mr. Sumeet Pushkarna, CGSC, Mr. Gaurav Verma, Advocate along with Mr. Asit Chaturvedi, Deputy Commissioner, Ministry of Water Resources, for the respondent No.1/UOI.
Mr. S.S. Prasad, Senior Advocate along with Mr. Y. Rajagopala Rao & Ms. Y. Vismai Rao, Advocates for the respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

19.11.2012

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1. The State of Odisha, the petitioner herein, has laid a challenge to the impugned notification dated 08.05.2012 issued in exercise of powers

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conferred under Section 4(2) read with Section 5(A) of the Inter-State River Water Disputes Act, 1956 (hereinafter referred to as the said Act) appointing Justice Ghulam Mohammed, retired Judge of the High Court of Andhra Pradesh as a member of the Vansadhara Water Dispute Tribunal.

2. It is in pursuance of the judgment of the Hon'ble Supreme Court in the ***State of Odisha Vs. Government of India***, (2009) 5 SCC 492, that the Central Government had issued earlier a similar notification dated 24.02.2010 constituting the said three member Tribunal consisting of Justice B.N. Agrawal (retired Judge of the Supreme Court), Justice Nirmal Singh (Retd.) and Justice B.N. Chaturvedi (Retd.). However, Justice B.N. Agrawal resigned and in his place Justice M.K. Sharma (Retd.) Judge, Supreme Court of India was appointed as the Chairman. Justice Nirmal Singh also resigned and to fill up the said vacancy Justice Ghulam Mohammed (Retd.) has been appointed. The grievance of the petitioner is that the river dispute is between the State of Odisha and the State of Andhra Pradesh, and Justice Ghulam Mohammed hails from Andhra Pradesh and, therefore, the petitioner perceives a possibility of a bias.

3. The State of Odisha, on the aforesaid notification being issued, vide its letter dated 04.06.2012 had raised the said objection to the constitution of the Tribunal where Justice Ghulam Mohammed was the member. However, the Central Government vide its letter dated 06.09.2012 rejected the objection of the petitioner.

4. We may note here that the relevant records have been produced by the learned ASG before us which show that the Tribunal was so constituted on the recommendation of the then Hon'ble Chief Justice of India and when the objection was raised by the petitioner, the papers were sent to the then Hon'ble Chief Justice of India for his view, who found no reason to change his earlier recommendation. The records show that the then Hon'ble Chief Justice opined that the notification having been issued qua the re-constituted Tribunal, there could be no change of composition. However, it was further observed that there was no ground made out in the representation of the petitioner for de-notification of the appointment. It is lastly mentioned that even otherwise the Tribunal is a three-member bench where a Supreme Court Judge is its Chairman and two High Court Judges are its member.

5. Insofar as the provisions of the said Act are concerned, it is not disputed that there is no specific mechanism provided under the Act to lay a challenge to the constitution of the Tribunal. However, it is relevant to reproduce Section 11 of the said Act, which reads as under:

"11. Bar of jurisdiction of Supreme Court and other courts. Notwithstanding anything contained in any other law, neither the Supreme Court nor any other court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act."

6. The submission of learned senior counsel for the petitioner is that Section 11 would be triggered of only where there is an exercise of jurisdiction by the Tribunal in respect of a water dispute but in the present case

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the challenge is laid to the composition of the Tribunal. It is further pointed out to us that the petitioner has, in fact, made an application before the Tribunal seeking recusal of the learned Judge but vide an order dated 03.10.2012, the application was rejected as the Hon'ble Judge found no reason to recuse himself from the Tribunal.

7. Learned senior counsel for the petitioner has tried to couch his submissions in a guarded language, conscious of the nature of the plea sought to be raised. On a Court query being raised that if a disqualification can be pleaded in the petition on the basis of the Hon'ble Judge hailing from a particular State, which was party to the river water dispute, the consequences would be much large, as the Hon'ble Judges – both in the Supreme Court and the High Courts deal with the matters which may have impact in terms of its result on the issues of caste, community and region, learned counsel submitted that his plea could never be to enlarge the scope of scrutiny to that extent, but he was seeking to confine his submissions to an aspect of river water dispute which is an emotive issue. He submits that there should not only be fairness in play, but also perceived fairness in play.

8. Learned senior counsel for the petitioner sought to articulate his submissions further by submitting that the State is in a nature of *parens patrie* and, thus, a resident hailing from a State, which was party to the river water dispute, may find himself unnecessarily burdened.

9. Learned counsel submitted that there was no specific reason to perceive

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a bias against the particular Judge, but his submission was on a larger plain that, in case of a river water dispute, no Judge hailing from one of the States party to the dispute should be appointed as its member. He added that since the learned Judge was born, grew-up and practiced in the Courts at Andhra Pradesh and continued to reside in the State after retirement, he is personally domiciled in the State and, thus, inhabitant of the State. Since the disputes have been referred to the Tribunal for adjudication on a complaint dated 28.02.2009 filed by the State of Andhra Pradesh on its own behalf, as well as on behalf of the interest of the 'inhabitants' of the State, the complaint has to be treated as one also on behalf of the learned Judge. There was, thus, at least a possibility of a bias or really a likelihood of a bias and, thus, natural justice and fairplay would require the re-constitution of the Tribunal.

10. The aforesaid plea is sought to be buttressed by the fact that in the previously constituted Tribunal under the said Act, never a resident of the participating State had been made a member. Learned counsel fairly concedes that there is no rule & regulation in this behalf but this is a convention or an unwritten rule, which has been so followed.

11. On the other hand, the petition is strongly opposed by the learned ASG appearing for the Union of India as well as the learned senior counsel for the respondent No. 2, the State of Andhra Pradesh.

12. On examination of the plea of the parties, we are afraid that we do not agree with the submissions of learned senior counsel for the petitioner, *albeit*

cast in very appropriate language. We cannot lose sight of the fact that our country has diversity of region, religion, caste, community and other characteristics. There is still perceived a unity in diversity which holds the country together. There may be disputes which are localized to a region, or there may be qua different regions, States, castes, communities. If we were to accept the plea of learned senior counsel for the petitioner, it would be difficult to restrain the application of this principle only to a river water dispute. There may be parties, who may act mischievously by claiming that the composition of benches should exclude persons from certain region, religion or castes. This would be completely unacceptable. A Judge is trained to act in a dispassionate manner and take an objective and impartial view of the matter, uninfluenced by irrelevant considerations which would include as to the region from which he hails or the caste or community to which he belongs.

13. It is not as if there is any specific allegation or plea raised qua the learned Judge in particular, but it is only a perceived possibility of a bias based on the region from where the learned Judge hails. This cannot, in our view, be treated to be a reasonable possibility of a bias.

14. We may also note that the recommending authority and the Union of India have both applied their mind to the matter in issue and we are unable to accept the plea of learned senior counsel for the petitioner that appointment may have occurred possibly on account of a mistake – as if the factum of the learned Judge hailing from Andhra Pradesh has been missed out. In fact, the

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very appointment shows that he has been the Judge of the Andhra Pradesh High Court. Similarly, the recommendation made by Hon'ble, the then Chief Justice of India, also shows that the recommending authority was naturally quite conscious of the States between whom the dispute was existing and as to which High Court the learned Judge appointed belonged and where he hailed from. The Tribunal itself has also not found any reason (the member, in particular) why the said member should recuse himself from the Tribunal.

15. We are, thus, not inclined to interfere with the impugned notification in exercise of our jurisdiction under Article 226 of the Constitution of India.

16. Dismissed.

17. At this stage, learned senior counsel for the petitioner seeks a certificate of fitness to appeal before the Supreme Court under Article 134A of the Constitution of India. It is his submission that Article 262 of the Constitution of India, which deals with adjudication of disputes relating to inter-State rivers or river valleys, ousts the jurisdiction of the judicial forums and, thus, the present matter in view of Article 132 involves a substantial question of law as to the interpretation of the Constitution. In the alternative, he prays that it at least raises a substantial question of law of general importance as envisaged under Article 133 of the Constitution.

18. We are unable to accept this plea for the reason that the issue which we have decided is restricted to the aspect of disqualification of a Judge to be a member of a Tribunal only on the plea that the Hon'ble Judge hails from a

particular region/State, which is party to the dispute before the Inter-State Water Dispute Tribunal.

19. Order Dasti.


SANJAY KISHAN KAUL, J.


VIPIN SANGHI, J.

NOVEMBER 19, 2012
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