

In the High Court of Judicature at Madras

Reserved on 18.12.2014 and Delivered on : 23-1-2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Writ Petition No.24003 of 2014

and

M.P.No.1 of 2014

V.Anbazhagan

... Petitioner

Vs.

1. The Chief Secretary
Government of Tamil Nadu
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Government of Tamil Nadu
rep. by its Secretary,
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.
5. Dr.K.Karthikeyan,
Member Secretary,
Tamil Nadu Pollution Control Board,
Guindy, Chennai - 600 032.
(Amended the post of the 5th respondent as per the order dated
18.12.2014 made in M.P.No.2 of 2014)

...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Quo Warranto calling upon the the fifth respondent herein to show under what authority of Law he is holding the post of Member Secretary of the third respondent Board and consequently declare the post of Member Secretary now held by the fifth respondent as vacant.

For Petitioner	.. Mr.K.Doraisamy, Senior Counsel for Mr.S.Kumaradevan
For Respondents -1 2& 4	.. Mr.A.L.Somayaji, Advocate General Assist by Mr.R.Vijayakumar,
For Respondent-3	.. Mrs.Rita Chandrasekar
For Respondent-5	.. Mr.K.V.Subramanian, Senior Counsel

O R D E R

The petitioner has come up with the above writ petition, seeking the issue of a writ of Quo-Warranto to call upon the 5th respondent to show under what authority of law he is holding the post of Member Secretary of the third respondent Board and to declare the post held by him as vacant.

2. I have heard Mr.K.Doraisamy, learned Senior Counsel for the petitioner, Mr.A.L.Somayaji, Advocate General, appearing for the respondents 1 and 2, Mrs.Rita Chandrasekar, learned counsel appearing for the third respondent, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the 4th respondent and Mr.K.V.Subramanian, learned Senior Counsel appearing for the fifth respondent.

3. The 5th respondent served as a Member Secretary of the Tamil Nadu Pollution Control Board from 26.09.2011, up to 01.01.2012. For reasons, about which, there is a controversy, but which is not germane to the issue on hand, the fifth respondent went on leave for five months from 01.01.2012.

4. It appears that in respect of certain alleged irregularities committed by the fifth respondent, while he was serving as District Environmental Engineer from 12.07.2008 to 31.12.2010, the Commissioner of Vigilance and Anti-Corruption ordered a detailed enquiry vide his proceedings dated 16.10.2012. The Inspector of Vigilance and Anti-Corruption registered a complaint on 08.11.2012 and a detailed enquiry was taken up.

5. Despite the fact that the Directorate of Vigilance and Anti-Corruption had already taken up a detailed enquiry, the Chairman of the Pollution Control Board also issued a charge memo dated 07.01.2013 in respect of some alleged irregularities. It appears that the detailed enquiry undertaken by the Inspector of Police, Vigilance and Anti-Corruption as well as the departmental proceedings initiated by the Pollution Control Board proceeded on parallel lines. But, before finalisation of both the proceedings, the Government of Tamil Nadu initiated a move to appoint him as the Member Secretary of the Tamil Nadu Pollution Control Board. Upon coming to know of the same, the petitioner, who claims to be a Press Reporter, sent a

representation to the Government of Tamil Nadu, objecting to his appointment on the ground that he was facing enquiries into serious charges. After sending his representation on 05.07.2014, the petitioner also filed a writ petition in W.P.No.19996 of 2014, praying for the issue of a writ of mandamus to direct the respondents to take appropriate action on the charges and also not to appoint him as Member Secretary.

6. It appears that the above writ petition was filed on 24.07.2014 and it came up for hearing on 25.07.2014. On the very same day, the Government issued an order in G.O.Ms.No.83 Environment and Forests Department, dated 25.07.2014 appointing the 5th respondent.

7. Therefore, the petitioner filed another writ petition in W.P.No.21397 of 2014 challenging the said Government Order, appointing the fifth respondent as the Member Secretary. This writ petition came up for admission before the Hon'ble First Bench of this Court on 08.08.2014. The Hon'ble First Bench directed the Government to file a status report on 22.08.2014.

8. On 21.08.2014, the Inspector of Police filed a counter affidavit in the writ petition. Therefore, on 22.08.2014, the writ petition was adjourned by the Hon'ble First Bench for hearing on 04.09.2014.

9. One of the preliminary objections raised by the respondents before the Hon'ble First Bench was that the subject matter related to the service matter of the fifth respondent and that therefore the very maintainability of a Public Interest Litigation in a service matter is questionable. Therefore, in order to overcome the said objection, the petitioner has filed the present writ petition, seeking the issue of a writ of quo-warranto.

10. After filing the present writ petition, the petitioner also withdrew the previous writ petitions in W.P.Nos.19996 and 21397 of 2014. While permitting the petitioner to withdraw the previous writ petitions, the Hon'ble First Bench of this Court passed the following order:-

"Learned senior counsel for the petitioner states that he has filed a petition of quo warranto being W.P.No.24003 of 2014 and thus, he seeks to withdraw these petitions with liberty to prosecute that petition in accordance with law.

2. Liberty granted.

3. The writ petitions stand dismissed as withdrawn. No costs. Consequently, M.P.No.1 of 2014 in W.P.No.19996 of 2014 also stands dismissed".

11. Accordingly, this writ petition is prosecuted by the petitioner and the Government of Tamil Nadu, the Tamil Nadu Pollution Control Board, the Inspector of Police (Vigilance and Anti-Corruption) and the fifth respondent have filed separate counter affidavits.

12. Apart from filing a counter affidavit, the Government also produced the Note-File relating to the appointment of the fifth respondent and also the draft final report submitted by the Director of Vigilance and Anti-Corruption to the Government. The learned Advocate General has also produced copies of the communications sent by the Government to the Director of Vigilance and Anti-Corruption, in a sealed cover.

13. I have gone through the pleadings of parties and also perused the files produced before me.

14. At the outset, it is to be pointed out that the Tamil Nadu Pollution Control Board was constituted by the State Government in exercise of the power conferred by Section 4(1) of the Water (Prevention and Control of Pollution) Act, 1974. Under Section 4(2) (f) of the Act, a State Pollution Control Board should consist of a full time Member Secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control to be appointed by the State Government. The Pollution Control Board is to be a Body Corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract.

15. Under Section 5(1), all the members of a State Pollution Control Board other than the Member Secretary shall hold office for a term of three years from the date of nomination. In so far as the post of Member Secretary is concerned, Section 12(1) stipulates that the terms and conditions of service of the Member Secretary shall be such as may be prescribed. He is empowered to exercise such powers and obliged to perform such duties as may be prescribed or as may be delegated by the Board. सत्यमेव जयते

16. In exercise of the power conferred by Section 64 of the Water Act, 1974, the Government of Tamil Nadu issued a set of Rules known as the Tamil Nadu Water (Prevention and Control of Pollution) Rules, 1983. Rule 16 of the Rules enlists the powers and duties of the Member Secretary. It is seen from the various items contained in Rule 16, that the Member Secretary is to be the Chief Executive Officer of the Board and he should be responsible for the day-to-day and orderly functioning of the offices of the Board. He is obliged to convene the meetings of the Board, issue all orders and instructions of the Board with his signature, deal with service matters of employees, accord technical sanction for all estimates and be a custodian of all the movable and immovable properties.

17. Therefore, it is clear that the post of Member Secretary of the Tamil Nadu Pollution Control Board is like the pivotal pin that makes the functioning of the wheel of the Board, smooth and efficient.

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.

19. The only ground on which the petitioner challenges the appointment of the fifth respondent is his suitability. This is based upon the fact that at the time when the fifth respondent was appointed, a departmental enquiry by the Pollution Control Board itself and a detailed enquiry by the Directorate of Vigilance and Anti-Corruption were pending against the fifth respondent. Therefore, the petitioner questions both the wisdom of the Government in appointing the fifth respondent to such a key post as well as the application of mind on the part of the Government to this fact while taking a decision to appoint him.

20. The fact that a departmental enquiry initiated in pursuance of a charge memo dated 07.01.2013 was pending against the fifth respondent at the time of his appointment as Member Secretary, is admitted. The fact that a detailed enquiry by the Directorate of Vigilance and Anti-Corruption was also pending against him is also admitted. But, the contention of the respondents is that ultimately the enquiries ended in favour of the fifth respondent and that at any rate, there was no bar for the respondents to consider the fifth respondent for appointment to the post.

21. In the light of the stand taken by the respondents, I think two questions arise for consideration. They are:-

(i) Whether the pendency of the enquiries into serious allegations against the fifth respondent was a bar for the consideration of his name for appointment to the post of Member Secretary? and

(ii) Whether the dropping of the charges after the appointment, can be considered to have any effect upon the question raised in the writ petition?

Question No.(i):-

22. As stated earlier, the post of Member Secretary of the Tamil Nadu Pollution Control Board is a pivotal post. The Member Secretary

is supposed to be the Chief Executive Officer of the Board. He is also a full time Member of the Board.

23. Section 6 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 8 of the Air (Prevention and Control of Pollution) Act, 1981, contain the disqualifications of a Member of the Pollution Control Board. Section 6(1)(g) of the Water (Prevention and Control of Pollution) Act, 1974, which is in pari materia with Section 8(1)(g) of the Air Act, stipulates that no person shall be a Member of the Board, if, in the opinion of the State Government, he had so abused his position as a Member, as to render his continuance on the Board detrimental to the interest of the General Public.

24. Section 12 of the Water Act, 1974 and Section 14 of the Air Act, 1981, make it clear that the terms and conditions of service of a Member Secretary shall be as prescribed. But, it appears from Rule 16(5) of the Tamil Nadu Water (Prevention and Control of Pollution) Rules, 1983 that the general rules of service as applicable to Government servants may be applicable to holders of all posts in the Board. Rule 39(d) of the General Rules for Tamil Nadu State and Subordinate Services, makes it clear that the pendency of charges is not a bar for promotion. However, the Government issued a series of orders starting from G.O.Ms.No.368 (P & AR) Department, dated 18.10.1993 followed by Letter Ms.No.248 (P & AR) Department, dated 20.10.1997. These Government Orders empower the Government not to grant promotion to persons, who are either facing enquiry into a grave charges or undergoing penalties. A Full Bench of this Court held in The Deputy Inspector General of Police vs. V.Rani [2011 (3) CTC 129] that the Government order G.O.Ms.No.368 dated 18.10.1993 cannot be equated to the Statutory Rules framed under the Proviso to Article 309 of The Constitution and that the other Government Letters have no legal force.

25. Therefore, the position appears to be that while a Government servant cannot claim, as a matter of right, promotion during the pendency of an enquiry into the grave charges, there are no fetters on the part of the Government to consider a person for promotion, despite the pendency of serious charges. However, if the Government chooses to ignore the pendency of serious charges and promote one person, they may have to explain as to why in respect of the very same promotion or appointment, they chose to act differently in the case of another.

26. Though the case on hand does not fall within the category of a promotion, but is only a case of appointment, the answer may not be different. For reasons, good or bad, that the Government may have, it may choose to appoint a person, who is facing an enquiry in to grave charges. Hence, the first question is answered against the petitioner and in favour of the fifth respondent.

Question No.(ii):-

27. In so far as the second question is concerned, there are some interesting facts that surface from (1) the draft final report submitted by the Department of Vigilance and Anti-Corruption; (2) the file relating to the disciplinary proceedings in pursuance of the charge memo dated 07.01.2013; and (3) the Note File relating to the impugned Government Order appointing the fifth respondent as the Member Secretary. The facts disclosed from these records and files, may be summarised as follows:-

(1) The fifth respondent was employed as the District Environmental Engineer during the period from 14.07.2008 to 30.12.2010.

(2) By proceedings dated 16.10.2012, the Vigilance Commissioner directed the Directorate of Vigilance and Anti-Corruption to take up a detailed enquiry into certain allegations against the petitioner.

(3) Accordingly, the Directorate of Vigilance and Anti-Corruption registered a case in DE114/2012/TNPCB/CC-I dated 08.11.2012.

(4) The allegation against the fifth respondent was that he issued consent orders to various industries and firms by receiving lump sum as pecuniary advantage.

(5) In particular, the allegations revolved around the grant or renewal of consent orders to 7 industries namely: (1) M/s. Gemini Enterprises; (2) Hotel Jayapushpam Private Limited; (3) Integrated Service Point Private Limited; (4) Hotel Grand Park; (5) Sanjay Jayapal for a commercial complex; (6) South (India) Hotels Private Limited; and (7) Hotel Blue Diamond.

(6) Even when the detailed enquiry by the Directorate of Vigilance and Anti-Corruption was in progress, the Chairman of the Board issued a charge memo dated 07.01.2013 under Regulation 8(2) of the Tamil Nadu Pollution Control Board (Discipline and Appeal) Revised Service Regulations, 2010. The fifth respondent appears to have submitted a reply to the charge memo. Thereafter, the Additional Chief Environmental Engineer was appointed as the Enquiry Officer. The Enquiry Officer appears to have conducted an enquiry in his Chamber on a single day namely 24.12.2013.

(7) In the meantime, the Inspector of Police, Vigilance and Anti-Corruption requested the Board vide letter dated 24.03.2014 to send all the relevant records, to enable him to proceed with the detailed enquiry.

(8) Despite the fact that the Directorate of Vigilance and Anti-Corruption was already seized of the matter, the Enquiry Officer appears to have conducted an enquiry on a single day namely 24.12.2013 and submitted a report dated 30.05.2014 to the Chairman.

In his report, the Enquiry Officer held charge Nos.1 and 2 not proved. However, he held charge Nos.3, 4 and 5 as proved.

(9) When the report of the Domestic Enquiry Officer dated 30.05.2014 holding 3 out of 5 charges as proved was available with the Pollution Control Board and when the detailed enquiry into the very same allegations was also pending with the Department of Vigilance and Anti-Corruption, the question of appointment of the fifth respondent to the post of Member Secretary was taken up by the Government.

(10) The Note File discloses that the proposal to appoint the fifth respondent emanated on 21.07.2014 from the Deputy Secretary. It was signed by the Member Secretary, Environment and Forests Department on the same day namely 21.07.2014. It was signed by the Chief Secretary also on the same day namely 21.07.2014. The Hon'ble Minister for Environmental and Forests approved the proposal on 22.07.2014 and the Hon'ble Chief Minister approved the proposal on 25.07.2014. Consequently, G.O.Ms.No.83 which is impugned in the writ petition, was issued on 25.07.2014 appointing the 5th respondent as the Member Secretary of the Board.

(11) On 01.08.2014, the Director of Vigilance and Anti-Corruption forwarded a draft final report to the Vigilance Commissioner holding that the allegations against the fifth respondent are held substantiated and that the departmental action was recommended against him.

(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.

(13) In response, the Directorate of Vigilance and Anti-Corruption sent a reply bearing No.DE114/2012/TNPCB/CC-III dated 26.11.2014, accepting the departmental enquiry report and offering no remarks except to request the Government to continue the departmental action.

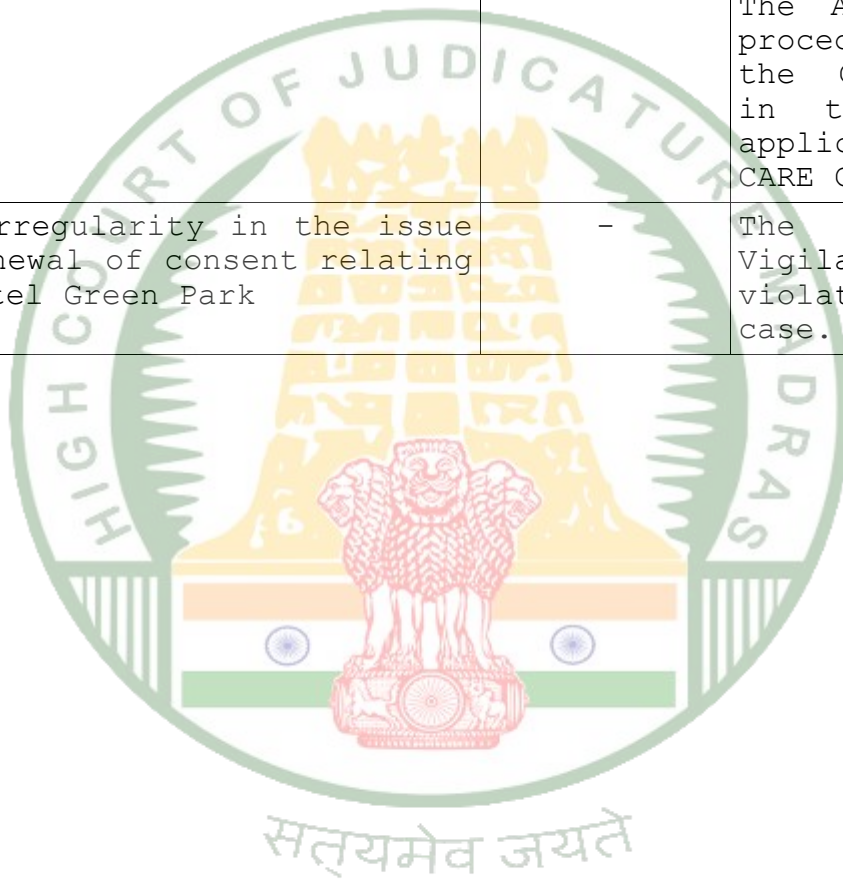
(14) Thereafter, the Government appears to have decided to drop all the charges against the fifth respondent. In a letter dated 10.12.2014, the Principal Secretary to Government had informed the learned Advocate General that the Government had decided to drop the charges.

28. The picture that emerges out of the above sequence of events, is quite disturbing as well as interesting.

29. Now, let me have a look at the allegations taken up for enquiry by the Department of Vigilance and Anti Corruption, the evidence analysed by them and the conclusions reached, in a tabular form, which is as follows :

S. No	Allegation	Evidence	Conclusion Reached
1	The Charged Officer committed irregularity in the issue of renewal of consent order to a leather garment manufacturing company by name Gemini Enterprises	In common to all the charges, 10 witnesses were examined and 66 documents were collected by the Vigilance and Anti Corruption. (Except Allegation 4)	(1) The AO has given 'renewal of consent' order for excess 15 months for the period between 1.1.2013 and 31.3.2014, which is against the procedure of the B.P.49 of 2007 dated 21.11.2007 (D-58) (2) By the negligent act of the AO in issuing excess period of 'renewal of consent' order, revenue of Rs.15,000/- from M/s. Gemini Enterprises was not collected at the right time for the TNPCB.
2	The irregularity in issuing renewal of consent to a hotel by name Hotel Jayapushpam Private Limited		The AO violated the procedures issued by the Chairman, TNPCB in the process of application through CARE Centre. The AO extended one year fresh consent order instead of actual period of consent, validity for the period upto 31.3.2011, which is against the Procedure of the B.P.53 of 1984 dated 19.9.1984 (D-59)

S. No	Allegation	Evidence	Conclusion Reached
3	The irregularity in the issuance of consent order to a company by name Integrated Service Point Private Limited.		The AO violated the existing procedure of TNPCB in the issuance of 'consent to operate' order to the industry covered under Coastal Regulation Zone Notification. The AO violated the procedure issued by the Chairman, TNPCB in the process of application through CARE Centre.
4	The irregularity in the issue of renewal of consent relating to Hotel Green Park	-	The Department of Vigilance found no violation in this case.



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S. No	Allegation	Evidence	Conclusion Reached
5	The irregularity in the issue of renewal of consent to Sanjay Jayapal		1) The Accused Officer has violated the norms and procedure of Tamilnadu Pollution Control Board and issued 'renewal of consent' to M/s.Sanjay Jayapal upto 31.3.2014 instead of 31.3.2013. 2) The issuance of 'renewal of consent' upto one year extension is clear violation of the procedures of TNPCB. 3) By the negligent act of the AO in issuing excess period of 'renewal of consent' order, revenue of Rs.59,300/- from M/s. Sanjay Jayapal Private Limited was not collected at the right time for the TNPCB.
6	The irregularity in the issue of renewal of consent to South (India) Hotels Private Limited		The Accused Officer has issued one year excess period of 'renewal of consent' to M/s.South (India) Hotels for the period valid upto 31.3.2012 instead of 31.3.2011, which is against the Board Procedures Ms.No.49 dated 21.11.2007.

S. No	Allegation	Evidence	Conclusion Reached
7	The issue of renewal of consent order to Hotel Blue Diamond		The Accused Officer has issued six months shortage period of 'renewal of consent' to M/s.Hotel Blue Diamond for the period valid upto 31.3.2012 instead of 30.9.2012.

30. However, the Inspector of Vigilance and Anti Corruption has also recorded the following in his draft final report :

"On the part of pecuniary advantage, it is seen from the statements of witnesses that the Accused Officer had not received any lumpsum as pecuniary advantages from the industries/firms mentioned in the allegation, for which, he had issued consent orders."

31. But eventually, the recommendation made by the Director of Vigilance and Anti Corruption, on the basis of the enquiry made by the Inspector of Police, is as follows :

"The above facts revealed that in all the consent orders, the Accused Officer had acted single mindedly and did not follow the regulations of the TNPCCB and thereby caused revenue loss to the Board. Hence, he is solely responsible for the commission of irregularities in the issuance of the consent orders mentioned in the seven instances. In view of the above discussion, it is established that there is apparent revenue loss to the Board which could have been collected during the relevant period by the Accused Officer Dr.K. Karthikeyan, District Environment Engineer during the period 14.7.2008 to 31.12.2010 is substantiated through oral and documentary evidence.

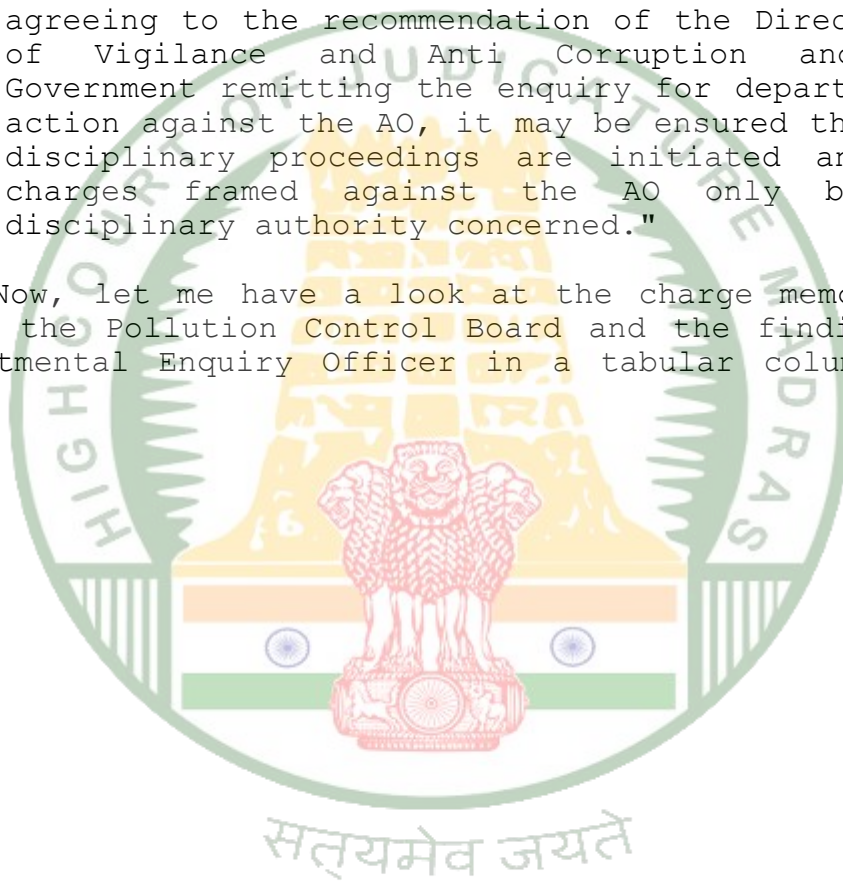
Therefore, the AO Dr.K.Karthikeyan had failed to maintain absolute integrity and devotion to duty as contemplated under Rule 20 of the Tamilnadu Government Service Conduct Rules."

32. Eventually, the Director of Vigilance and Anti Corruption recommended departmental action against the fifth respondent herein. The recommendations made by the Director of Vigilance and Anti Corruption read as follows :

"To sum up, the allegations are held as substantiated against the AO Dr.K.Karthikeyan, Joint Chief Environmental Officer, TNPCB, Guindy, Chennai and departmental action is recommended against him.

In the event of the Vigilance Commissioner agreeing to the recommendation of the Directorate of Vigilance and Anti Corruption and the Government remitting the enquiry for departmental action against the AO, it may be ensured that the disciplinary proceedings are initiated and the charges framed against the AO only by the disciplinary authority concerned."

33. Now, let me have a look at the charge memo dated 7.1.2013 issued by the Pollution Control Board and the findings recorded by the Departmental Enquiry Officer in a tabular column, which is as follows :



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S. No	Charge	Finding
1	Dr.K.Karthikeyan, while functioning as District Environmental Engineer during the period July 2008 to December 2010, has made certain irregularities in issuance of consent orders without following the periodicity issued by the Board in B.P.Ms.No.326 dated 28.6.1989 in respect of the following units thereby failing to maintain absolute integrity in discharging his official duties and violated Rule 20 of the Tamilnadu Government Servants Conduct Rules, 1973.	1) In so far as Sanjay Jayapal is concerned, there was a procedural lapse; 2) In so far as Gemini Enterprises is concerned also, there was a procedural lapse; 3) The delinquent officer committed a procedural lapse in granting renewal of consent to Green Park Hotel; 4) The delinquent officer issued consent to operate to Hotel Jayapushpam (P) Ltd., in violation of the procedure; 5) The renewal of consent to South India Hotel P. Ltd., was also in violation of the procedure. But nevertheless, the Enquiry Officer took note of the amendment under B.P.Ms.No. 49 dated 21.11.2007 to B.P. Ms.No. 326 dated 28.6.1989 and held that charge No.1 cannot be held proved under Rule 20 of the Tamilnadu Government Servants Conduct Rules, 1973.

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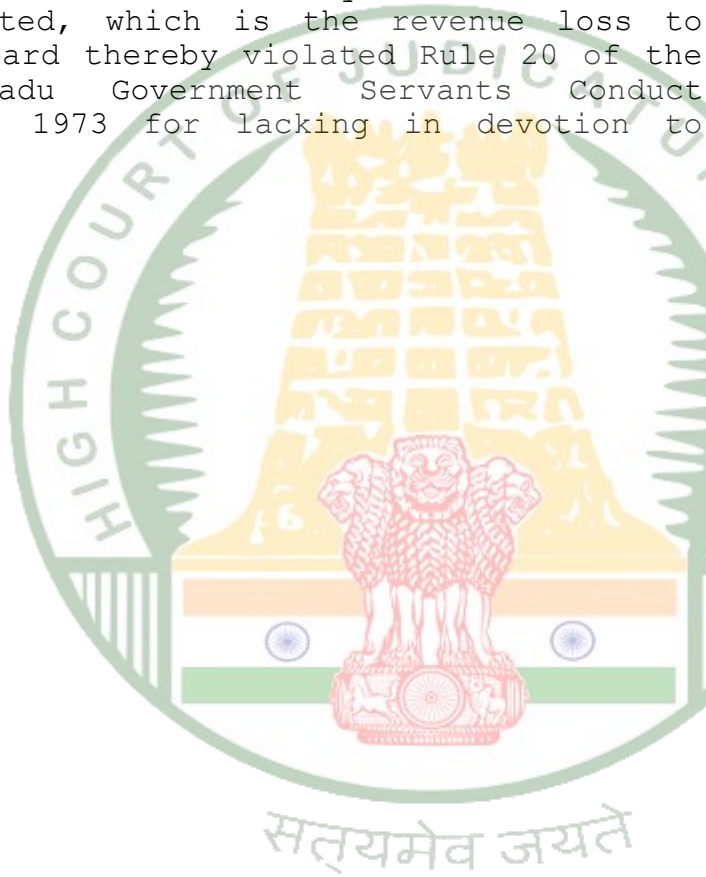
Dr.K.Karthikeyan, while functioning as District Environmental Engineer during the period July 2008 to December 2010, has not completely collected the consent fees in respect of the following units for the periods upto which the consent orders were issued.

Hence, 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 the Tamilnadu Government Servants Conduct Rules, 1973 for lacking in devotion to duty.

1) The delinquent officer renewed consent for Sanjay Jayapal, for an extended period, taking into account the remittance of consent fee made for the period 2009-10, for which consent was not renewed. Therefore, it was not correct.

2) The same is true even in respect of Gemini Enterprises, Green Park Hotel, Hotel Jayapushpam Private Limited and South India Hotel Private Limited.

However, taking into account the fact that consent fee for a part of the period can be collected from those industries at any point of time, as and when arrears are found out, the Enquiry Officer holds that the second charge also cannot be held proved under Rule 20 of the Tamilnadu Government Servants Conduct Rules, 1973.



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3	Dr.K.Karthikeyan, while functioning as the District Environmental Engineer during the period July 2008 to December 2010, in respect of issuance of consent order to M/s.Hotel Jayapushpam (P) Ltd. (Orange Large), Koyambedu, Chennai-107, the consent has been approved only upto 31.3.2011 whereas in the fair copy, the consent order was issued upto 31.3.2012 thereby violated Rule 20 of the Tamilnadu Government Servants Conduct Rules, 1973 by not maintaining absolute integrity and devotion to duty.	The delinquent officer has also approved the consent to operate with a validity upto 31.3.2011 in the office copy of the consent proceedings. But, he has changed the validity period upto 31.3.2012 in the fair copy of the proceedings of the consent to operate issued to the unit, which is irrelevant and not correct. Hence, charge proved.
4	Dr.K.Karthikeyan, while functioning as the 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 31.3.2012. 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 31.3.2012 without submission of application under Air Act thereby violating Rule 20 of the Tamilnadu Government Servants Conduct Rules, 1973.	The delinquent officer, without receiving an application under Air Act, issued renewal of consent vide proceedings dated 8.4.2009 valid upto 30.9.2010 and subsequently renewed vide proceedings dated 21.10.2010 valid upto 31.3.2012 and not followed the procedure laid down under Air Act. Hence, charge proved.

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5	Dr.K.Karthikeyan, while functioning as the 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/TNPCB/CHN/35264/OL-130/2010 dated 11.5.2010 without obtaining applications through Care Centre thereby violated Rule 20 of the Tamilnadu Government Servants Conduct Rules, 1973 by not maintaining absolute integrity and devotion to duty.	Consent to establish the said unit was issued at Corporate Office vide proceedings dated 4.3.2010. But, consent to operate the unit has to be issued by the Corporate Office by placing it before the consent clearance committee. But, the delinquent officer has issued the consent to operate to the unit by proceedings dated 11.5.2010. Moreover, the request made by the unit for seeking consent to operate was not routed through Care Centre as per the standard operating procedure of Care Centre of TNPCB issued in 2009. Hence, charge proved.
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34. I have already indicated certain crucial dates, on which, the important events took place. They are reproduced for easy recollection as follows :

(i) The report of the Enquiry Officer, holding three out of five charges proved, was submitted to the Chairman of the Board on 30.5.2014;

(ii) The Note for circulation to the Honourable Chief Minister was prepared on 21.7.2014, which was signed by two Deputy Secretaries, the Principal Secretary in the Department of Forests and the Chief Secretary on 21.7.2014 and signed by the Minister for Environment on 22.7.2014 and approved by the Honourable Chief Minister on 25.7.2014; and

(iii) The draft final report of the Director of Vigilance and Anti Corruption holding the fifth respondent prima facie guilty of failure to maintain absolute integrity and devotion to duty, as required by Rule 20 of the Tamilnadu Government Servants Conduct Rules, 1973, was sent to the Vigilance Commissioner only on 1.8.2014.

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.

38. Interestingly, the petitioner appears to have sent a representation dated 5.7.2014 to the Secretary to Government, Environment and Forest Department, referring to (i) the charge memo dated 7.1.2013; (ii) the pendency of the detailed enquiry by the Department of Vigilance and Anti Corruption; and (iii) the letter of the Inspector of Police, Vigilance and Anti Corruption dated 24.3.2014 calling for certain files for proceeding with the detailed enquiry. If this representation had been taken note of by the Secretary to Government, Environment and Forest Department, the Note File ought to have contained a reference to the pendency of two proceedings as on 21.7.2014. The petitioner has produced a copy of the postal receipt to show that the representation dated 5.7.2014 was dispatched on the same day by speed post.

39. In paragraph 13 of the affidavit in support of the writ petition, the petitioner has specifically pleaded about the representation sent by him on 5.7.2014. The response of the Government to this pleading is quite surprising. In paragraph 8 of the counter affidavit filed by the Joint Secretary to Government, he responded to the averment of the petitioner with regard to his representation, which is as follows :

"With regard to the averments made in paragraphs 13 and 14 of the affidavit, it is humbly submitted that the representation dated 5.7.2014 was received and under consideration of the second respondent herein. The reply is kept pending in view of the fact that he has raised this litigation on the same issue. Surprisingly, he has sent his representation dated 5.7.2014 to this respondent herein when the proposal to appoint the fifth respondent herein was not even contemplated. Having regard to the facts and circumstances of the disciplinary proceedings that were reported to be pending against the fifth respondent herein and also the qualifications and suitability of the fifth respondent herein, the decision to appoint the fifth respondent herein as Member Secretary, Tamilnadu Pollution Control Board has been arrived by the State Government and accordingly orders were issued in G.O.Ms.No. 83 Environment and Forests (EC.2) Department dated 25.7.2014."

40. The above response is neither here nor there. On the one hand, it is stated in paragraph 8 of the counter affidavit of the Joint Secretary to Government that the representation of the petitioner dated 5.7.2014 was under consideration. On the other hand, the counter states that the representation was received at a time when the appointment of the fifth respondent was not even contemplated.

41. If the representation dated 5.7.2014 of the petitioner was truly under consideration, the two enquiries, to which, a reference is made in the representation, ought to have found a place in the Note File. But, it did not.

42. Therefore, it is clear that the Note File proposing to appoint the fifth respondent, was prepared in such a manner either by suppressing the factum of pendency of one departmental enquiry before the Pollution Control Board and another detailed enquiry by the Directorate of Vigilance and Anti Corruption or by simply overlooking the same. Even in respect of the promotions and appointments to the lower level posts, the pendency of charges is taken as a bar and the Appointing Authorities refuse to promote/ appoint persons during the pendency of disciplinary proceedings. Therefore, it is surprising that in the matter of appointment to the coveted post of Chief Executive Officer of the Pollution Control Board, the Government ignored to take note of the pendency of the proceedings. I do not know if it happened by chance or by a deliberate design.

43. The manner in which the Government has chosen to react, after all the above events and things came to light, is also shocking. With a view to save the appointment, the Government appears to have proceeded in haste to drop all further proceedings in respect of both the enquiries. It appears from the confidential file produced before me that the draft final report submitted by the Directorate of Vigilance and Anti Corruption on 1.8.2014 to the Vigilance Commissioner, was forwarded to the Government. The Government appears to have sent a letter bearing No.14831/EC2/2014-6 dated 1.10.2014 along with the copy of the report of the Enquiry Officer dated 30.5.2014. In the said letter, the Government took a stand that since the fifth respondent had already been appointed as the Member Secretary, the Government had become the Competent Authority to pass final orders in the disciplinary action initiated by the Pollution Control Board and that since the allegations before the Pollution Control Board and before the Department of Vigilance and Anti Corruption were one and the same, the Government proposed to pass final orders in the departmental disciplinary action.

44. On the above proposal indicated in their letter dated 1.10.2014, the Government sought the specific remarks of the Director of Vigilance and Anti Corruption. In response, the Director of Vigilance and Anti Corruption sent a reply dated 26.11.2014 to the Principal Secretary to Government accepting the findings of the Departmental Enquiry Officer and requesting the Government to continue the departmental action, based upon the findings of the Enquiry Officer. Thereafter, the Government had decided to drop all charges. All these had happened after notice was ordered in the above writ petition. Therefore, the events that had happened after the appointment, actually confirm the apprehensions expressed by the petitioner in the representation dated 5.7.2014. In an attempt to save the appointment that was made without an application of mind as to the pendency of two enquiries, the Government had whitewashed everything.

45. There are only two possibilities with regard to the manner in which the appointment had taken place. The first is that the Government had already decided upon the choice of the candidate, as apprehended by the petitioner in his representation dated 5.7.2014 and hence, completely ignored the pendency of the proceedings against the fifth respondent. The second possibility is that they made the appointment overlooking the pendency of the proceedings and later, cleaned up the records with a view to justify the appointment. In either case, it is not correct.

46. Since we have already seen in great detail the factual position, let me now turn over to the legal issues.

47. Relying upon the decision of the Supreme Court in B.Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employees'

Association [2006 (11) SCC 731 (1)], it is contended by Mr.K.V.Subramanian, learned Senior Counsel appearing for the fifth respondent that it is not for the petitioner to question the wisdom of the Government on the choice of the person to be appointed, so long as that person possesses the prescribed qualification and is otherwise eligible for appointment.

48. But, the case on hand cannot be compared to the decision in B.Srinivasa Reddy. In that case, the Supreme Court was concerned about the appointment of a person as the Managing Director of the Karnataka Urban Water Supply and Drainage Board. It was an appointment on contract basis. The main reason as to why the Supreme Court interfered with the decision of the Karnataka High Court was that the Employees Union, which challenged his appointment, was found by the Supreme Court to have approached the Court by suppressing material facts and snatching an order on the basis of wrong averments. This is brought out in paragraph 42 of the said decision. Moreover, the appointment of the Managing Director was found to be temporary and until further orders and hence, the Supreme Court held in paragraph 43 that a Writ of Quo Warranto was not maintainable. Though in the said decision, the Supreme Court observed that a Writ of Quo Warranto would not lie, if the alleged violation is not of a statutory nature, the law appears to have taken a different turn, after the decision in B.Srinivasa Reddy. I shall come to the same later.

49. The next decision relied upon by Mr.K.V.Subramanian, learned Senior Counsel appearing for the fifth respondent is the one in Mahesh Chandra Gupta Vs. Union of India [2009 (8) SCC 273]. The Supreme Court was concerned in that case with the correctness of appointment of one Dr.Satish Chandra as an Additional Judge of the Allahabad High Court. Dr.Satish Chandra was enrolled as an advocate in 1975. He was appointed as Additional Law Officer in the Law Commission of India, before being appointed as the Member of the Income Tax Appellate Tribunal. Therefore, his eligibility as well as suitability to be appointed as a Judge of the High Court were both questioned by the writ petitioner. The Supreme Court pointed out the basic distinction between eligibility and suitability and also the difference between judicial review and merit review. Since eligibility is an objective factor, the Supreme Court indicated that in cases involving lack of eligibility, a Writ of Quo Warranto would certainly lie. But, in so far as suitability is concerned, the Supreme Court indicated that it is a matter of opinion and that the same stands excluded from the purview of judicial review.

50. But unfortunately for the fifth respondent, the limitations indicated by the Supreme Court on the scope of judicial review on the aspect of suitability, would not extend even to cases where important and relevant information was not even taken note of during the decision making process. As a matter of fact, the Supreme Court was

satisfied, as seen from paragraph 82 of its decision in Mahesh Chandra Gupta, that there was an effective consultation and that the High Court Collegium as well as the Supreme Court Collegium took note of all relevant factors. Therefore, a case where important and relevant information was not even taken note of by the Government, may not fall within the four corners of the ratio laid down in Mahesh Chandra Gupta.

51. In Hari Bansh Lal Vs. Sahodar Prasad Mahto [2010 (8) MLJ 405 (SC)], the Supreme Court was concerned with a challenge to the appointment of a person as the Chairman of the Jharkhand State Electricity Board. The challenge was sustained by the High Court in a public interest litigation. When the matter went before the Supreme Court, the Supreme Court made it clear (i) that the appointment of a Chairman to the State Electricity Board was not a service matter; and (ii) that a public interest litigation is not maintainable in service matters except for a Writ of Quo Warranto. On the scope of jurisdiction to issue a Writ of Quo Warranto, the Supreme Court held in paragraph 10 of the report in Hari Bansh Lal that it would lie only when the appointment is contrary to a statutory provision. To come to the said conclusion, the Supreme Court placed reliance upon the decision of a Three Member Bench in High Court of Gujarat Vs. Gujarat Kishan Mazdoor Panchayat [AIR 2003 SC 1201] and a series of other decisions. In paragraph 15 of the report in Hari Bansh Lal, the Supreme Court pointed out that the suitability or otherwise of a candidate for appointment to a post is the function of the Appointing Authority and not of the Court, unless the appointment is contrary to statutory provisions/rules.

52. But, even in the said case, the relevant material regarding the track record of the selected candidate was brought on record by the Chief Secretary. Therefore, if the pendency of the 2 enquiries against the fifth respondent had been specifically taken note of by the Government at least in the Note file and a conscious and informed decision had been taken to appoint the 5th respondent, then such an appointment cannot be set at naught by the court. In such an event, the decision in Hari Bansh Lal would squarely apply. But, it was not to be. When the decision of the Government to appoint a person to such a coveted post, is found to be not an informed decision, the entire decision making process becomes vitiated and such a decision even where it is purely administrative, cannot be saved.

53. In M.Manohar Reddy Vs. Union of India [2013 (3) SCC 99], relied upon by Mr.K.V.Subramanian, learned Senior Counsel appearing for the fifth respondent, the Supreme Court very clearly indicated that judicial review is allowed on two grounds namely (a) lack of eligibility; and (b) lack of effective consultation. Thereafter, the Supreme Court went on to hold in M.Manohar Reddy that the said case did not raise the issue of lack of effective consultation. The reason behind the said conclusion is too obvious to state.

54. On facts, the Supreme Court found in M.Manohar Reddy that no one was ever aware of the pendency of a case, in which, the person concerned was named as an accused. Therefore, the Supreme Court held in paragraph 46 of the report that a fact, which is unknown to anyone, cannot influence the consultative process and that the non consideration of such an unknown fact cannot vitiate the consultative process.

55. But, in the case on hand, the petitioner admittedly sent a representation dated 5.7.2014 to the Government. The Government has not denied the receipt of such a representation. On the other hand, the Government has gone on record to the effect that the said representation was under consideration. Therefore, the respondents cannot pass the second test laid down by the Supreme Court in M.Manohar Reddy.

56. In Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo [2014 (1) SCC 161], the Supreme Court considered in detail the contours of the jurisdiction of the court to issue a Writ of Quo Warranto. After taking note of several decisions of the Supreme Court starting from

- (i) University of Mysore Vs. C.D.Govinda Rao [AIR 1965 SC 491];
- (ii) High Court of Gujarat Vs. Gujarat Kishan Mazdoor Panchayat [2003 (4) SCC 712]; upto the decision in
- (iii) Centre for PIL Vs. Union of India [2011 (4) SCC 1], the Supreme Court held in paragraphs 21 and 22 as follows :

"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.

While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes

a contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a relator to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds."

57. Though the Supreme Court made it clear in paragraph 21 that a Writ of Quo Warranto can be issued only when the person holding the public office lacks eligibility criteria or when the appointment is contrary to statutory rules, the Supreme Court clarified one important aspect in paragraph 40 of its decision. In paragraph 40 of the report, the Supreme Court held as follows:

"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 it 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. "

58. In other words, the Supreme Court made it clear in Central Electricity Supply Utility of Odisha that the concept of institutional integrity, formulated in its earlier decision in the case of Chief Vigilance Commissioner, would still hold the field. Therefore, the Courts have a duty also to see whether the Government took note of all relevant factors that had a bearing upon the decision making process of the Government with regard to the past conduct and integrity of the individual selected for appointment.

59. At this stage, it will be relevant to take note of what the Supreme Court said and did in the matter of appointment of Mr.P.T.Thomas as the Central Vigilance Commissioner. Even at the outset, the Supreme Court made it clear that though the Government is not accountable to the Courts in respect of policy decisions, they are accountable for the legality of such decisions. Therefore, after

pointing out the distinction between judicial review and merit review, the Supreme Court relied upon its earlier decision in N.Kannadasan Vs. Ajoy Khose [2009 (7) SCC 1] to point out that merely because someone is eligible for being considered for a post, his past record of service cannot be discarded. The Supreme Court pointed out in paragraph 33 of its decision in the said case (Centre for PIL Vs. Union of India) that "the decision to recommend has got to be an informed decision." The Court pointed out that if the Appointing Authority failed to look into the relevant material or took into account irrelevant material, the decision to select a candidate would stand vitiated on the ground of official arbitrariness. The Court also said that the Appointing Authority has to take into consideration what is good for the institution.

60. As pointed out earlier, the post of Member Secretary of the Tamilnadu Pollution Control Board is created by statute and the holder of the post is supposed to be the Chief Executive Officer of the Board. The Board performs very crucial and important statutory functions that impact public interest on environmental protection, to a great extent. Therefore, the method of appointment to such a key post, cannot be allowed to be polluted.

61. In a decision rendered yesterday (22.01.2015) in Board of Control for Cricket in India v. Cricket Association of Bihar [Civil Appeal No.4235 & 4236 of 2014], the Supreme Court reiterated the importance of institutional integrity, even in respect of mere associations and societies, such as BCCI, which do not come within the definition of the expression "State" or "Instrumentality of the State" under Article 12 of the Constitution. The Supreme Court once again made a reference to its earlier decisions in N.Kannadasan and Centre for PIL. After extracting paragraph 45 of the decision in Centre for PIL, the Supreme Court observed in paragraph 96 of its decision in BCCI as follows:

"BCCI is a very important institution that discharges important public functions. Demands of institutional integrity are, therefore, heavy and need to be made suitably in larger public interest. Individuals are birds of passage, while institutions are for ever."

62. If today, there is a cry for institutional integrity even in Societies like BCCI, its importance hardly need any emphasis in the case of public authorities such as Tamil Nadu Pollution Control Board, which perform statutory functions of great public importance.

63. In the case on hand, it is clear from the Note File that the pendency of one departmental enquiry before the Board and one detailed enquiry by the Directorate of Vigilance and Anti Corruption were not taken note of by the Government, despite the same having

been brought to its notice by the petitioner in his representation dated 5.7.2014. After the appointment and after this Court was seized of the matter, the Government hurriedly got the concurrence of the Directorate of Vigilance and Anti Corruption to finalise the departmental proceedings and took a decision to drop the charges, making the remedy worse than the disease. Therefore, I am of the view that the appointment does not stand the test laid down by the Supreme Court in Centre for PIL and Central Electricity Supply Utility of Odisha.

64. Hence, the writ petition is allowed. There will be no order as to costs. Consequently, the above MP is closed.

-s/d-
Assistant Registrar (CO)
Dt:23/1/2015

True Copy

Sub-Assistant Registrar

To

1. The Chief Secretary, Government of Tamil Nadu, Fort St. George, Chennai-9.
2. The Secretary to 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-32.
4. The Inspector of Police, Vigilance and Anti Corruption, Chennai City-I, Detachment, Chennai-28.

+ 2 ccs to Mr.K.V.Subramanian, Advocate SR 3489

+ 1 cc to M/s.S.Kumaradevan, Advocate SR 3475

+ 1 cc to M/s.Rita Chandrasekaran, Advocate SR 3472

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W.P.No.24003 of 2014
and M.P.1 of 2014