

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

P.I.L.No.18 OF 2015

ORDER: (Per Hon'ble Sri Justice S.V.Bhatt)

Heard learned counsel appearing for the parties.

The petitioner through the instant public interest litigation challenges constitution of the A.P. Pollution Control Board through G.O.Ms.No.72 Environment, Forests, Science and Technology (ENV.Sec.V) Department dated 30.08.2014, as illegal, arbitrary and contrary to the mandate under Section 4 of the Water (Prevention and Control of Pollution) Act, 1975 (for short 'the Water Act') and Section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act') and also contrary to the circular issued by the Supreme Court Monitoring Committee (for short 'SCMC') and prays for a consequential direction to re-constitute the A..P. Pollution Control Board with persons having special knowledge or experience in matters relating to environment protection.

The case of petitioner, briefly, stated is as follows:

The petitioner claims to be an Advocate by profession and practising at Nellore. The petitioner is interested to protect the natural resources, flora and fauna and interested in proper administration of the Board under the provisions of the Water and Air Acts. The petitioner takes exception to the constitution of Board. By the 1st respondent through G.O.Ms.No.72 Environment, Forests, Science and Technology (ENV.Sec.V) Department dated 30.08.2014 under Water and Air Acts. The constitution of board is with the following officials and representatives as members:

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| “1. | Chief Secretary to Government,
A.P. Secretariat, Hyderabad. | : | Chairman |
| 2. | Special Chief Secretary to Government/
Prl. Secretary to Government,
E.F.S & T Department, Andhra Pradesh | : | Member |
| 3. | Principal Secretary to Government,
Municipal Administration and Urban
Development Department, Andhra Pradesh | : | Member |
| 4. | Principal Secretary to Government,
Health, Medical and Family Welfare
Department, Andhra Pradesh | : | Member |
| 5. | Commissioner of Industries,
Government of Andhra Pradesh, Hyderabad | : | Member |
| 6. | Commissioner of Transport
Government of Andhra Pradesh, Hyderabad | : | Member |
| 7. | Vice Chairman and Managing Director,
Andhra Pradesh Industrial Infrastructure
Corporation Ltd., Hyderabad | : | Member |
| 8. | Vice Chairman and Managing Director,
A.P. Mineral Development Corporation,
Hyderabad | : | Member |
| 9. | Five (5) Members from the Local Authorities :
and three (3) Non-officials to be nominated
by the State Government | : | Members(*) |
| 10. | Member Secretary, A.P. Pollution | : | Member-Convenor” |

According to petitioner, the Hon'ble Suprme Court in W.P (C) No.657 of 1995 and batch had taken cognizance of unauthorized and illegal dumping of hazardous waste which was causing unprecedented damage to all natural resources. The illegal dumping of hazardous waste and steps required for strict implementation of Hazardous Waste (Management and Handling) Rules, 1989 (for short “HW Rules”) by all the

stakeholders,
constituted a High Power Committee under the Chiarmanship of Dr.D.Tyagarajan as Supreme Court Monitoring Committee.
Briefly stated, the reports filed by the committee were taken note of and periodical directions were issued to Central/State Governments, CPCB/SPCBs in the country for complying with the requirements of “HW Rules”. W.P (C) No.657 of 1995 was finally disposed of through order dated 14.10.2003. For the purpose of considering the objection stated against the constitution of Committee, the petitioner refers to the directions issued in W.P (C) No.657 of 1995.

The case of petitioner is that the SCMC, as part of its recommendations, after noticing a few deficiencies in the functioning of SPCBs, through circular No.23-8/20040HSMD (Ex.P5), made the following recommendations:

“The statutory provisions require that Chairpersons appointed shall be persons having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid.

The SCMC has found that in several cases, the Chief Secretaries, Environment Secretaries, politicians, MLAs literary persons and other non-technical persons have been appointed as Chairpersons of SPCBs/PCCs.

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xxxxx xxxxx

The SCMC discussed these issues at its meeting held on 28.03.2005 and came to the firm conclusion that only technically qualified professionals should be appointed to the critical positions of Chairpersons, Member Secretary and Members of the Pollution Control Boards so that their functioning can be strengthened as required in terms of paragraph 41.1 of the Supreme Court's order dated 14.10.2003.

The Committee is also of the view that recommendations of the MGK Menon Committee be fully respected and the Chairpersons should be appointed on full-time basis. Without full time officers it is not possible for any Board to function effectively in view of the numerous laws and statutes that demand efficient and effective actions from State Pollution Control Boards.”

By reference to the instant circular, the complaint of petitioner is that constitution of a committee with Chief Secretaries etc., is unsustainable and amounts to ignoring the directive issued by SCMC. The petitioner relies upon Sections 4 of the Water Act and Section 5 of the Air Act to contend that the constitution of committee as noticed hereinabove is illegal, arbitrary and liable to be set aside.

The Special Chief Secretary to Government (In charge), Environment, Forests, Science and Technology Department filed reply. The reply of 1st respondent is that under the scheme of Water and Air Acts, every State should have a body called ‘Pollution Control Board’ under the provisions of these enactments and the Board oversees discharges etc., the functions and duties under the Water and Air Acts. The 1st respondent states that the constitution of the instant Board conforms to the requirements of the Water and Air Acts and the Chief Secretary is the Chairman who has knowledge and experience in administering the institutions. The reasons for nominating the Principal Secretaries/Other Officers who have direct or indirect connection with the industry and pollution are nominated to the Board for effective implementation of the assigned functions. The Chairman, being the Chief Secretary of the State, is involved in framing the policies related to industry on the one hand and environment, ecology and implementation of decisions at field level on the other. It is stated that to contend that the Chief Secretary does not possess adequate or special knowledge on the environment or related topics, is too specious. The 1st respondent further states that the persons nominated through the impugned GO have administrative knowledge, experience and the persons help the Board in properly implementing the functions and duties under the respective enactments. The 1st respondent justifies the constitution of Board and submits that the writ jurisdiction of this Court under Article 226 of the Constitution of India against G.O.Ms.No.72 dated 30.08.2014 is misconceived and the PIL is liable to be dismissed.

Learned Counsel Mr.K.Anand Rao, appearing for petitioner, has briefly put forward two contentions against the impugned GO. The SCMC on examination of working of SPCBs has recommended for constitution of a board with persons having specialized knowledge and skill in matters of environment and in the case on hand, the recommendation of SCMC is disregarded. The requirements of Section 4 of the Water Act or Section 5 of the Air Act are not followed in letter and spirit and prays for setting aside the impugned GO.

Mr.Ramesh, learned Special Government Pleader, appearing for the 1st respondent by drawing the attention of the Court to the directions issued by the Supreme Court through order dated 14.10.2003 in W.P (C) No.657 of 1995 submits that the circular relied upon by the petitioner was not incorporated in the final order of the Apex Court and secondly from the material available on record, it is not clear whether the Apex Court has issued any further directions in the matter of constitution of boards under the Water and Air Acts. According to the learned Special Government Pleader, the constitution of board conforms to the requirements of Water and Air Acts and no exception can be taken to the constitution of a board.

Sri Anand Rao, learned counsel for the petitioner, fairly states that the petitioner is not in a position to further show that circular No.23-8/20040-HSMD (Vol.II) (Ex.P5) is part of the order issued by the Apex Court and alternatively submits that the said report ought to be taken as a guiding factor in constituting boards under the Water and Air Acts.

Perused the material available on record and noted the submissions of learned counsel appearing for the parties.

The 1st respondent through the impugned GO constituted Board consisting of 8 officials from the cadres of Chief Secretary/ Principal Secretary etc., and Member Secretary/IAS Officer. Section 4 insists upon inclusion of persons having special knowledge or practical experience in respect of matters concerning with and relating to environmental pollution. These two acts deal with pollution from effluents and emissions. The sources of pollution are from industries, establishments, local bodies etc. Special knowledge in matters of environmental pollution cannot be viewed from a narrow perspective that only a technically experienced or qualified person in environment matters should be appointed. It is not the case of petitioner either that being senior bureaucrats, the officers lack experience in administering the institutions. The objection is that they do not have special knowledge in environment matters. The Chief Secretary, being the Chairman, it is difficult to ascribe that he does not have special or practical knowledge in matters relating to administering the environmental institutions. As rightly stated by the 1st respondent, the technical aspects of environmental pollutants are dealt with by scientific officers and the Board lays down the policies in the matter of industry, environment and oversees the dynamics with other government departments and takes administrative decisions to discharge the functions and duties of the Board under the Acts. The objection viz., lack of special knowledge in environment matters, against the members constituted through the impugned GO, is misconceived and is accordingly rejected.

The PIL fails and is accordingly dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J