

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

Pronounced on: 23rd March , 2016

+ **W.P.(C) 10600/2015 & CM No.26966/2015 (interim relief)**

**M/S SOCIETY STANDING FOR ALL
YOUTH MASS AWARENESS & ANR.**

..... Petitioners

Through: Mr.Sushant Mahapatra, Adv. with
Mr.Deepak Mahapatra, Ms.Aruni Poddar,
Ms.Aakanksha Jha and Mr.Mahavir Singh,
Advocates

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Sanjay Jain, ASG with
Mr.Jaswinder Singh, Ms.Shipra Shukla, Mr.Neeraj
Malhotra, Ms.Rupal Luthra, Mr.Ashish Aggarwal,
Mr.Yogesh, Ms.Priyanka, Advocates for R-1, R-3 &
R-5

Mr. Neeraj Kishan Kaul, Sr. Adv. with Mr.Ashish
Aggarwal, Adv. for R-4

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

JUDGMENT

G. ROHINI, CHIEF JUSTICE:

1. This petition is filed as a Public Interest Litigation alleging that the appointment of Respondent No.4 as a Whole Time Member of the Security and Exchange Board of India (SEBI) is illegal and thus praying to issue a writ of quo warranto against the Respondent No.4.

2. The Petitioner No.1 claims to be a non-governmental organization which actively indulges in social upliftment, welfare of public and in consumer related affairs. The Petitioner No.2 claims to be a citizen of India who has made a complaint dated 14.07.2015 to Petitioner No.1 society regarding the illegal appointment of Respondent No.4 without complying with the mandatory vigilance clearance required for appointment of the Whole Time Member of SEBI. On the basis of the said complaint, the Petitioner No.1 is stated to have issued a legal notice dated 23.07.2015 to the Respondents No.1 to 4 herein calling upon the Respondent No.1 to look into the matter and initiate necessary action for termination of services of the Respondent No.4. The Respondent Nos.2 and 3 were also called upon to initiate necessary action against the illegal appointment of the Respondent No.4 and for his immediate suspension. Since there was no response, reminders were also sent on 11.09.2015. Alleging that the Respondent Nos.1 to 3 failed to take any action, the present petition has been filed with the above prayer.

3. It is pleaded in the petition that the Respondent No.4 was appointed on 08.08.2012 for a period of five years as a Whole Time Member of SEBI. The said post was advertised by the Respondent No.1 on 23.02.2012 inviting applications from eligible candidates in the prescribed proforma and one of the essential documents to be submitted was certificate of vigilance clearance. The relevant para of the advertisement dated 23.03.2012 published by the Respondent No.1 reads as under:

“Applications from eligible candidates are invited in the prescribed proforma along with the attested copies of the Annual Confidential Reports (ACRs)

for the last five years, Vigilance Clearance, No Penalty & Integrity Certificate, and a Certificate that no disciplinary proceeding(s) or criminal proceeding(s) are either pending or contemplated against the officer (in respect of serving Govt. servants and employees of PSUs, Academic and Research Institutions/Universities etc.).”

4. The allegation is that the Respondent No.4 failed to enclose the requisite vigilance clearance certificate either at the time of filing the application or at the time of appointment. It is contended that the vigilance clearance for Board level appointments such as the Whole Time Member is required to be granted by the Chief Vigilance Commission / Chief Vigilance Officer of the concerned Ministry. However, the said requirement has not been complied with and the Executive Director, Vigilance Department of SEBI, who was subordinate to the Respondent No.4 and not a competent person to issue the vigilance clearance, had addressed the letter dated 16.03.2012 to the General Manager, SEBI informing that as per the vigilance records available with him, no vigilance matters are pending against the Respondent No.4 and therefore vigilance clearances is accorded. It is alleged that the said letter was without any authority and cannot be treated as the vigilance clearance as required under the advertisement dated 23.03.2012. It is therefore contended that the appointment of the Respondent No.4 as Whole Time Member of SEBI is illegal and a writ of quo warranto needs to be issued to remove him from the office of Whole Time Member of SEBI, a public office. It is alleged that the entire vigilance mechanism has been by-passed by the Respondent No.5, the Chairman of SEBI, and the Respondent No.4 to suit their personal interest and that the

Respondent No.5 is instrumental in forwarding the application of Respondent No.4 to the Respondent No.1.

5. Reiterating the averments in the petition, it is vehemently contended by the learned counsel appearing for the Petitioners that the appointment of Respondent No.4 in the absence of the mandatory clearance from CVC/CVO/DEA, Ministry of Finance is illegal. In support of his submission that a writ of quo warranto can be sought by way of public interest litigation, the learned counsel placed reliance upon the decisions of the Apex Court in *State of Punjab v. Salil Sabhlok & Ors.*, (2013) 5 SCC 1, *Rajesh Awasthi v. Nand Lal Jaiswal & Ors.*, (2013) 1 SCC 501; *Hari Bansh Lal v. Sahodar Prasad Mahto & Ors.*, (2010) 9 SCC 655 and *Subrata Chatteraj v. Union of India & Ors.*, (2014) 8 SCC 795.

6. Having regard to the law laid down in the above decisions that any citizen can claim a writ of quo warranto since he stands in the position of a relator and he need not have any special interest or personal interest, we do not find substance in the preliminary objection raised by the learned counsels who appeared on advance notice on behalf of the Respondents as to the maintainability of the writ petition.

7. However, in view of the fact that the complaint made by the Petitioners by way of legal notice dated 23.07.2015 is yet to be considered by the Respondent Nos.1 to 4, instead of calling for the response of the Respondents to the present petition, we deem it appropriate to dispose of the writ petition with a direction to the Respondent Nos. 1 and 2 to consider all the issues raised in the representation/notice of the Petitioners dated 23.07.2015 and pass an appropriate order in accordance with law within

eight weeks from today and communicate the same to the Petitioners. The Petitioners are at liberty to institute fresh proceedings, in case necessity thereof arises.

8. The writ petition is disposed of accordingly. The application for interim relief also stands dispose of.

(CHIEF JUSTICE)

(RAJIV SAHAI ENDLAW, J.)

MARCH 23, 2016

pk

