

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V. ASHA

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

WP(C).No. 24989 of 2015 (S)

PETITIONER(S):

HANIL KUMAR.M.H, AGED 42 YEARS
ADVOCATE, S/O.M.K.HARSHAN, MADATHIPARAMBIL HOUSE
DR.O.K.MADHAVIAMMA ROAD, AYYAPPANKAVU, KOCHI-682018.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.S.K.SAJU
SRI.A.RANJITH NARAYANAN
SMT.SIMI RANJITH

RESPONDENT(S):

1. UNION OF INDIA
REPRESENTED BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES AND PENSIONS, 5TH FLOOR
SARDAR PATEL BHAVAN, NORTH BLOCK, NEW DELHI-110001.
2. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM-695001.
3. PRINCIPAL SECRETARY
P&ARD DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.
4. KERALA ADMINISTRATIVE TRIBUNAL
REPRESENTED BY ITS REGISTRAR, VANCHIYOOR
THIRUVANANTHAPURAM-695305.

R1 BY ADV. B.RAMACHANDRAN, CGC
R2&3 BY SR GOVT PLEADER SMT.REKHA VASUDEVAN
R4 BY ADV. SRI.P.GOPAL
R BY ADVOCATE GENERAL SRI.K.P.DANDAPANI
R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18.11.2015,
ALONG WITH WPC. 25749/2015, THE COURT ON 01.12.2015 DELIVERED THE
FOLLOWING:

WP(C).No. 24989 of 2015 (S)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE GOVERNMENT ORDER NO.G.O.[MS]
NO.20/2010/P&ARD DATED 15/6/2010.

EXHIBIT-P2: TRUE COPY OF THE LETTER DATED 18/3/2015.

EXHIBIT-P3: TRUE COPY OF THE NOTIFICATION ISSUED BY THE 4TH RESPONDENT.

EXHIBIT-P4: TRUE COPY OF THE RELEVANT EXTRACT OF THE MATHRUBHUMI
NEWSPAPER DATED 13/8/2015 ALONG WITH ITS ENGLISH TRANSLATION.

EXHIBIT-P5: TRUE COPY OF THE RELEVANT EXTRACT REPORT IN MATHRUBHUMI
DATED 18/7/2015 RECOMMENDING THE NAME OF E.K.BHARAT BOOSHAN, FORMER
ADDITIONAL CHIEF SECRETARY OF THE GOVERNMENT OF KERALA ALONG WITH
ITS ENGLISH TRANSLATION.

RESPONDENT(S)' EXHIBITS

EXT.R2(a): TRUE COPY OF NOTIFICATION DATED 30.12.2011 PUBLISHED IN GSR
NO.923 (E) ISSUED FROM MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE &
PENSIONS.

EXT.R2(b): TRUE COPY OF LETTER NO.1082/2015/KAT DATED 02.06.2015 ADDRESSED
BY THE REGISTRA, KERALA ADMINISTRATIVE TRIBUNAL.

/TRUE COPY/

PS TO JUDGE

C.R.

ANTONY DOMINIC & P.V.ASHA, JJ.

W.P(C).Nos.24989 & 25749 of 2015

Dated this the 1^s day of December, 2015

JUDGMENT

Antony Dominic, J.

1.The captioned Public Interest Litigations have been filed by an Advocate practising in the Kerala Administrative Tribunal and the High Court of Kerala and the Kerala Administrative Tribunal Advocates Association respectively. The prayers sought for are to direct the State of Kerala to place the recommendations of the selection committee relating to appointment of two judicial members of the Kerala Administrative Tribunal (KAT) before the Governor of the State of Kerala and also to direct the State to forward the recommendations of the selection committee together with the views of the Governor to the first respondent, the Union of India. They are also seeking a direction to the Union of India to appoint two judicial members to the two vacancies in the Kerala Administrative Tribunal in accordance with the recommendations of the selection committee.

2.The Kerala State Administrative Tribunal was established by the Government of India in exercise of its powers under section 4(2) of the Administrative Tribunals Act, 1985 (hereinafter referred to as the 'Act', for short). In so far as this case is concerned, on 7.3.2015, the selection committee for appointment of members of the KAT held its meeting under the chairmanship of the Hon'ble the Chief Justice of the High Court of Kerala and decided to invite applications to one existing vacancy of judicial member, one anticipated vacancy of judicial member and one anticipated vacancy of administrative member. Accordingly, on 18.3.2015, notification was issued inviting applications to the aforesaid one existing vacancy of judicial member and one anticipated vacancy each in the posts of judicial member and administrative member. The last date specified for receipt of the applications was 30.4.2015. It appears that for the post of judicial member, 17 applications were received. The selection committee again met on 23.5.2015 and recommended the names of Sri.Benny Gervacis and Sri.V.Rajendran, both advocates practising in this Court. In so far as the

one anticipated vacancy of administrative member is concerned, the selection committee postponed the selection on the ground that there were only two applications and directed that a fresh notification be issued. Accordingly, notification was again issued inviting applications to the one anticipated vacancy of administrative member. The applications received were considered by the selection committee on 17.7.2015. The committee recommended the name of Sri.Bharath Bhushan, former Chief Secretary of the State of Kerala and the same was forwarded to the second respondent. The second respondent placed the recommendation of the selection committee for appointment to the post of administrative member before the Cabinet and decided to forward the same to the Governor. However, no action whatsoever was taken on the recommendation made by the committee on 23.5.2015 for appointment to the post of judicial member. It was in this background, these writ petitions were filed with the prayers mentioned above.

3. In the counter affidavit filed by the State of Kerala and the Principal Secretary, P&ARD Department, they challenged the maintainability of the writ petitions and also the locus standi of the writ petitioners. In so far as the recommendation made by the selection committee on 23.5.2015 is concerned, referring to the provisions of the Act and the Administrative Tribunals (Procedure for appointment of members) Rules, 2011 (hereinafter, the '2011 Rules', for short), it is stated that the recommendation of the selection committee was placed before the council of ministers in its meeting held on 25.8.2015 and that after deliberations, it was decided not to draw a list of persons selected incorporating the names recommended by the selection committee and send it to the Central Government in accordance with Rule 5 of the Rules. This decision of the second respondent is sought to be justified by stating thus in the counter affidavit:

“(5) Therefore, according to Rule 5(2) of the Administrative Tribunals (Procedure for appointment of Members) Rules, 2011, the process of selection includes three-fold action:

- i) Recommendation by the Selection Committee
- ii) **State Government after consideration of the recommendations, to make a list of persons selected by it and sending the same with its recommendations to Central Government.**
- iii) Appointment by the Central Government in consultation with the Chief Justice of India.

Therefore, on the basis of the above provisions, the State Government has the power to prepare a list of persons from among the persons recommended by the Selection Committee and forward it to the Central Government. In fact, it is the prerogative of the State Government to make a decision with respect to the members to be appointed as members of the Tribunal from the recommendation made by the Selection Committee. **In other words, the duty of the Selection Committee is only to recommend such persons who are qualified to be appointed as members. It is not the Selection Committee which is preparing the list. It is the State Government which is conferred with power to prepare the list of persons selected, after considering the recommendations of the Selection Committee.** Therefore, the State Government has the power to prepare a list from the recommendations forwarded by the Selection Committee. Therefore, in view of State Government's power under Rule 5(2)(iii), State Government has ample power to drop the names of

two persons who were recommended to be appointed as Judicial Members by the Selection Committee.

8. It is submitted with great respect that petitioner's prayers are that recommendation of Selection Committee held on 23.05.2015 pursuant to Exhibit P2 and P3 may be placed forthwith before His Excellency the Governor and in turn forward the recommendation of the Selection Committee together with the views of the Governor to the 1st respondent. It is submitted that the consultation procedure provided under Rule 8 have to be followed only in the event of selection of a member of the State Administrative Tribunal. The only purpose for which the recommendation of the Selection Committee is placed before the Governor is in order to enable His Excellency the Governor to elucidate his views. Therefore, if the State Government is not making a list of the persons selected in accordance with Section 5(2)(iii), the consultation procedure contemplated in Rule 8 need not be followed. Only in the event of the State Government making a list of persons selected, after taking into consideration of the recommendation of the Selection Committee, the State Government is bound to place the same for consultation with the Governor and to send the same to the Central Government with its recommendations, the recommendation of the Selection Committee and the views of the Governor. "

4. On the basis of the pleadings, the writ petitions were taken up for hearing. However, after the cases were heard in part, when the cases came up for consideration on 27.10.2015, learned Advocate General submitted that the Government re-considered the matter and decided to approve the name of Sri. Benny Gervacis, who, according to him, was nominated to the one existing vacancy. Thereupon, an order was passed directing that an affidavit be filed, clarifying that if it was the case of the State Government that nomination of the other candidate was not accepted for the reason that it was against an anticipated vacancy, the State should also clarify as to why the vacancy was treated as an anticipated one. Further steps that were taken by the State on the recommendation of Sri. Bharath Bhushan for the post of administrative member was also ordered to be clarified.

5. Subsequently, by order dated 4.11.2015, the standing counsel appearing for the KAT was directed to produce the file containing the minutes of the selection

committee which led to the recommendation of the two persons for appointment to the post of judicial member.

6. In compliance with the order dated 27.10.2015, respondents 2 and 3 filed affidavit dated 16.11.2015. In that affidavit, they have stated that based on the advice of the Advocate General, the council of ministers, in their meeting held on 21.10.2015, have decided to place the name of Sri. Benny Gervacis before the Governor for approval. In so far as the recommendation of the name of Sri. V. Rajendran is concerned, it is stated that the vacancy against which he was recommended was notified as an anticipated vacancy and that if the vacancy was notified as a clear vacancy and re-notified as such, there would have been much more applicants to the said post. According to the State, in response to the notification issued on 18.3.2015, only 17 applications were received for the post of judicial member and this was for the reason that one of the two vacancies was only an anticipated vacancy as on the date of the notification. These factual

averments are contained in paragraphs 5, 6 and 7 of the additional counter affidavit and being relevant, these paragraphs are extracted below for reference:

"5. During the pendency of the present Writ Petition the Government was advised by the Learned Advocate General to reconsider the matter. Based on the advice a note was placed before the Council of Ministers for decision in connection with the appointment to the existing vacancy in the post of Judicial Member on the following points:

i. whether the name of one candidate from the list of two candidates namely Sri.Benny Gervacis and Sri.V.Rajendran recommended by Selection Committee as contemplated under Rule 5(2) of the Administrative Tribunal (Procedure for Appointment of Members) Rules, 2011 for appointment against the existing vacancy of Judicial Member in Kerala Administrative Tribunal may be reconsidered?

ii. whether the Hon'ble Governor of Kerala may be requested to approve the name of candidate so selected and

iii. If approved, whether the same may be recommended to the Government of India for his appointment?

6. The Council of Ministers in its meeting held on 21.10.2015 has decided to place the name of Sri.Benny Gervacis before His Excellency Governor for approval.

7. It is submitted that the Government has in effect decided not to approve the name of Sri.V.Rajendran as the vacancy against which he was recommended by the Selection Committee was notified as anticipatory vacancy. It is further submitted that though Sri.Ashok M.Chériyan had withdrawn his willingness, the clear vacancy that thus arose was never re-notified at any point of time. Had the vacancy been re-notified there would have been much more applications for the said post. It is worth submitting that only 17 applications were received only for the reason that the one of the two vacancies notified was only an anticipated vacancy as on the date of notification. Further the Selection Committee did not choose to resolve to re-notify the said vacancy as done in the case of the vacancy in the post of Administrative Member, which was re-notified as clear vacancy. On re-notification of the vacancy in the post of Administrative Member clear vacancy, the number of candidature to the post increased."

7.A statement dated 18.11.2015 has been filed by the standing counsel for the Central Government in which it is stated that as on date, no proposal for the appointment of Sri.Benny Gervacis or Sri.V.Rajendran

as judicial members of the KAT has been received by the Union of India. It is also stated that the role of the Central Government commences only after receipt of a complete proposal from the State Government for appointment to KAT and that once a complete proposal is received, the Central Government will take immediate necessary steps to complete the procedure for appointment.

8. We heard learned counsel for the petitioners and the Learned Advocate General.

9. The main issues raised for our consideration are whether the writ petitions are maintainable, which is an objection raised by respondents 2 and 3 in their counter affidavit. If the writ petitions are held to be maintainable, it is to be considered whether in the scheme of the Act and the Rules, the second respondent had the power not to act upon the recommendations made by the selection committee for appointment to the post of judicial members of the KAT. It is also to be considered whether respondents 2 and 3 could have refused to act upon the

recommendations on the ground that one of the vacancies notified was an anticipated vacancy.

10. The first issue that is required to be answered is the contention raised by the respondents that the writ petitions are not maintainable. According to them, the petitioner in W.P(C).25749/15 being the Kerala Administrative Tribunal Advocates Association and the petitioner in W.P(C).24989/15 being an advocate practising in the Tribunal, do not have the locus standi to file the writ petitions. It is also contended that the issue raised in the writ petitions being a service matter, a writ petition filed by a third party who is neither an applicant nor a candidate for the post of judicial member is not maintainable. The contention regarding locus standi can be answered with reference to the principles laid down in the judgment of the Apex Court in S.P.Gupta v. Union of India [AIR 1982 149], where, the question of locus standi was examined by the Apex Court in great detail.

11. Dealing with this question, the Apex Court held that there may be cases where the State or a public authority may act in violation of a constitutional or statutory obligation or fail to carry out such obligation resulting in injury to public interest or what may be conveniently be termed as public injury as distinguished from private injury. Then the court posed the question as to who would have the standing to complain against such an act or omission of the State or public authority and whether any member of the public can sue for judicial redress or whether the standing is limited only to a certain class of persons or whether there is no one who can complain and the public injury must go unredressed. While answering these questions, the court held that if the duty is owed by the State or any public authority to a person or to a determinate class or group of persons, it would give rise to a corresponding right in such person or determinate class or group of persons and that they would be entitled to maintain an action for judicial redress. It was also held that if no specific legal injury is caused to a person or to a determinate class or group of persons

by the act or omission of the persons or by the act or omission of the State or any public authority and the injury is caused only to public interest, the question arises as to who can maintain an action for vindicating the rule of law and setting aside the unlawful action or enforcing the performance of the public duty.

12. According to the Apex Court, if no one can maintain an action for redressal of such public wrong or public injury, it would be disastrous for the rule of law for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in breach of a public duty owed by it and that the courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. This issue was finally answered by the Apex Court by holding that in a situation of the above type, any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some

provisions of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. It was also held that this is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective. However, the court struck a note of caution by holding that care should be taken to see that the member of the public who approaches the Court in cases of this kind is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration.

13. Thereafter the court considered the locus standi of advocates to maintain the writ petition of the class falling in the above category and held thus:

"25. If we apply these principles to determine the question of locus standi in the writ petition of Iqbal chagla & Ors in which alone this question has been sharply raised, it will be obvious that the petitioners had clearly and indisputably locus standi to maintain their writ petition. The petitioners are lawyers practising in the High Court of Bombay. The

first petitioner is a member of the Bombay Bar Association, petitioners Nos.2 and 3 are members of the Advocates Association of Western India and petitioner No.4 is the President of the Incorporated Law Society. There can be no doubt that the petitioners have a vital interest in the independence of the judiciary and if an unconstitutional or illegal action is taken by the State or any public authority which has the effect of impairing the independence of the judiciary, the petitioners would certainly be interested in challenging the constitutionality or legality of such action. The profession of lawyers is an essential and integral part of the judicial system and lawyers may figuratively be described as priests in the temple of justice. They assist the court in dispensing justice and it can hardly be disputed that without their help, it would be well nigh impossible for the Court to administer justice. They are really and truly officers of the Court in which they daily sit and practice. They have, therefore, a special interest in preserving the integrity and independence of the judicial system and if the integrity or independence of the judiciary is threatened by any act of the State or any public authority, they would naturally be concerned about it, because they are equal partners with the Judges in the administration of justice. Iqbal Chagla and others cannot be regarded as mere bystanders or meddlesome interlopers in filing the writ petition."

14. We cannot also be oblivious of the judgments of the Apex Court in celebrated cases such as Madras Bar Association v. Union of India [(2014) 10 SCC 1] and the Supreme Court Advocates on Record Association and Another v. Union of India [2015 AIR SCW 5457] which were also filed by associations of advocates and were decided by the Apex Court. Therefore, the contention raised that the petitioners in these writ petitions do not have the locus standi to maintain the writ petitions is only to be rejected and we do so.

15. Similar is the contention that the issues raised in these writ petitions are service matters. This contention, to our mind, need not detain us any longer in view of the judgment of the Apex Court in State of Punjab v. Salil Sabhlok [(2013) 5 SCC 1], where, a similar contention raised to resist a challenge to the appointment of the Chairman of Public Service Commission of the State of Punjab was rejected by the Apex Court. For these reasons, we do not find any substance in the first contention raised by the learned counsel for the respondents.

16. We shall now proceed to examine whether the State could have validly taken a decision not to make a list of the persons selected by the selection committee. Section 4 of the Act provides for establishment of Administrative Tribunals. Section 4 (2) provides that the Central Government may, on receipt of a request in this behalf from any State Government, establish, by notification, an Administrative Tribunal for the State to exercise the jurisdiction, powers and authority conferred on the Administrative Tribunal for the State by or under the Act. It was in exercise of this power that the Kerala Administrative Tribunal was established by the Government of India by its notification GSR 705(E) dated 25.8.2010. Section 5 of the Act provides for the composition of Tribunals and Benches thereof. As per Section 5(1), each Tribunal shall consist of a Chairman and such number of Judicial and Administrative members as the appropriate Government may deem fit and subject to the other provisions of the Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.

Section 6 of the Act deals with qualification for appointment as Chairman and other members. As per section 6(3), the Chairman and every other Member of the Central Administrative Tribunal shall be appointed by the President after consultation with the Chief Justice of India. As per sub-section (4), subject to the provision of sub-section (3), the Chairman and every other Member of an Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the concerned State.

17. In exercise of its rule making powers under section 36(c) of the Act and in supercession of the Administrative Tribunals (Procedure for appointment of Vice Chairman and Members) Rules, 2006, the Central Government made the Administrative Tribunals (Procedure for Appointment of Members) Rules, 2011. The Rules were published by notification dated 30.11.2011 and came into force on the date of its publication in the official gazette. Rule 3 of the Rules provide for the composition of the selection committee. As per Rule 3(2), there shall be a

Selection Committee of the concerned State Government for the purpose of selection of Members of the concerned State Administrative Tribunal. The Chief Justice of the concerned State shall be the Chairman of the selection committee and the members of the committee are the Chief Secretary, the Chairman of the State Administrative Tribunal and the Chairman of the Public Service Commission, all of the concerned State. As per Rule 4, the anticipated vacancies of Members that are to arise between January to December of each calendar year shall be placed before the Selection Committee and the Chairman of the Administrative Tribunal concerned shall indicate the number of vacancies of Members to be filled from the judicial stream and the administrative stream respectively, whereupon the procedure to fill up the vacancies, accordingly, shall be initiated by the concerned Department of the State Government. Rule 6 (1) provides for the meetings of the Selection Committee and as per this rule, the Selection Committee shall normally hold its meetings at the State capital of the State concerned or at such other place as may be decided by the Chairman of the

concerned selection Committee by recording the reasons for the change of the venue of the Committee. As per Rule 5(2)(i), the Selection Committee of the concerned State Government shall devise its own procedure or lay down guidelines for inviting applications and for the selection of the Members of the Administrative Tribunal of the State concerned. Sub rule (ii) thereof provide that the Selection Committee shall recommend persons for appointment as Members from amongst the persons on the list of the candidates prepared by the Chief Secretary or Secretary, General Administration Department or Personnel Department of the State Government after writing to the various cadre controlling authorities of the State. Sub rule (iii) states that the State Government shall, after taking into consideration the recommendations of the Selection Committee, make a list of persons selected and send the same with its recommendations to the Central Government, who shall, in consultation with the Chief Justice of India and in accordance with the provisions contained in section 6(4), appoint Members of the Administrative Tribunal of the State concerned.

18. Rule 5(2) of the 2011 Rules reads thus:

5. Procedure for inviting applications and processing of candidatures:- (1) Central Administrative Tribunal-

xxx xxx xxx

(2) State Administrative Tribunal-

(i) The Selection Committee referred to in sub rule (2) of Rule 3 of the concerned State Government shall devise its own procedure or lay down guidelines for inviting applications and for the selection of the Members of the Administrative Tribunal of the State concerned.

(ii) The Selection Committee shall recommend persons for appointment as Members from amongst the persons on the list of the candidates prepared by the Chief Secretary or Secretary, General Administration Department or Personnel Department of the State Government after writing to the various cadre controlling authorities of the State.

(iii) The State Government shall, after taking into consideration the recommendations of the Selection Committee, make a list of persons selected and send the same with its

recommendations to the Central Government who shall in consultation with the Chief Justice of India and in accordance with the provisions contained in sub-section (4) of Section 6, appoint Members of the Administrative Tribunal of the State Government concerned".

19. Rule 8 of the 2011 Rules provides for consultation with the Governor and as per clause (1) thereof, for selection of a Member of State Administrative Tribunal the Governor of the concerned State shall be consulted by the State Government and for this purpose the recommendations of the Selection Committee shall be placed before him. Clause (2) provides that after consulting the Governor, the recommendations of the Selection Committee together with the views of the Governor shall be forwarded to the Central Government and that Government shall seek the orders of the competent authorities.

20. By notification G.S.R. 205(E) dated 21.3.2014, the 2011 Rules were amended by Administrative Tribunals (Procedure for appointment of Members) Amendment

Rules, 2014. By this amendment, clause 1(A) was inserted to Rule 7, which is extracted below:

"1(A) For selection of a Member of the State Administrative Tribunal, the Chief Justice of India shall be consulted in accordance with the provisions of sub-section (4) of section 6 and the recommendations of the Selection Committee referred to in sub-rule (2) of rule 3 shall accordingly be placed before him for his views".

As per this Rule, for selection of a member of the State Administrative Tribunal, the Chief Justice of India shall be consulted in accordance with the provisions of section 6(4) of the Act and the recommendations of the selection committee referred to in Rule 3(2) shall be placed before the Chief Justice of India for his views.

21. Reading of the above provisions of the Rules show that the selection committee constituted in terms of Rule 3(2) shall recommend persons for appointment as members of the State Administrative Tribunal from amongst the persons on the list of candidates prepared by the Chief Secretary or the

Secretary to the Departments mentioned in Rule 3(2) (iii) in the manner as provided therein. Once a list is thus prepared by the Selection Committee, the State Government shall, after taking into consideration the recommendations, make a list of persons selected and send the list to the Central Government. Rule 8(1) of the 2011 Rules provides for consultation with the Governor and for the purpose of consultation, the recommendations of the selection committee referred to in rule 3(2) shall be placed before the Governor. As per rule 8 (2), after consulting the Governor, the State Government shall forward to the Central Government the recommendations of the Selection Committee, together with the views of the Governor and the Central Government shall seek orders from the competent authorities.

22. In view of rule 7(1A) inserted by the Amendment Rules, 2014, before orders of the competent authority are obtained, the Central Government is required to consult the Chief Justice of India in accordance with the provisions of section 6(4) of the Act and for the

purpose of consultation, what is required to be placed before the Chief Justice of India is the recommendations of the Selection Committee referred to in rule 3(2). These provisions of the rules show that on receipt of the recommendations of the Selection Committee, the State Government is bound to make a list of the persons selected as contemplated in rule 5(2)(iii) and send the list with its recommendations to the Central Government. Simultaneously, under rule 8(1), the State Government shall place the recommendations of the Selection Committee before the Governor for the purpose of consulting him and thereafter, the recommendations of the Selection Committee together with the views of the Governor shall be forwarded to the Central Government. Once the recommendations of the State Government along with the list made under rule 5(2)(iii) and the views of the Governor as specified in rule 8(2), are received by the Central Government, the Central Government has to consult the Chief Justice of India in accordance with the provisions of section 6(4) of the Act, placing before him the recommendations of the Selection Committee referred

to in rule 3(2), for his views.

23. These being the different stages that are involved in the appointment of the members of the State Administrative Tribunal, once the recommendation is received from the Selection Committee, the provisions of the Act and the Rules do not contemplate any further selection process and also do not concede any power to the State Government not to make a list or refuse to act upon the recommendations of the Selection Committee. Instead, the only option that is available to the State Government in rule 5(2) (iii) is to make a list of persons selected and to send the same with its recommendations to the Central Government. Therefore, the State Government could not have refused to make a list on the basis of the recommendations made by the selection committee in its meeting held on 23.5.2015.

24. This is not the first time the State Government is behaving in this manner in relation to candidates recommended by the Selection Committee for appointment of members of the Tribunal. In the

context of the Act and the Administrative Tribunals (Procedure for appointment of Vice-Chairman and Members) Rules, 2006, which was superceded by 2011 Rules, this Court had occasion to consider the very same question in the judgment in Basil Attipetty v. Union of India [2012 (1) KLT 841]. In that judgment, referring to rules 3(4), 3(5) and 3(8) of the 2006 Rules, this Court held thus:

"14. We feel the authority of the State Government to drop the names needs to be examined with reference to the statutory provisions. There is no provision in the Rules authorizing the State Government to revert the selection and to drop the names of the candidates selected by the selection committee constituted under R.3(2) of the Rules. All what the State Government can do is to express their views when the list is forwarded to the Governor as required under S. 6(4) of the Act. Stage wise procedure to be followed for appointment of members of the Tribunal as is clear from the provisions of S.6 of the Act and R.3 (4), 3(5) and 3(8) are the following :-

(1) The Chief Secretary or the Secretary of the Department concerned of the State Government will invite applications from among qualified persons for appointment of required number of members of the Tribunal.

(2) Valid applications received from eligible candidates with annexures thereto will be placed by

the Secretary to Government to the selection committee constituted under R.3(2) for making selection and for preparation of list of candidates selected by the selection committee in terms of R.5 (2).

(3) State Government is free to express their views on the selected candidates and forward the same to the Governor of the State for him to endorse the same or to make his suggestions /recommendations / views and return the file to the State Government.

(4) The State Government on receipt of the file from the Governor will forward the same to the Central Government, which shall record their views and forward the file to the Chief Justice of India for his approval as required under S.6(3) read with R.8(1) of the Rules.

5) The Chief Justice of India will naturally consider the suitability of the candidates, the views expressed by the State and Central Governments and Governor and may or may not approve the names forwarded for appointment.

6) On receipt of the file from the Chief Justice of India, the Central Government will only forward the names approved by the Chief Justice of India for appointment by the President of India. So far as candidates who are not approved by the Chief Justice of India is concerned, their names will be dropped by the Central Government without forwarding to the President.

15. From the above scheme of selection as revealed from the provisions of the Act and the Rules we do not find any authority for the State Government to review and drop selected candidates from the list prepared by the selection committee. We are in complete agreement with the view expressed by the Bombay High Court in this regard in the decision above referred. The State Government's decision stated in the Court to appoint Judicial Members from the State Judiciary does not find any support in the provisions of the Act or the Rules in regard to the qualification prescribed for appointment of Judicial Members. We therefore do not find any justification for the State Government to drop the names, and the Governor's approval to the State Government's decision does not attach any sanctity to it. As a result of this finding, the Central Government's decision to accept the State Government recommendation is also not sustainable."

25. In the judgment in Basil Attipetty (supra), the Division Bench has followed the judgment of the Bombay High Court in M.Ramesh Kumar v. State of Maharashtra [2012 (1) Mah LJ 321]. That was a case where the petitioner therein had challenged the decision of the Maharashtra State Government

communicated to the Chairman of the Maharashtra Administrative Tribunal not to go ahead with the recommendation of the Selection Committee and inviting fresh application from eligible officers for the post of Member (Administration). In this judgment, after referring to the provisions of section 6 of the Act and rules 3 to 8 of the 2006 Rules, the Bombay High Court held thus:

"17. As per the Rules, the Selection Committee consists of (i) the Chief Justice of the High Court, (ii) the Chief Secretary, (iii) the Chairman of the State Administrative Tribunal, and (iv) the Chairman of the Maharashtra Public Service Commission. The anticipated vacancies of Members shall be placed before the Selection Committee for a block of six months i.e. January to June and July to December of each calendar year. The Chairman of the Administrative Tribunal concerned shall indicate the number of vacancies of the Members to be filled as Judicial and the Administrative Members, respectively, whereupon the procedure to fill up the vacancies, shall be initiated by the department concerned of the State Government. The procedure for inviting/processing of candidates has been set out in Rule 5(2)(ii). The Selection Committee shall devise its own procedure or lay down

guidelines for finalizing applications, as also for the selection of Members, the Selection Committee shall recommend persons for appointment from the list of the candidates prepared by the Chief Secretary or the Secretary, General Administration Department of the State Government, after writing to the various Cadre Controlling authorities of the State. The State Government shall, after taking into consideration the recommendations of the Selection Committee make a list of persons selected and send the same with its recommendations to the Central Government. As per Rule 6, the Selection Committee will normally hold its meeting at Mumbai and the notice/agenda for the meeting of the Selection Committee shall be issued in advance. The date and venue for the meeting shall be fixed with the convenience of the Chairman of the Committee i.e. the Chief Justice of the High Court of Bombay. The minimum quorum for the meeting shall be the Chairman and at least one other member. As per Rule 7, merit in terms of suitability and not the seniority shall be the criteria in the matter of filling up the post of Member of the Tribunal. Rule 8 mandates consultation with the Chief Justice of India and states that the recommendation of the Selection Committee shall be placed before the Chief Justice of India for his views. The recommendation of the Selection Committee together with the views of the Chief Justice of India shall thereafter be submitted to the

competent authority for orders. Rule 8 of the Selection Rules thus states that the Selection Committee's recommendations have to be received by the Government of India and they are required to be placed before the Chief Justice of India for his view and thereafter the recommendation of the Selection Committee are required to be placed along with the view of the Chief Justice of India to the competent authority for orders. The appointment of the Member of the Tribunal is made by the President after consultation with the Governor of Maharashtra. Thus, Rule 8 does not contemplate, by any stretch of imagination, that the State Government can claim to have the authority or power or discretion to either drop or not to proceed with the recommendations of the Selection Committee. The language of the Rule is plain and does not suffer from any ambiguity and it has to be read with section 6 (3) and (4) of the Act. Rule 5(2)(iii) certainly does not take away the power of the State Government to have a different view on the recommendation of the Selection Committee and it is free to forward such views along with recommendations of the Selection Committee to the Government of India. The selection process as contemplated in the Rules starts from notifying the vacancies, inviting applications, list of candidates to be prepared by the Chief Secretary or the Secretary, General Administration Department, such list is to be placed before the Selection Committee and

thereafter the Selection Committee would go through the credentials of the applicants and make its recommendations keeping in mind the merit and not the seniority as the criteria. The list made by the State Government of selected persons along with recommendations of the Selection Committee, in case the State has any difference of opinion with the recommendations of the Selection Committee, is required to be forwarded to the Central Government. We cannot read the scheme of Rule (5)(2)(iii) in the manner Mr.Kadam urged before us and if it is so read, in our considered opinion, Rule 8 would become otiose. The Scheme of the Rules read in its entirety would suggest that the State Government has the choice to record its own views on the recommendations made by the Selection Committee and forward the same along with the recommendations of the Selection committee to the Central Government. Unless the Chief Justice of India records his view on the recommendations of the Selection Committee, the recommendations are not processed further so as to be submitted to the competent authority."

26.It is seen that SLP(C).No.29179/11 filed by the State of Maharashtra against the judgment of the Bombay High Court was dismissed by the Apex Court by order dated 8.11.2011. In so far as the judgment in

Basil Attipetty (supra) is concerned, C.A.No.9447/13 filed by the State and C.A.No.9446/13 filed by a third party are pending before the Apex Court against that judgment.

27.However, learned Government Pleader attempted to distinguish the judgment in Basil Attipetty (supra) contending that the said judgment was rendered by this Court in the context of the provisions of the Act and the 2006 Rules. For the purpose of comparison, the provisions of rule 5(2) of the 2006 Rules is extracted below for reference:

5. Procedure for inviting/processing of candidatures:- (1) Central Administrative Tribunal-

xxx xxx xxx

(2) State Administrative Tribunal-

(i) The Selection Committee of the concerned State Government shall devise its own procedure or lay down guidelines for inviting applications as also for the selection of the Vice Chairman and the Members of the Administrative Tribunal of the State Government concerned.

(ii) The Selection Committee shall recommend persons for appointment as the Vice Chairman and Members from amongst the persons on the list of the candidates prepared by the Chief Secretary or Secretary, General Administration Department or Personnel Department of the State Government after writing to the various cadre controlling authorities of the State.

(iii) The State Government shall, after taking into consideration the recommendations of the Selection Committee, make a list of persons selected and send the same with its recommendations to the Central Government who will in consultation with the Chief Justice of India in accordance with the provision contained in sub-section (7) of Section 6 of the said Act, appoint Vice Chairman or Members of the Administrative Tribunal of the State Government concerned".

On a comparison of the provisions of the 2006 rules with the provisions of the 2011 rules, it can be seen that there is no difference between these provisions of the rules and therefore, the interpretation given by this Court in *Basil Attipetty* (supra) and the

Bombay High Court in M.Ramesh Kumar (supra) apply in all respects to the 2011 Rules as well. Therefore, we do not find any force in the contention of the learned Government Pleader and we hold that in spite of the introduction of the 2011 Rules, there is absolutely no difference in the power of the State Government and it has no power whatsoever even under the 2011 Rules not to act upon the recommendations made by the Selection Committee.

28.This view that we have taken finds support from the judgment of the Apex Court in R.S.Mittal v. Union of India [1995 Suppl 2 SCC 230]. That case arose in the context of selection of candidates for appointment to the post of Judicial Member in Income Tax Appellate Tribunal, made by a selection board headed by a sitting Judge of the Hon'ble Supreme Court in terms of rule 4(1) and 4(2) of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963. The selection board prepared a panel of selected candidates which included the name of the appellant and sent the recommendations to the Central Government for consideration in accordance

with the rules. The Central Government did not make any appointment and issued fresh advertisement inviting applications for the same post. This was challenged before the Central Administrative Tribunal seeking a direction to the respondents to appoint the appellant as Judicial Member. The Tribunal dismissed the application. It was this order which was challenged before the Apex Court.

29. Rule 4 of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 has been referred to by the Apex Court in paragraph 9 of the judgment and the Apex Court concluded the issue by holding thus in paragraphs 9 and 10:

"9. At this stage, we may refer to Rule 4 of the Rules which is reproduced hereunder:

"4. Method of Recruitment - (1) There shall be a Selection Board consisting of-

- (i) a nominee of the Minister of Law;
- (ii) The Secretary to the Government of India, Ministry of Law (Department of Legal Affairs);
- (iii) The President of the Tribunal; and
- (iv) Such other persons, if any, not exceeding two, as the Minister of law may appoint.

(2) The nominee of the Minister of law shall be the Chairman of the Selection Board.

(3) The Selection Board shall recommend persons for appointment as members from amongst the persons on the list of candidates prepared by the Ministry of Law after inviting applications therefor by advertisement or on the recommendations of the appropriate authorities.

(4) The Central Government shall after taking into consideration the recommendations of the Selection Board make a list of persons selected for appointment as members".

As mentioned above, a sitting Judge of this Court being a nominee of the Minister of law was the Chairman of the Selection Board.

10. The Tribunal dismissed the application by the impugned judgment on the following reasoning:

(a) The selection panel was merely a list of persons found suitable and does not clothe the applicants with any right of appointment. The recommendations of the Selection Board were directory and not mandatory and were not therefore enforceable by issue of a writ of mandamus by the Court.

(b) The letter of Ministry of Home Affairs dated 8-2-1982 which extends the life of panel till exhausted is not relevant in the present case. In the circumstances the life of the panel in this

case cannot go beyond 18 months and as such expired in July 1989.

It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr.Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified."

30. Language of Rule 4(4) of the Rules referred to in paragraph 9 of the judgment is similar to the language of Rule 5(2)(iii) of the 2011 Rules. The principles laid down by the Apex Court would show that when a select panel has been made by the

selection committee, the appointing authority cannot ignore the recommendations of the selection committee or decline to make the appointment on its whims. When a person has been selected and if there is a vacancy which can be offered to him, then, ordinarily there is no justification to ignore him for appointment.

31. The second issue that is required to be resolved is whether there is any force in the contention by the State Government in the additional counter affidavit filed by it that the recommendations of the Selection Committee in so far as it relates to Sri.V.Rajendran was declined to be accepted for the reason that it was against an anticipated vacancy. First of all, rule 4 of the 2011 Rules require that the anticipated vacancy of members that is to arise between January to December of each calendar year shall be placed before the selection committee. This, therefore, means that the process of recruitment has to be initiated against anticipated vacancies. It was accordingly that, in compliance with the procedure laid down by the selection committee in terms of rule

5(2), and as it is revealed from the files made available by the counsel for the KAT, that the Principal Secretary to the Government, Personnel and Administration Reforms Department, vide his letter dated 14.5.2015, forwarded the list of applicants for the post of members (Judicial/Administration) of the Tribunal. It was this list which was considered by the Selection Committee in its meeting held on 23.5.2015.

32. The minutes of the Selection Committee read thus:

Minutes of the Selection Committee for selection of
Members (Judicial and Administrative) of the Kerala
Administrative Tribunal, Kerala, held at the Chamber of
the Hon'ble the Chief Justice of Kerala at 11 a.m.
on May 23, 2015

Present:

The Hon'ble Mr. Justice Ashok Bhushan,
Chief Justice, High Court of Kerala. : Chairman

Shri Jiji Thomson,
Chief Secretary, Government of Kerala. : Member

Hon'ble Mr. Justice K. Balakrishnan Nair,
Chairman, Kerala Administrative Tribunal : Member

Dr. K. S. Radhakrishnan,
Chairman, Kerala Public Service Commission: Member

As per Rule 6 of the Administrative Tribunals (Procedure for appointment of Members) Rules, 2011, the meeting is required to be held at State capital. But, owing to pressure of judicial work, it is not possible for the Chairman to have the meeting at Thiruvananthapuram. So, the Committee has decided to hold its meeting at Ernakulam.

The Committee perused the details of the candidates who have submitted their applications for one post of Administrative Member. The Committee resolved that the Government may be asked to submit a report regarding the said candidates, including all service details and enquiries, if any. With regard to the post of Administrative Member, the Committee further resolves that since only two candidates have submitted their applications and the Committee is adjourning the matter, let a fresh notification be published in the Websites of the Government, the High Court and in two National English dailies and in local dailies, inviting applications from candidates, if any, to submit their applications for one post of Administrative Member, by 15th of June, 2015. The candidates who have already submitted their applications, need not submit any fresh application. The Committee decides to meet again on 27th of June, 2015 at 11 a.m.

The Committee perused the details of all the 17 candidates who have submitted their applications for two posts of Judicial Member.

Shri Ashok M.Chерian, Advocate, whose name had earlier been recommended for the post of Judicial Member has, by letter dated 7th May, 2015, informed that he is withdrawing his consent for being appointed as a Judicial Member of the Kerala Administrative Tribunal. So, at present there exists two clear vacancies in the post of Judicial Member.

The Selection Committee deliberated over the recommendation with regard to two Judicial Members. With regard to Judicial Members, the Committee examined the details of all the 17 applicants who have submitted their applications for two posts of Judicial Member. Considering the experience and qualification of all the candidates, who have applied for the posts of Judicial Member, the Committee finds that Shri Benny Gervacis, Advocate, 61/6016, Cherupilly Lane, Azad Road, Kaloор, Ernakulam-682017 and Shri V. Rajendran, Advocate, PRA-199, Vibhoothi, Poovampilly Road Bye-lane, Elamakkara, Kochi-682026 are the best candidates to be recommended for the posts of Judicial Member of the Kerala Administrative Tribunal. The Committee unanimously recommends Shri Benny Gervacis, Advocate and Shri V.Rajendran, Advocate for the posts of Judicial Member.

The Committee, under Rule 5(2)(ii) of the Administrative Tribunals (Procedure for appointment of Members) Rules, 2011 makes the following recommendation:

Judicial Member:(i) Shri Benny Gervacis, Advocate.

(ii) Shri V.Rajendran, Advocate.

The Committee has decided to send a copy of this minutes to the Chief Minister, Government of Kerala, Thiruvananthapuram, for taking necessary further action.

Dated this the 23rd May, 2015.

Justice Ashok Bhushan
(Chairman)

Shri Jiji Thomson
(Member)

Justice K.Balakrishnan Nair
(Member)

Dr. K.S.Radhakrishnan,
(Member)

33. Reading of the minutes show that much before the meeting of the selection Committee, vide his letter dated 7.5.2015, Sri.Ashok M.Chериан whose name was earlier recommended, informed that he was withdrawing his consent for being appointed as a judicial member of the Tribunal. Taking note of this, the selection Committee concluded that there existed two clear vacancies in the post of Judicial Member. It is accordingly that the selection Committee unanimously recommended Sri.Benny Gervacis and Sri.V.Rajendran

for appointment to the post of members (Judicial). This, therefore, shows that the statutorily constituted Selection Committee, in which, none other than the Chief Secretary of the State is a member and had participated in the meeting held on 23.5.2015, made its unanimous recommendations, concluding that there existed two clear vacancies. It is despite all this, that the State is now coming up with a belated contention that the vacancy notified was an anticipated one and therefore, could not be accepted.

34. Apart from lack of any substance, we also do not find any bona fides in this contention. If, as contended by the State, what prevented it from accepting the recommendations of the selection committee was that it was an anticipated vacancy, there is no reason forthcoming from the State for urging this contention only at this belated stage. Secondly, if it was actually an anticipated vacancy as contended by them, how the State could accept one of the names recommended by the Selection Committee, particularly when the candidates were not recommended against any of the specified vacancies. Thirdly,

there is no basis at all for the claim that since the vacancy notified was an anticipated one, it did not evoke proper response. All these show that the State was hunting for reasons and has no consistent case. That apart, it is also obvious that the reason stated is not the real one and the attempt of the State is to somehow abort the recommendations made by the Selection Committee which is not permissible in law. In such circumstances, the second contention raised, though may not be of much relevance in the context of the conclusion on the first issue, also does not merit acceptance.

35. This is the second time, the State is attempting to abort the recommendations made by the statutory Selection Committee. As famously stated by Andre Gide; "everything has been said before, but since no body listens, we have to keep going back and beginning all over again". It is the responsibility of the State to ensure that each of its pillars function with the independence and respect that each one deserves. Then and then only can the citizens be assured the good governance that the Constitution

guarantees to them. However, the repeated attempt of the State to abort the recommendations made by the statutory selection Committee, the Chairman of which is the Chief Justice of this Court and in which, the Chief Secretary is a member, shows that the constitutional obligations are ignored and decisions are taken on extraneous considerations. In fact, having regard to the principles laid down in *Basil Attipetty* (supra), the decision taken not to make a list or even the partial acceptance of the recommendations of the Selection Committee, borders on contempt as defined in the Contempt of Courts Act. At any rate, this attitude is neither in the interest of the State nor in the interest of its proper administration. Therefore, we hope and trust that at least at this belated stage, wisdom will prevail on all concerned so that no further attempt will be made to sabotage the recommendations made by the Selection Committee.

36. We, therefore, dispose of these writ petitions declaring that the decision of the first respondent not to make a list based on the recommendations made

by the Selection Committee is illegal. There will be a direction to the 2nd respondent State of Kerala, to make a list of persons selected on the basis of the recommendations of the selection Committee and send the list with its recommendations to the Central Government. The State is also directed to place the recommendations of the selection Committee before the Governor for consultation and the views of the Governor shall also be forwarded to the Central Government. This shall be done as expeditiously as possible. It is also directed that once list is made by the State and its recommendations and the views of the Governor are received, the Central Government shall, in consultation with the Hon'ble the Chief Justice of India, make appointments to the posts of Member (Judicial) of the Kerala Administrative Tribunal, in accordance with the Act and the 2011 Rules.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

k kb.