

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2015

DATE OF DECISION : 24.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.Nos.112 and 177 of 2015

W.A.No.112 of 2015 :

Dr.K.Karthikeyan
Member Secretary,
Tamil Nadu Pollution Control Board,
Guindy,
Chennai-600 032.

.. Appellant

Vs.

- 1.V.Anbazhagan
- 2.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai-600 009.
- 3.The Government of Tamil Nadu,
represented by Secretary,
Forest and Environment Department,
Secretariat,
Fort St. George,
Chennai-600 009.
- 4.The Chairman,
Tamil Nadu Pollution Control Board (TNPCB),
Guindy, Chennai-600 032.
- 5.The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-I, Detachment,
Chennai-600 028.

.. Respondents

W.A.No.177 of 2015 :

1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Fort St. George, Chennai-600 009.

2.The Government of Tamil Nadu,
represented by Secretary,
Environment and Forests Department,
Secretariat,
Fort St. George,
Chennai-600 009.

3.The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-I, Detachment,
Chennai-600 028.

.. Appellant

Vs.

1.V.Anbazhagan

2.The Chairman,
Tamil Nadu Pollution Control Board (TNPCB)
Guindy, Chennai-600 032.

3.Dr.K.Karthikeyan,
Member Secretary,
Tamil Nadu Pollution Control Board,
Guindy, Chennai-600 032.

.. Respondents

These writ appeals are preferred under Clause 15 of the Letters Patent
against the order of this court dated 23.01.2015 made in W.P.No.24003 of 2014.

For Appellants : Mr.R.Muthukumarasamy, SC
for Mr.Parthiban in W.A.No.112 of 2015

Mr.AL.Somayaji, Advocate General
assisted by
Mr.P.S.Sivashanmugasundara, Spl.G.P.
In W.A.No.177 of 2015

For Respondents : Mr.K.Doraisami, SC
for Mr.S.Kumaradevan for R-1
in both W.As.

Mr.AL.Somayaji, Advocate General
assisted by
Mr.P.S.Sivashanmugasundara, Spl.G.P.
For RR2,3 and 5 in W.A.No.112 of 2015

Mr.AL.Somayaji, Advocate General
assisted by
Mr.Abdul Saleem, Spl.G.P for R-4
in W.A.No.112 of 2015
and for R-2 in W.A.No.177 of 2015
Mr.R.Muthukumarasamy, SC
for Mr.A.Jenasenan for R-3
in W.A.No.177 of 2015

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COMMON JUDGMENT

SATISH K. AGNIHOTRI, J.

Both writ appeals arise from the order dated 23.1.2015 rendered by the learned Single Judge in W.P.No.24003 of 2014.

2. W.A.No.112 of 2015 is preferred by the fifth respondent therein and W.A.No.177 of 2015 is preferred by the 1st, 2nd and 4th respondents therein, questioning the legality, validity and propriety of the order of the learned Single Judge. For convenience, the parties are referred to as per their status in the writ petition.

3. The facts in brief are that the fifth respondent was working as District Environment Engineer when he was promoted as Joint Chief Environment Engineer, Tamil Nadu Pollution Control Board (for short TNPCB) on 29.12.2010 by G.O.(D) No.383, Environment and Forests (EC.2) Department. Thereafter, during the period from 26.09.2011 to 01.01.2012, the fifth

respondent was working as Member Secretary of TNPCB. On 1.1.2012, he proceeded on leave for five months. It transpires that an enquiry was ordered by the Commissioner of Vigilance and Anti Corruption, vide proceedings dated 16.10.2012, which in turn ended in acquittal.

4. On the basis of a complaint, a charge memo was issued to the fifth respondent on 7.1.2013 in respect of some alleged irregularities committed while he was working as Chief Environment Engineer, Chennai. According to the third respondent Board, out of seven charges, five were found proved and it was found that the fifth respondent had caused loss to the exchequer to the tune of Rs.4,95,709/-. In the meantime, the fifth respondent was appointed as Member Secretary by the Environment and Forest (EC2) Department on 25.7.2014. The petitioner filed the writ petition on 1st September, 2014, seeking a writ in the nature of Writ of Quo Warranto or any other appropriate writ to declare the appointment of the fifth respondent as against the authority of law and consequently to declare the post of Member Secretary as vacant.

5. In the writ petition, it was contended by the writ petitioner that when departmental as well as vigilance enquiry were pending against the fifth respondent, his appointment on the post of Member Secretary was without authority of law. The fifth respondent was not a fit person to hold the post of Member Secretary. It was also submitted that out of seven serious charges, five charges were held as proved, which are grave in nature and as such, the fifth respondent is not eligible and competent to be appointed to the responsible and

important post of Member Secretary of TNPCB. Thus, his appointment be declared as bad and illegal.

6. In response, the State Government / appellant in W.A.No.177 of 2015 submitted that the fifth respondent possesses qualification, knowledge and experience of scientific engineering or management aspects of pollution control as required under Section 4(2)(f) of the Water (Prevention and Control of Pollution) Act, 1974. The fifth respondent was the most eligible and suitable qualified person for the post.

7. The locus standi of the writ petitioner was also questioned on the ground that the writ petitioner under the banner of social activist is not competent to file the writ petition for a writ of quo warranto. On the issue of framing of charges, the State Government took the stand that the third respondent- Chairman, TNPCB has framed five charges against the fifth respondent on 7.1.2013 for certain procedural flaws while issuing consent to certain industries, thereby causing loss to TNPCB to the tune of Rs.4,95,709/-. However, the loss as alleged in the charges was not held proved against the fifth respondent. The charges were in the nature of fact finding and on the enquiry report dated 30.5.2014, the fifth respondent had submitted a representation on 7.7.2014. It was also stated that the fourth respondent- Inspector of Police, Vigilance and Anti Corruption /department, who conducted a detailed enquiry into the same set of allegations in the enquiry report dated 1.8.2014, has recommended for departmental action against the fifth respondent for three allegations, but not for any criminal action against the fifth respondent.

8. The Directorate of Vigilance and Anti Corruption has been sent a communication on 1.10.2014 for specific remarks for continuation of departmental proceedings which has reached final stage and his report was awaited. The fifth respondent is involved in various committees and with his experience, he is in a position to contribute a lot. It was lastly contended that there is no justification to issue writ of quo warranto, as the fifth respondent is properly qualified and suitable for the post.

9. The third respondent TNPCB had also filed a counter affidavit before the writ court, stating that there were not seven charges, but only five charges, which were pending consideration.

10. The fifth respondent, citing his educational, academic qualification and also his experience, had submitted that he has an unblemished record. He had not gone on leave on any other reason, except due to some personal reasons. He was appointed as Member Secretary from 23.09.2011 to 01.11.2012. All charges levelled against him were false, which could not stand the scrutiny and as such, on the basis of the pending enquiry, the fifth respondent could not have been denied appointment on the post of Member Secretary.

11. The learned Single Judge considered all aspects of the matter and observed as under :

“18.The fact that the fifth respondent possesses all the qualifications both in terms of education and experience, is not disputed even by the petitioner. In other words, the eligibility of the petitioner for appointment to the post of Member Secretary is not even in doubt.”

On the issue of departmental enquiry pending against him, it was held as under :

27. x x x x x x x x x x

(12) Since the Government already had the report of the Departmental Enquiry Officer dated 30.05.2014 holding 3 out of 5 charges proved and since the draft final report of the Directorate of Vigilance and Anti-Corruption dated 01.08.2014 also recommended departmental action on the ground that the allegations are substantiated, the Government sent a letter bearing No. 14831/EC2/2014-6 dated 01.10.2014 to the Directorate of Vigilance and Anti-Corruption.

x x x x x x x x x x

35. In other words, the Government did not have the benefit of the draft final report of the Director of Vigilance and Anti Corruption during the period from 21.7.2014, the date on which the Note File was generated, until 25.7.2014, the date on which the appointment was approved.

36. What is interesting to note is the fact that the file did not take note either of the pendency of a detailed enquiry before the Directorate of Vigilance and Anti Corruption or of the enquiry report submitted by the departmental enquiry officer on 30-5-2014. The entire note for circulation, prepared by the Deputy Secretary to Government, which went upto the Honourable Chief Minister for approval, can be reproduced as follows in order to appreciate this fact :

"The file relates to the proposal to appoint Dr.K.Karthikeyan, Joint Chief Environmental Engineer, Tamilnadu Pollution Control Board as Member Secretary, Tamilnadu Pollution Control Board in the place of Thiru A.V.Venkatachalam, IFS.

As per Section 4(2)(f) of the Water (Prevention and Control of Pollution) Act, 1974, the full time Member Secretary to be appointed by the State Government shall possess qualifications, knowledge and experience of scientific engineering or management aspects of pollution control. According to Rule 16 of the Tamilnadu Water (Prevention and Control of Pollution) Rules, 1983, the Member Secretary shall be the Chief Executive Officer of the Board and he is responsible for the day to day and orderly functioning of the office of the Board and specific powers have been assigned to him under the said Rules. He is a custodian of all the movable and immovable properties of the Board.

3. In G.O.(Ms)No.158 Environment and Forests (EC.2) Department dated 11.10.2013, Thiru.A.V.Venkatachalam, IFS was appointed as Member Secretary, Tamilnadu Pollution Control Board under Section 4(2)(f) of the Water (Prevention and Control of Pollution) Act, 1974.

4. The post of Member Secretary, Tamilnadu Pollution Control Board is a selection post to be filled up by the State Government. The person selected shall possess the qualifications, knowledge and experience of scientific, engineering or management aspect of pollution control as mentioned in Section 4(2)(f) of the Water (Prevention and Control of Pollution) Act, 1974.

5. This Department proposes to appoint Dr.K.Karthikeyan, Joint Chief Environmental Engineer, Tamilnadu Pollution Control Board in the place of Thiru A.V.Venkatachalam, I.F.S.

6. The file may be circulated to Honourable Chief Minister through the Chief Secretary and Honourable Minister (Environment) for orders on this Department's proposal in para 5 at page 2 ante."

37. Therefore, it is clear that neither the enquiry report dated 30.5.2014 submitted by the Departmental Enquiry Officer to the Chairman of the Tamilnadu Pollution Control Board nor the pendency of the detailed enquiry before the Department of Vigilance and Anti Corruption was indicated in the Note put up on 21.7.2014. The Note File also contains the bio-data submitted by the fifth respondent for considering his candidature for appointment. Even in the bio-data, there is no indication of the pendency of a departmental enquiry by the Pollution Control Board or the detailed enquiry by the Department of Vigilance and Anti Corruption.”

12. Thiru AL.Somayaji, learned Advocate General appearing for the respondent State would submit that there is no dispute with regard to the eligibility of the fifth respondent as held by the learned Single Judge in paragraph 19 of the impugned order to the effect that the fifth respondent possesses all qualifications, both in terms of education and experience. It is also submitted that there is no statutory violation in the order of appointment. It is next contended that the writ petitioner has not pointed out any violation of any statute to seek a writ of quo warranto. It has also been recognised by the learned Single Judge that under Rule 39(d) of the General Rules for Tamil Nadu State and Subordinate Services, pendency of disciplinary proceedings cannot create a bar in appointment of a person. The State Government had taken note of the pending disciplinary proceedings and after arriving at the subjective satisfaction, the same was dropped during the pendency of the writ petition before the writ court.

13. It is further urged by the learned Advocate General that the issue of suitability is not subjected to judicial review in the writ petition seeking quo warranto, relying on a decision of the Constitution Bench of Supreme Court of India in *University of Mysore and another Vs. C.D.Govinda Rao and another*¹. The report of the Directorate of Vigilance and Anti Corruption does not record a finding that there was any pecuniary advantage to the fifth respondent and also he had failed to maintain absolute integrity and devotion to duty. The finding of the learned Single Judge in this respect is contrary to the observations of the Directorate of Vigilance and Anti Corruption. The recommendations of the Vigilance and Anti Corruption is of no importance unless the Vigilance Commissioner agrees to the recommendation and recommends for departmental enquiry.

14. It is further contended that the question of institutional integrity will not arise in the instant case as it was not a case of any pecuniary advantage to the fifth respondent in respect of the alleged misconduct as observed by the Directorate of Vigilance and Anti Corruption. The learned Single Judge ought to have considered the only issue of lack of devotion to duty / procedural lapse and not the issue of lack of integrity. The post-appointment events are not relevant for quo warranto. The Directorate of Vigilance and Anti Corruption is only the fact finding authority and not competent to make recommendation for departmental action. It is also contended that the grant of quo warranto is futile as the fifth respondent is eligible for re-appointment after dropping of charges

1 AIR 1965 SC 491

against him. The appointing authority, i.e., the State Government is fully competent to drop the charges and also dropping of charges is not an issue in this petition.

15. The learned Advocate General has relied on the decisions of the Supreme Court and the High Court in support of his contentions, namely, *The University of Mysore and another Vs. C.D.Govinda Rao and another*¹; *B.Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees' Assn and others*²; *N.Kannadasan Vs. Ajoy Khose and others*³; *Mahesh Chandra Gupta Vs. Union of India*⁴; *Hari Bansh Lal Vs. Sahodar Prasad Mahto and others*⁵; *Centre for PIL and another Vs. Union of India and another*⁶; *M.Manohar Reddy and another Vs. Union of India and others*⁷; *Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and others*⁸ and a decision of the Madras High Court in W.A.(MD) Nos.427, 428 and 474 of 2014, dated 29.04.2014.

16. Thiru R.Muthukumarasamy, learned Senior Counsel appearing for the fifth respondent (appellant in W.A.No.112 of 2015) would reiterate the aforestated contentions advanced by the learned Advocate General and further submit that there is no requirement under the statutory provisions to have consultation with any other authority. The fifth respondent is having the eligibility

1 AIR 1965 SC 491

2 (2006) 11 SCC 731 (II)

3 (2009) 7 SCC 1

4 (2009) 8 SCC 273

5 (2010) 9 SCC 655

6 (2011) 4 SCC 1

7 (2013) 3 SCC 99

8 (2014) 1 SCC 161

criteria and there being no violation of statutory rules, the writ petition seeking for quo warranto ought to have been rejected.

17. Referring to the decisions of the Supreme Court in N.Kannadasan (supra), Centre of PIL (supra) and Central Electricity Supply Utility of Odisha (supra), Thiru.R.Muthukumarasamy, learned Senior Counsel would further submit that institutional integrity referred to in the aforestated judgments was in different context. The basic principle is that quo warranto will be issued when there is violation of statutory rules. In Kannadasan's case (supra), there was violation of statutory provisions as the requirement of statutory provision was consultation with the Chief Justice for appointment to the post of the President of the State Commission, which was not complied with. In case of Centre of PIL (supra), the recommendation as required under the statutory provision was not valid and accordingly, the quo warranto was issued. Thus, this appeal deserves to be allowed and the writ petition be dismissed.

18. On the other hand, Mr.K.Doraisami, learned Senior Counsel appearing for the first respondent (writ petitioner), countering the submissions of the State as well as the fifth respondent, would contend that the fifth respondent was appointed to a coveted post of Member Secretary. Being the Chief Executive of the Board, he was required to maintain the highest degree of integrity. During his tenure before the appointment as Member Secretary, the Directorate of Vigilance and Anti Corruption conducted a detailed enquiry on 16.10.2012 and as such, on the earlier occasion, the appointment of the fifth respondent was cancelled with effect from 16.10.2012. The charge memo,

containing five serious charges, was pending consideration in the departmental proceedings initiated on 7.1.2013. Three, out of five charges, were proved as is evident from the show cause notice dated 30.5.2014 issued by the Chairman, TNPCB. In spite of the pendency of the Vigilance enquiry as well as departmental enquiry, on the ground of which the first term of appointment was cancelled, the fifth respondent was again appointed as Member Secretary.

19. The learned Senior Counsel has also commented upon the movement of file in haste as the Principal Secretary and the Chief Secretary approved the file on one and the same day, i.e. on 21.7.2014. The Ministry of Environment cleared the file on 22.7.2014 and the Chief Minister also approved the file on 25.7.2014. The relevant G.O appointing the fifth respondent as Member Secretary was notified on the same day. The learned Single Judge has rightly held that the authority dealing with the appointment did not take note of the pendency of the detailed enquiry before the Directorate of Vigilance and Anti Corruption or the enquiry report submitted by the departmental enquiry officer on 30.5.2014. Thus, there was inherent defect in the selection of the fifth respondent and the appointment of the fifth respondent was vitiated.

20. Relying on the decision of the Supreme Court in Centre of PIL (supra), it was submitted that an informed decision has to be taken keeping in mind all vital aspects. The procedure adopted for selection and appointment of the fifth respondent was not fair, just and reasonable as required. Thus, it was a case of lack of institutional integrity.

21. We have considered the rival submissions of the learned counsel

appearing for the parties at great length and also perused the pleadings and documents appended thereto.

22. The facts of the case are not in dispute that when the case of the fifth respondent was considered for appointment, there was a detailed enquiry of the Directorate of Vigilance and Anti Corruption and also the enquiry report in the departmental proceedings initiated on 07.01.2013 and submitted on 30.5.2014, wherein three charges including the charge in respect of pecuniary loss to the TNPCB was proved. In the case on hand, we are not examining the issue of dropping of charges and also validity of the allegations levelled in the memo of charges. However, the fact remains that there were serious allegations in respect of loss to the Board, which was proved in the enquiry, before the case of the fifth respondent along with other candidates was considered for appointment on the post of the Member Secretary, TNPCB.

23. To appreciate the nature of gravity of the charges, it is relevant to quote the charges levelled and proved in the report of the enquiry officer against the fifth respondent as under :

Charge-II.

That the said Dr.K.Karthikeyan, while functioning as District Environment Engineer during the period July 2008 to December 2010, has not completely collected the consent fees in respect of the following units for the periods upto which the consent orders were issued:

<i>Sl. No.</i>	<i>Name of the unit</i>	<i>Collection made for the period upto</i>	<i>Collection to be made for the period upto</i>	<i>Amount due to be collected</i>
1	M/s.Sanjay Jayapal (Green large)	2013	2014	59,300

<i>Sl. No.</i>	<i>Name of the unit</i>	<i>Collection made for the period upto</i>	<i>Collection to be made for the period upto</i>	<i>Amount due to be collected</i>
	222, T.T.K.Road, Alwarpet, Chennai-18.			
2	M/s.Gemini Enterprises (Green small) 38/1, Backers Street, Choolai, Chennai	2012	2014	15,000
3	M/s.Green Park Hotel (Orange large)No.187, N.S.K. Salai, Vadapalani, Chennai.	2010	2012	2,46,839
4	M/s.Hotel Jayapushpam P. Ltd., (Orange large), Koyambedu, Chennai-107	2011	2012	1,49,570
5	M/s.South India Hotel (P) Ltd. Egmore, Chennai.	2011	2012	25,000
	Total			4,95,709

Hence, an amount of Rs.4,95,709/- (Rupees four lakhs ninety five thousand seven hundred and nine only) has not been collected which is the revenue loss to the Board thereby violated Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973 for lacking in devotion to duty.

Charge-IV

That the said Dr.K.Karthikeyan, while functioning as District Environmental Engineer during the period July 2008 to December 2010, in respect of M/s.Hotel Blue Diamond, 934, P.H.Road, Chennai-84, consent order was issued only for Water Act and subsequently renewal was also issued only under Water Act upto 31.3.12. At that time, the unit has not applied for consent under Air Act and requested for exemption to apply for the Air Act. Subsequently, a letter has been sent to the unit requesting to apply under Air Act. But, during 2009-2010, renewal has been issued under both acts valid upto 31.3.12 without submission of application under Air Act thereby by violating the Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973.

Charge-V

That the said Dr.K.Karthikeyan, while functioning as District Environmental Engineer during the period July 2008 to December 2010, in respect of M/s.Integrated Service Point (P) Ltd., Chennai Port Trust, Tondiarpet, Chennai, has made irregularities in issuance of consent to operate under Water and Air Acts vide Proc. DEE/TNPCCB/CHN/35264/OL-130/2010, dt.11.5.2010 without obtaining applications through Care Centre thereby violated the Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973 by not maintaining absolute integrity and devotion to duty. “

However, the said charges, though proved in the departmental enquiry, were subsequently dropped by the State Government during the pendency of the

instant writ petition before the Writ Court.

24. The enquiry report was submitted on 30.5.2014, finding charge Nos.2,4 and 5 proved. The Note for Circulation dated 21.07.2014 indicates that under Rule 16 of the Tamil Nadu Water (Prevention and Control of Pollution) Rules, 1983, the Member Secretary, being the Chief Executive Officer of the Board, is responsible for the day-to-day and orderly functioning of the office of the Board and other specific powers assigned to him under the said rules and also he is the custodian of all movable and immovable properties and assets of the Board. The person selected shall possess the qualifications, knowledge and experience of scientific, engineering or management aspect of pollution control as provided under Section 4(2)(f) of the Water (Prevention and Control of Pollution) Act, 1974.

25. Section 4(2)(f) of the Water (Prevention and Control of Pollution) Act, 1974 prescribes eligibility for a full time member secretary as aforesaid, to be appointed by the State Government. The knowledge is an essential part of the eligibility. The experience when it is also essential ingredient of the eligibility, has to be examined in the light of the antecedent of integrity, fairness and honesty. The experience is not only working for a period in the concerned field, but in the proper, fair manner. If the antecedent of a candidate while working in different capacities to acquire scientific, engineering and management aspects of pollution control, is tainted with doubtful integrity, as found proved in the enquiry in the instant case, the same is the relevant consideration for

examination under the eligibility criteria. In the case on hand, the appellants herein have not placed any material before us to refute the findings recorded by the learned Single Judge, as extracted in the preceding paragraph No.11. Thus, we are unable to hold that the integrity which was under cloud is a part of suitability, not of the eligibility and as such, the same should not have been gone into while considering the issue of grant of quo warranto. The institutional integrity is also a relevant consideration. The suitability is adjudged on the basis of comparative merit having required eligibility of the participating candidates and requirement of the nature of the job.

26. The Supreme Court in *M.Mahohar Reddy and another* (supra), while examining the scope of judicial review and grounds for issuance of writ of quo warranto in case of appointment of a High Court judge, defined “eligibility” and “suitability” as under :

“17. The concepts of “eligibility” and “suitability” were later examined by this Court in the decision in *Mahesh Chandra Gupta*⁵ (to which one of us Aftab Alam, J. was also a Member). In *Mahesh Chandra Gupta*⁵ challenge was made to the appointment of a Judge of the Allahabad High Court after the incumbent had assumed his office. In the writ petition, as it was originally filed, the appointment was questioned only on the ground that the incumbent did not possess the basic eligibility for being appointed as a Judge of the High Court. Later on, the appointment was also challenged on grounds of suitability and want of effective consultation process by taking additional pleas in supplementary affidavits. Kapadia, J. (as His Lordship then was), speaking for the Court brought out the distinction between “eligibility” and “suitability” and pointed out that eligibility was based on objective facts and it was, therefore, liable to judicial review. But, suitability pertained to the realm of opinion and was, therefore, not amenable to any judicial review. The Court also examined the class of cases

relating to appointment of High Court Judges that might fall under judicial scrutiny and concluded that judicial review may be called for on two grounds, namely, (i) “lack of eligibility”, and (ii) “lack of effective consultation”.

27. A Constitution Bench of the Supreme Court of India in *The University of Mysore* case (supra), examining the scope of judicial review for grant of quo warranto, held as under :

“(7)As Halsbury has observed¹:

“An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.”

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without

legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.”

28. In *B.Srinivasa Reddy* case (supra), the Supreme Court reiterated the same principle and held as under :

“51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in *R.K. Jain v. Union of India*¹² was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no *locus standi* to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of *quo warranto* so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post.

x x x x x x x x x x x x

57. It is settled law that a *writ of quo warranto* does not lie if the alleged violation is not of a statutory nature. Three judgments relied on by Mr P.P. Rao can be usefully referred to in the present context.”

29. In *N.Kannadasan* case (supra), the Supreme Court examining

appointment of a former High Court Judge as the President of State Consumer Disputes Redressal Commission, noticed that there was no valid consultation of the Chief Justice of the High Court, as required under the statute and thus, held as not legal and observed as under :

“131. Concededly, judicial review for the purpose of issuance of writ of quo warranto in a case of this nature would lie:

(A) in the event the holder of a public office was not eligible for appointment;

(B) processual machinery relating to consultation was not fully complied.

The writ of quo warranto proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title he would be directed to be removed from the said office by a judicial order. The proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to protect the public from being deprived of public office to which it has a right. It is indisputably a high prerogative writ which was reserved for the use of the Crown. The width and ambit of the writ, however, in the course of practice, have widened and it is permissible to pray for issuance of a writ in the nature of quo warranto.

x x x x x x x x x x x x x x x x

134. Indisputably, a writ of quo warranto can be issued inter alia when the appointment is contrary to the statutory rules as has been held by this Court in *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*¹² and *R.K. Jain v. Union of India*²³. (See also *Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana*⁴⁰.) In *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra*⁴¹, this Court has stated that it is not for the court to embark upon an investigation of its own to ascertain the qualifications of the person concerned. (See also *Arun Singh v. State of Bihar*⁴².) We may furthermore notice that while examining if a person holds a public office under valid authority or not, the court is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. [See *Kashinath G. Jalmi (Dr.) v. Speaker*⁴³.]

30. In case of *Centre for PIL and another* (supra), the issue was appointment of Central Vigilance Commissioner, wherein it was observed as under :

“36.For the sake of brevity, we may refer to the Selection Committee as the High-Powered Committee. The key word in the proviso is the word “*recommendation*”. While making the recommendation, the HPC performs a statutory duty. The impugned recommendation dated 3-9-2010 is in exercise of the statutory power vested in the HPC under the proviso to Section 4(1). The post of the Central Vigilance Commissioner is a statutory post. The Commissioner performs statutory functions as enumerated in Section 8. The word “*recommendation*” in the proviso stands for an informed decision to be taken by the HPC on the basis of a consideration of relevant material keeping in mind the purpose, object and policy of the 2003 Act. As stated, the object and purpose of the 2003 Act is to have an integrity institution like the CVC which is in charge of *vigilance administration* and which constitutes an anti-corruption mechanism. In its functions, the CVC is similar to the Election Commission, the Comptroller and Auditor General, the Parliamentary Committees, etc. Thus, while making the recommendations, the service conditions of the candidate being a public servant or civil servant in the past is not the sole criterion. The HPC must also take into consideration the

question of institutional competency into account. If the selection adversely affects institutional competency and functioning then it shall be the duty of the HPC not to recommend such a candidate. Thus, institutional integrity is the primary consideration which the HPC is required to consider while making recommendation under Section 4 for appointment of the Central Vigilance Commissioner.

37. In the present case, this vital aspect has not been taken into account by the HPC while recommending the name of Shri P.J. Thomas for appointment as the Central Vigilance Commissioner. We do not wish to discount personal integrity of the candidate. What we are emphasising is that institutional integrity of an institution like the CVC has got to be kept in mind while recommending the name of the candidate. Whether the incumbent would or would not be able to function? Whether the working of the institution would suffer? If so, would it not be the duty of the HPC not to recommend the person. In this connection the HPC has also to keep in mind the object and the policy behind enactment of the 2003 Act.

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39. These provisions indicate that the office of the Central Vigilance Commissioner is not only given independence and insulation from external influences, it also indicates that such protections are given in order to enable the institution of the CVC to work in a free and fair environment. The prescribed form of oath under Section 5(3) requires the Central Vigilance Commissioner to uphold the sovereignty and *integrity* of the country and to perform his duties without *fear or favour*. All these provisions indicate that the CVC is an *integrity institution*. The HPC has, therefore, to take into consideration the values, independence and impartiality of the institution. The said Committee has to consider institutional competence. It has to take an informed decision keeping in mind the abovementioned vital aspects indicated by the purpose and policy of the 2003 Act.”

On the ground of lack of institutional integrity, his appointment was set aside.

31. In *Central Electricity Supply Utility of Odisha* (supra), the Supreme

Court while examining the appointment of CEO of the Central Electricity Supply Utility of Odisha, again interpreted the scope of judicial review for grant of quo warranto, holding as under :

“21.From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

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40.In this backdrop it is to be seen whether the action of the authority requiring the Chairman to remain in charge of the CEO or to function as .CEO comes within the scope and ambit of writ of quo warranto. We have already stated the principles relating to exercise of jurisdiction of the Court to issue a writ of quo warranto. When a writ of quo warranto is filed, it is the obligation of the relator to satisfy the Court that the office in question is a public office and is held by the usurper without the legal authority. It is the duty of the Court to see whether the appointment has been made contrary to the statutory rules. The issue of institutional integrity has also to be taken into consideration when a post is filled up and that is where the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable are required to be seen. On a perusal of the reasons adopted by the High Court it is perceptible that it has paved a different path. It has given emphasis on the role of the Commission, the functionism of CESU, the control of the Chairman on the CEO, the violation of the principles of natural justice, the nature of appointment, the abuse of power by the Commission and the violation of the Regulations in such appointment. In our opinion, most of the reasons that have been given by the High Court are totally unrelatable to

the sphere of issue of writ of quo warranto. We are only required to see whether the Commission had the authority to make any temporary arrangement and whether the fifth respondent was eligible for the said purpose. To understand the said facet, we have to refer to certain provisions of the Act which encapsulate the basic map of the functions of the licensees and the utility service.

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47. The whole thing has to be scrutinised from the point of view of power. Suitability or eligibility of a candidate for appointment to a post is within the domain of the appointing authority. The only thing that can be scrutinised by the Court is whether the appointment is contrary to the statutory provisions/rules.”

32. A division bench of this Court in *B.Rajendran and others Vs. State and another in W.A.(MD)Nos.427, 428 and 474 of 2014* decided on 29.04.2014, considering the grant of quo warranto in respect of appointment of Commissioner for Hindu Religious and Charitable Endowments Department, observed as under :

“60. Today, it is not the contention of any of the appellants/writ petitioners that the second respondent is ineligible to be reemployed. It is not their contention that the second respondent is not qualified for the post. It is not also their case that the second respondent has suffered some disqualification. Therefore, there is no objection to the eligibility of the second respondent to hold the post of Commissioner. Once the issue of eligibility does not arise, this Court cannot go into the question of suitability, as has already been laid down by the Hon'ble Supreme Court in a catena of decisions. Interestingly, the appellants /petitioners do not question even the suitability of the second respondent to hold the post. In other words, neither the suitability nor the eligibility of the second respondent to hold the post is in doubt today.

61. Once there is no dispute about the suitability or eligibility of the second respondent to hold the post, it is not open to the appellants to call upon the Government to justify as to why they chose to exercise the power of reemployment. The reasons for exercising the power of reemployment, are not justiciable, as the source of power is traceable to the Constitution. Therefore, the third contention of the petitioner also does not merit acceptance.”

33. The law well settled, which flows from the aforestated judicial pronouncements, is that the judicial review in case of grant of quo warranto is permissible only to an extent of examining the eligibility or violation of statutory / constitutional provisions, not the suitability of a candidate which falls in the domain of the executive or appointing authority.

34. Further, the contention of the learned Advocate General that Rule 39(d) of the Tamil Nadu State and Subordinate Services Rules, provides that pending enquiry does not create a bar for consideration for appointment of a person, is not relevant and applicable in the case on hand as it is a case of appointment on the public office, not by way of promotion as prescribed under the said provision.

35. Applying the well settled principles of law to the facts of the case, as analyzed in the preceding paragraph 25, this is a case of lack of eligibility, as prescribed under the statute under Section 4(2)(f) of the Water (Prevention and Control of Pollution) Act, 1974. The institutional interest is also a relevant

consideration in case of appointment on the post of a high public office. The learned Writ Court was justified in grant of writ of quo warranto.

36. As a sequel, for the reasons mentioned herein-above, the impugned order of the learned Single Judge does not suffer from any infirmity, illegality or irregularity, warranting interference. Accordingly, both writ appeals are dismissed. No costs.

(S.K.A., J.) (M.V., J.)

24.04.2015

Index : Yes

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To

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai-600 009.
2. The Secretary,
The Government of Tamil Nadu,
Forest and Environment Department,
Secretariat,
Fort St. George,
Chennai-600 009.
3. The Chairman,
Tamil Nadu Pollution Control Board (TNPCB),
Guindy, Chennai-600 032.
4. The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-I, Detachment,
Chennai-600 028.

SATISH K. AGNIHOTRI, J.
and
M.VENUGOPAL, J.

vvk

Judgment in
W.A.Nos.112 and 177 of 2015

24.04.2015