

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2017

DATE OF DECISION : 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.13675 & 15499 of 2017

W.P.No.13675 of 2017

Cyril C.George

... Petitioner

Vs.

1. The Public Enterprises Selection Board
rep. by its Secretary
Department of Personnel & Training
Government of India
Public Enterprises Bhawan
Block No.14, CGO Complex
Lodhi Road
New Delhi 110 033

2. Secretary to Government
Ministry of Shipping
Government of India
Ministry of Shipping
Transport Bhawan
No.1, Parliament Street
New Delhi 110 001

3. The Kamarajar Port Trust
rep. by its Secretary
Chennai

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the interview and selection for the post of third respondent Chairman and Managing Director Kamarajar Port Trust Limited as invited by first respondent circular dated 28.2.2017 to be held on 1.6.2017 and to quash the same and consequently direct the first respondent to conduct afresh interview by issuing interview call letters including to the petitioner on the basis of the petitioners application dated 22.3.2017 and proceed with the selection of the candidates by the respondents to the post of Chairman cum Managing Director of third respondent.

For Petitioner : Mr.P.Wilson
Senior Counsel for
Mr.S.Arulandu

For Respondents : Mr.G.Rajagopalan
Additional Solicitor General
assisted by Mr.Venkatasamy Babu
Senior Panel Counsel
Central Government for R1 & R2
Mr.M.T.Arunan
Standing Counsel for R3

W.P.No.15499 of 2017

Cyril C.George

... Petitioner

Vs.

1. The Union of India
rep.by its Secretary to Government
Ministry of Public Grievances & Pensions
Department of Personnel & Training
North Block
New Delhi 110 001
2. The Public Enterprises Selection Board
rep. by its Secretary
Department of Personnel & Training
Government of India
Public Enterprises Bhawan
Block No.14, CGO Complex
Lodhi Road
New Delhi 110 033
3. The Secretary to Government
Ministry of Shipping
Government of India
Transport Bhawan
No.1 Parliament Street
New Delhi 110 001
4. The Kamarajar Port Trust Ltd.
rep. by its Secretary
Chennai

... Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus,
calling for the records of the second respondent pertaining to
the compendium of guidelines dated February 2017 regarding board
level appointments in Central Public Sector Enterprises and to
quash clause 8 (b) and (iii) in so far as limiting sectoral
category only to CPSE of the same cognate group as defined by

the DPE and the records of the respondents pertaining to the vacancy circular dated 28.2.2017 prescribing eligibility for the post of Chairman and Managing Director of the fourth respondent and quash clause III(2) of the same in so far as it excludes employees of the Major Ports in India from the zone of consideration and consequently direct the respondents 1 to 3 to invite fresh applications for filling up the post of Chairman and Managing Director of the fourth respondent by permitting the employees of the Major Ports in India including the petitioner to apply.

For Petitioner : Mr.P.Wilson
Senior Counsel for
Mr.S.Arulandu

For Respondents : Mr.G.Rajagopalan
Additional Solicitor General
assisted by Mr.Venkatasamy Babu
Senior Panel Counsel
Central Government for R1 to R3
Mr.M.T.Arunan
Standing Counsel for R4

ORDER

Mr.Cyril C.George is the petitioner in both the writ petitions. In the first writ petition viz., W.P.No.13675 of 2017, he seeks to quash the circular dated 28.2.2017 issued by the first respondent relating to the interview and selection for the post of Chairman and Managing Director, Kamarajar Port Limited, the third respondent to be held on 1.6.2017 with a consequential direction to the first respondent to conduct afresh interview by issuing interview call letters including the petitioner on the basis of his application dated 22.3.2017 and proceed with the selection of the candidates to the said post and pass appropriate orders. This Court, having seen that the vacancy circular dated 16.3.2017 issued by the Under Secretary to the Government of India requested all the Chairmen of all Major Ports, among others, to forward the names of eligible and willing officers for the post of Chairman and Managing Director of the third respondent Port and pursuant thereto, when the petitioner, who is working as Deputy Chairman of Chennai Port Trust, which is also one of the Major Ports, having applied to the said post and not being invited, keeping in mind that many candidates have assembled at Delhi to take part in the interview, accepting the request of the learned Additional Solicitor General to allow them to continue the interview process, directed the respondents 1 and 2 not to publish the results till further orders. In the meanwhile, the petitioner has filed the second writ petition viz., W.P.No.15499 of 2017 challenging the compendium of guidelines dated February 2017 regarding board level appointments in Central Public Sector

Enterprises, more particularly to quash clause 8(b) and (iii) in so far as limiting sectoral category only to CPSE of the same cognate group as defined by the DPE and the records of the respondents pertaining to the vacancy circular dated 28.2.2017 prescribing eligibility for the post of Chairman and Managing Director of the fourth respondent and quash clause III(2) of the same in so far as it excludes employees of the Major Ports in India from the zone of consideration, with a consequential direction to the respondents 1 to 3 to invite fresh applications for filling up the post of Chairman and Managing Director of the fourth respondent by permitting the employees of the Major Ports in India including the petitioner to apply. Hence, both the writ petitions are taken up together and disposed of by this common order.

2. Mr.P.Wilson, learned senior counsel for the petitioner, while canvassing the relief sought for in the first writ petition viz. W.P.No.13675 of 2017, submitted that when the petitioner is serving as Deputy Chairman of the Chennai Port Trust, which is one of the 12 Major Ports in India under the administrative control of the Ministry of Shipping, the second respondent, and is having an outstanding and proven track record of 29 years of experience in different Major Ports in different levels of managerial cadre, is a fully qualified and eligible candidate for the post of Chairman cum Managing Director, Kamarajar Port Limited, Chennai. While so, the Public Enterprises Selection Board represented by its Secretary, Department of Personnel and Training, the first respondent invited applications for the post of Chairman and Managing Director, Kamarajar Port Limited, Chennai through public advertisement dated 28.2.2017 inviting applications from the candidates employed in Central Government/All India Services/Armed Forces of the Union/State Public Sector Enterprises/Private Sector company having an annual turnover of Rs.1000 crore or more, in the prescribed format to be received by the PESB on or before 8.5.2017. The said circular was also sent to the Ministry of Shipping, which is the controlling Ministry of the Kamarajar Port Limited with a request to forward the list of applicants from the organisations under the Ministry duly verified on or before 8.5.2017. The said impugned circular also states that the ACRs for the last five years of the candidates along with latest vigilance profile [(i) penalty imposed, if any during the last 10 years (ii) details of disciplinary action initiated/being initiated if any, etc.] to be furnished as and when the selection meeting is scheduled. Pursuant to the circular issued by the first respondent, the second respondent in turn issued a vacancy circular dated 16.3.2017 inviting applications from all eligible and willing officers of all Major Ports specifically stating therein that the names of the eligible candidates in the prescribed format along with vigilance clearance and ACRs for the last five years to be forwarded to the second respondent. As the petitioner is having sufficient qualification and experience as required under

the circular, he applied for the said post through proper channel by letters dated 22.3.2017 and 7.4.2017 along with necessary enclosures.

3. When the petitioner had worked in various capacities, namely, as Labour Officer in Kandla Port Trust from 30.4.87 to 16.12.93, Senior Labour Officer from 17.12.93 to 11.6.2000 in Kandla Port Trust, again as Deputy Chairman in the Kandla Dock Labour Board from 12.6.2000 to 14.11.2001 and as Deputy Secretary in Kandla Port Trust for two years from 2001 to 2003, as Secretary in Cochin Port Trust from 2003 to 2014, as Deputy Chairman in Mormugao Port Trust from 5.3.2014 to 31.7.2014, as Chairman in-charge of Mormugao Port Trust from 1.8.2014 to 15.9.2015, as Deputy Chairman in Chennai Port Trust from 16.9.2015 to 1.3.2016, as Chairman in-charge in Chennai Port Trust from 2.3.2016 to 29.9.2016 and again as Deputy Chairman of Chennai Port Trust from 30.9.2016 till now, considering the outstanding experience of the petitioner, the present employer had also forwarded his application to the second respondent on 7.4.2017 well in advance of the prescribed date, more particularly, the Under Secretary to Government, Ministry of Shipping, the second respondent, after scrutinising the petitioner's application, had also forwarded the same to the first respondent-Selection Board for consideration to the post of Chairman cum Managing Director of the third respondent Port, on 8.5.2017.

4. When the matter stands as above, the first respondent issued call letters scheduling the interview on 1.6.2017 and a copy of the interview letter No.6/11/2016-PESB dated 17.5.2017 issued to a candidate is filed in the typedset of papers. However, the petitioner has not received any interview call letter, although he had submitted his application on 22.3.2017 and 7.4.2017 well in advance and more than that, when the Under Secretary to Government, Ministry of Shipping, in his letter dated 8.5.2017, has specifically mentioned that the petitioner's application with five others are clear from the vigilance angle and therefore they are forwarded along with APARs and vigilance clearance for consideration to the post of Chairman and Managing Director, Kamarajar Port Limited with the approval of Secretary (Shipping), it is not proper on the part of the first respondent to send the call letters only to the selective persons, ignoring the qualification and experience of the petitioner as Deputy Chairman in one of the Major Ports. Adding further, the learned senior counsel submitted that after coming to know that some candidates have been issued with interview call letters, the petitioner has immediately represented to the first respondent in his letter dated 25.5.2017 through e-mail as well as fax pointing out that he had already given his application to the second respondent and the same was also forwarded to the first respondent. But the petitioner neither received any interview call letter nor any response from the respondents. On further enquiry, the petitioner has come to know

that the interview call letters have not been issued to any one of the candidates from the Major Ports. On the other hand, the first respondent has invited only selected non-port sector candidates for their own reasons. Such a stand taken by the first respondent would run counter to the circular issued by the first respondent dated 28.2.2017 inviting applications from all eligible candidates working in the port sector and would also further run counter to the policy decision of the first respondent.

5. Continuing his arguments, the learned senior counsel stated that one Mr.M.A.Bhaskarachar, the present Chairman and Managing Director of the third respondent was appointed to the said post while working as Deputy Chairman in one of the Major Ports. Since his term is expiring on 31.7.2017, the impugned selection is being done by the respondents. When the petitioner is also similarly placed like the present incumbent and is also working in the same Major Port viz., Chennai Port Trust, the respondents, having appointed Mr.M.A.Bhaskarachar from the same Chennai Port Trust, which is also one of the Major Ports in the country, cannot discriminate the petitioner, who is presently working as the Deputy Chairman in the very same Port Trust. On this basis, he sought for allowing the writ petition by setting aside the impugned circular dated 28.2.2017.

6. Again advancing his arguments in the second writ petition viz., W.P.No.15499 of 2017 challenging clause 8(b) and (iii) of the compendium of guidelines in so far as limiting sectoral category only to CPSE of the same cognate group as defined by the DPE and also prescribing eligibility for the post of Chairman and Managing Director of the fourth respondent and also to quash clause III(2) of the same in so far as it excludes employees of the Major Ports in India from the zone of consideration, he submitted that when the petitioner is working in one of the Major Ports constituted under the Major Port Trusts Act, 1963, he cannot be excluded from the zone of consideration whimsically, irrationally and arbitrarily. Hence the stand taken in the counter affidavit that the employees of the Major Ports, which are autonomous bodies constituted under Section 3 of the Major Port Trusts Act, 1963, are kept away from the zone of consideration is an unreasonable classification which is not based on intelligible differentia. Such a stand is wholly against the doctrine of public trust. When clause III(2) of the eligibility speaks about the categories of employers, the petitioner cannot be denied the opportunity of taking part in the selection process. Moreover, the appointing authority, having understood the need for appointing the persons working in the port sectors, had forwarded the circular to all the Major Ports inviting applications from the eligible candidates working in all the Major Ports. After receipt of the applications from the eligible candidates who are working in the Major Ports, the respondents cannot take a stand that in the meeting held on 19.4.2017, the Board decided that the candidates from autonomous

bodies should not be considered eligible for shortlisting in line with IM decision dated 27.12.2016. When the circular provides the candidates from the Central Public Sector Enterprise (CPSE), State Public Sector Enterprise (SPSE), Central Government and Private Sector, there is no rhyme or reason why the Major Ports, especially the employees of the Board constituted under the Major Port Trusts Act, 1963, who are also from the same sector as that of the fourth respondent, are kept away from the zone of consideration.

7. Again reiterating his stand, the learned senior counsel submitted that the selection Board cannot exclude the employees of Major Ports notified under the Indian Ports Act, 1908, especially the Chennai Port Trust, which is constituted under Section 3 of the Major Port Trusts Act, 1963, where the petitioner is working, more particularly, when the first respondent has included the employees of the fourth respondent under clause 2 of the vacancy circular as falling under "Central Public Sector Enterprise". When the employees of Kamarajar Port Limited are permitted to apply, there is no rationale or justification to exclude the employees of the Major Ports constituted under the Major Port Trusts Act, 1963. Such a stand of the respondents, being highly fanciful, whimsical, irrational and discriminatory, cannot stand the test of Articles 14 and 16 of the Constitution of India. When a similar notification was issued in 2007 to fill up the post of Chairman and Managing Director of Kamarajar Port Limited, the very same Secretary to Ministry of Shipping invited applications from all Major Ports. In response thereto, the candidates from Major Ports viz., Capt.Subhash Kumar, Deputy Chairman, Cochin Port Trust, Mr.P.M.Mahapatra, Deputy Chairman, Mormugao Port Trust, Mr.Bhascarachar, Deputy Chairman, Kolkatta Port Trust were shortlisted, however, one Mr.Velumani was appointed as the Chairman and Managing Director of the Kamarajar Port Limited. Again in 2012, when another vacancy circular similar to the impugned one was issued inviting applications from various sectoral candidates viz., Central/State Public Sectors and Government offices, private sector, the candidates from all Major Ports applied and finally Mr.M.A.Bhascarachar from Kandla Port Trust was appointed as the Chairman and Managing Director. Therefore, on earlier occasions, when the candidates from all the Major Ports were considered for the post of Chairman and Managing Director of Kamarajar Port Limited, peculiarly for the first time, the exclusion of the employees working in Chennai Port Trust, which is one of the Major Ports, for the simple reason that it is an autonomous body, is not only wholly unreasonable and capricious but also made with a huge plan to help only the selective people. When the respondents in 2007 and 2012 have considered the candidates from the Chennai Port Trust as well for the post of Chairman and Managing Director, the disqualification of the candidates from Chennai Port Trust to take part in the selection to the post of Chairman and Managing Director in 2017 is not only peculiar, but also wholly

arbitrary. Therefore, the impugned proceedings are liable to be set aside. Concluding his arguments, the learned senior counsel submitted that no counter has been filed by the appointing authority on what basis the candidature of the petitioner has been excluded. Moreover, the counter affidavit filed by other than the appointing authority excluding the employees of Chennai Port Trust, which is one of the Major Ports, cannot be taken into account by this Court.

8. A detailed counter affidavit has been filed by the Under Secretary, Ministry of Shipping on behalf of the second respondent in W.P.No.13675 of 2017. Mr.G.Rajagopalan, learned Additional Solicitor General for the Union of India submitted that as per para III(2) of the Job Description (JD) circulated vide the impugned notification, a candidate, on the date of application as well as on the date of interview, must be employed in a regular capacity and not in a contractual/ad hoc capacity, in one of the following:-

- (a) Central Public Sector Enterprise (CPSE) (including a full-time functional Director in the Board of a CPSE);
- (b) Central Government including the Armed Forces of the Union and All India Services;
- (c) State Public Sector Enterprise (SPSE) where the annual turnover is over Rs.1000 crore or more;
- (d) Private Sector in company where the annual turnover is Rs.1000 crore or more.

However, since the petitioner Mr.Cyril C.George is an employee of Chennai Port Trust, which is an autonomous organisation, he has applied indicating his category as 'Central Government'. As per para 5(b)(i) of the job description, applicants from Central Government/All India Services should be holding a post at the level of Joint Secretary in Government of India or carrying equivalent scale of pay. Further, as per the guidelines contained in para 8(v) of the compendium of guidelines dated 23.2.2017 read with para 7.2 of the Government of India Resolution No.27(21)-EO/86(ACC) dated 3.3.87, in addition to officers from Armed Forces of the Union and All India Services, only members/officers of organized services of central government are eligible to apply under the category of Central Government. Therefore, the list of Central Group 'A'/Organized Services updated time to time by the Department of Personnel & Training is taken as final while shortlisting applications under Central Government. Whereas the petitioner, being an employee of the Chennai Port Trust, which is an autonomous organisation, does not belong to any of the services under the Central Government. Further, in an internal meeting held on 27.12.2016, the Board had decided that the candidates from organized services, All India services and Armed Forces may continue to be shortlisted under the Central Government. Again in one another meeting, the Board decided that the candidates from autonomous bodies should not be considered for shortlisting in line with the internal meeting decision dated 27.12.2016. Therefore, keeping in mind these decisions, although the petitioner applied

under the central government category, his candidature was not found eligible. Hence he cannot claim that he is a sectoral candidate.

9. The learned Additional Solicitor General further submitted that at the time of issuing the advertisement, circulating the vacancy among all CPSEs, Ministries and the State Governments, it has uploaded the same on the PESB website. As per usual practice, the administrative ministry further circulates the vacancy among all the organisations under their administrative control with a view to give wide coverage so that eligible and willing candidates can apply. Since there are officers working in the Major Ports from different organisations such as government and CPSEs on deputation basis who might be eligible to apply for the post, this circular has been addressed to all Major Ports inviting applications from eligible and willing candidates working in all Major Ports. Therefore, mere circulation of vacancy by the Ministry of Shipping to the organisations including the Major Ports cannot be a ground for calling the petitioner for interview when he is not from any of the categories of candidates eligible for the post. Arguing further, the learned Additional Solicitor General submitted that though Kamarajar Port Limited is one of the 12 Major Ports under the Indian Ports Act, 1908, it is only the first public company categorised as Schedule 'B' CPSE. All other Major Ports including Chennai Port Trust, where the petitioner is employed, are enjoying the status of autonomous organisations and not a public company/CPSE. However, none of them is either holding/subsidiary of Kamarajar Port Limited or in the sector/cognate group of companies like the Kamarajar Port. Since the Chennai Port Trust is not a public company/CPSE being not a cognate group of Kamarajar Port Limited, the petitioner cannot claim his candidature under any category of CPSEs (Internal, Sectoral and External). Therefore the petitioner, not being from any of the categories of candidates as per para III(2) of the Job Description, cannot claim his eligibility on the basis of his qualification and work experience. In support of his contention, he has also relied upon a judgment of the Apex Court in the case of Dhananjay Malik and others v. State of Uttaranchal and others, AIR 2008 SC 1913.

10. But this Court finds it very difficult to accept the stand taken by the second respondent herein not to consider the candidature of the petitioner, for the following reasons. Firstly, it is not in dispute that the respondent-Board invited applications for the post of Chairman and Managing Director of Kamarajar Port Limited, Chennai by way of public advertisement and issued a circular dated 28.2.2017 inviting applications from the candidates working in Central Government/All India Services, Armed Forces, Union/State Public Sector Enterprises, Private Sector in the prescribed format to be received on or before 8.5.2017. The circular was issued to the Ministry of Shipping, which is the controlling authority of the Kamarajar Port Limited

with a request to forward the list of applicants from the organisations after due verification on or before 8.5.2017. The respondent-Ministry of Shipping also issued a vacancy circular dated 16.3.2017 inviting applications from all the eligible candidates of all Major Ports stating that the names of all the candidates with the vigilance clearance and ACRs for the last five years to be forwarded to the respondent. For better appreciation, the vacancy circular dated 16.3.2017 is extracted below:-

No.PD-27/12/2017/PD-1 (325267)
Government of India
Ministry of Shipping
PD-I Section

Transport Bhavan 1, Parliament Street
New Delhi 110 001 Dated 16th March, 2017

VACANCY CIRCULAR

Subject: Selection for the post of Chairman and Managing Director, Kamarajar Port Ltd.

The post of Chairman and Managing Director, Kamarajar Port Limited, a Schedule B Mini Ratna Corporate Major Port under Ministry of Shipping in the pay scale of Rs.75,000-90,000/- is falling vacant from 01.08.2017. PESB has issued the circular for filling up the vacancy which is available in their website. A copy of the vacancy circular issued by PESB is enclosed. It is requested that the vacancy circular may be circulated in your organization and to forward name of eligible and willing officers (job description of the post is given at Annexure-I) in the prescribed proforma (Annexure-II) along with vigilance clearance and ACRs for the last five years.

2. The applications which are received after the due date/not sent through proper channel will not be considered. The last date for receipt of applications in this Ministry is 15th April, 2017. The applications, complete in all respect, may be sent to the following address.

Under Secretary
Ministry of Shipping
Room No.427 Transport Bhawan
1, Parliament Street
New Delhi 110 001

Sd/-

Under Secretary to Govt.of India

Encl: as above

To

1. Chairmen, All Major Ports
2. Department of Personnel & Training [Sh.Anand Madhukar, Dir.(ACC)], North Block, New Delhi, with the request for uploading the vacancy circular in DOPT's website under the heading "vacancy in CPSE"
3. Sh.Pawan Joshi, Sr.Technical Director, NIC, Ministry of Shipping, for uploading the vacancy circular on shipmin.nic.in
4. Managing Director, Indian Ports Association, NBCC Place, Pragati Vihar, Lodhi Road, New Delhi 110 003, for uploading the vacancy circular in IPA website
5. All Wing Heads in the Ministry of Shipping [AS/JS(P)/JS(S&A)/JS(SM)/JS&FA/ Advisor (Eco)/ Adviser (Transport)] with the request to circulate the vacancy circular in all organizations coming under their wing.

(emphasis supplied)

11. Since the vacancy circular dated 16.3.2017 issued by the Ministry of Shipping was addressed to the Chairmen of all Major Ports, the petitioner, serving as Deputy Chairman in the Chennai Port Trust constituted under the Major Port Trusts Act, 1963, had submitted his application through proper channel on 22.3.2017 indicating his previous placements and the present employment as shown below:-

ORGANISATION	POST HELD	FROM	TO
Kandla Port Trust	Labour Officer	30.04.1987	16.12.1993
Kandla Port Trust	Senior Labour Officer	17.12.1993	11.06.2000
Kandla Dock Labour Board	Deputy Chairman	12.06.2000	14.11.2001
Kandla Port Trust	Deputy Secretary	15.11.2001	19.11.2003
Cochin Port Trust	Secretary	29.11.2003	04.03.2014
Mormugao Port Trust	Deputy Chairman	05.03.2014	31.07.2014
Mormugao Port Trust	Chairman (i/c)	01.08.2014	15.09.2015
Chennai Port Trust	Deputy Chairman	16.09.2015	01.03.2016
Chennai Port Trust	Chairman i/c	02.03.2016	29.09.2016
Chennai Port Trust	Deputy Chairman	30.09.2016	Till Date

Therefore, the Secretary of Chennai Port Trust also forwarded his application to the Under Secretary, Ministry of Shipping vide the letter dated 7.4.2017 bearing No.A1/8152/2015/GA. After scrutinising the application of the petitioner along with others for the post of Chairman and Managing Director of

Kamarajar Port Limited, the Under Secretary to Government, Ministry of Shipping (PD-1 Section) vide letter dated 8.5.2017 had forwarded all the applications to the first respondent along with APARs and vigilance clearance with the approval of Secretary (Shipping) and the contents of the said letter read as follows:-

IMMEDIATE

No.PD-27/12/2017-PD-1
Government of India
Ministry of Shipping
(PD-I Section)

Transport Bhawan
1, Parliament Street
New Delhi 110 001

Dated 08.05.2017

OFFICE MEMORANDUM

Subject: Selection for the post of Chairman and Managing Director, Kamarajar Port Ltd.

The undersigned is directed to refer to the advertisement of the PESB vide Advertisement No.6/11/2016-PESB dated 28.02.2017 and to forward applications of the following six applicants:

- (i) Sh.Cyril C.George, Dy.Chairman, Chennai Port Trust
- (ii) Sh.G.Senthilvel, Dy.Chairman, HDC, Kolkata Port Trust
- (iii) Sh.N.Vaiyapuri, Dy.Chairman, Paradip Port Trust
- (iv) Sh.V.Krishnasamy, GM (Operations), Kamarajar Port Limited
- (v) Sh.S.Charles, Dir.(Finance), Dredging Corporation of India
- (vi) Sh.M.S.Rao, Dir.(O&T), Dredging Corporation of India

2. The above noted applicants are clear from vigilance angle. Applications of above 6 candidates are forwarded herewith along with APARs and vigilance clearance for consideration of their candidature to the post of Chairman and Managing Director, Kamarajar Port Limited.

3. This issues with the approval of Secretary (Shipping).

Sd/-

Encl: as above Under Secretary to the
Govt.of India

Sh.Rajiv Rai, Secretary
Public Enterprises Selection Board
Public Enterprises Bhawan
Block No.14, CGO Complex
Lodhi Road
New Delhi 110 003

(emphasis supplied)

12. A perusal of the above office memorandum dated 8.5.2017 clearly shows that the name of the petitioner and five others were cleared from the vigilance angle for consideration of their candidature to the post of Chairman and Managing Director of Kamarajar Port Limited and further more, this has been issued with the approval of the Secretary (Shipping) to the Public Enterprises Selection Board. In the above background, it is clear that the respondent-Ministry of Shipping, addressing the vacancy circular dated 16.3.2017 to the Chairmen of all Major Ports inviting applications from the eligible candidates for the post of Chairman and Managing Director of Kamarajar Port Limited, has not ruled out the candidates from all Major Ports including the Chennai Port Trust, which is also considered as one of the Major Ports under Section 3(8) of the Indian Ports Act, 1908. In this context, Section 3(8) of the Indian Ports Act, 1908 reads as follows:-

"3. In this Act, unless there is anything repugnant in the subject or context,-

(8) "Major Port" means any port, which the Central Government may by notification in the Official Gazette declare, or may under any law for the time being in force have declared, to be a major port;"

Even Section 3 of the Major Port Trusts Act, 1963, regarding the constitution of Board of Trustees, reads as follows:-

"3. Constitution of Board of Trustees.--(1) With effect from such date as may be specified by notification in the Official Gazette, the Central Government shall cause to be constituted in respect of any major port a Board of Trustees to be called the Board of Trustees of that port, which shall consist of the following Trustees, namely:-

(a) a Chairman to be appointed by the Central Government;

(b) one Deputy Chairman or more, as the Central Government may deem fit to appoint;

(c) not more than nineteen persons in the case of each of the ports of Bombay,

Calcutta and Madras and not more than seventeen persons in the case of any other port who shall consist of--

(i) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be appointed by that Government from amongst persons who are in its opinion capable of representing any one or more of such of the following interests as may be specified in the notification, namely:--

- (1)labour employed in the Port;
- (2)the Mercantile Marine Department;
- (3)the Customs Department;
- (4)the Government of the State in which the port is situated;
- (5)the Defence Services;
- (6)the Indian Railways; and
- (7)such other interests as, in the opinion of the Central Government, ought to be represented on the Board

Provided that before appointing any person to represent the labour employed in the port, the Central Government shall obtain the opinion of the trade unions, if any, composed of persons employed in the port and registered under the Trade Unions Act, 1926 (16 of 1926), and that the number of persons so appointed shall not be less than two;

(ii) such number of persons, as the Central Government may, from time to time, by notification in the Official Gazette, specify, to be elected by such bodies and representing any one or more of such of the following interests as may be specified in the notification from among themselves, namely:--

- (1)ship owners;
- (2)owners of sailing vessels;
- (3)shippers; and
- (4)such other interests as, in the opinion of the Central Government, ought to be represented on the Board:

Provided that in a case where any such body is an undertaking owned or controlled by the Government, the person to be elected by such body shall be appointed by the Central Government.

(2) A Trustee appointed by the Central Government under this Act may be appointed by name or by virtue of office.

(3) Every notification issued under sub-clause (ii) of clause (c) of sub-section (1) may also specify the number of Trustees that each of the bodies referred to in that clause may elect.

(4) The election of Trustees under sub-clause (ii) of clause (c) of sub-section (1) shall be held within such period as may, from time to time, be specified by the Central Government.

(5) The chief executive authority of every electing body shall communicate forthwith to the Central Government the result of any election held in pursuance of sub-section (4).

(6) The names of persons appointed or elected as Trustees shall be notified by the Central Government in the Official Gazette."

13. A perusal of sub-section (1) of Section 3 of the Major Port Trusts Act, 1963 shows that the Central Government alone can constitute the Board of Trustees in respect of any major port, which shall consist of (a) a Chairman to be appointed by the Central Government; (b) one Deputy Chairman or more, as the Central Government may deem fit to appoint. Moreover, in the case of each of the ports of Bombay, Calcutta and Madras (now Chennai), not more than nineteen persons can be appointed to represent any one or more of such interests as specified therein. Again sub-section (2) of Section 3 says that the Central Government alone can appoint the Trustee(s). This apart, Section 15 of the Major Port Trusts Act says that the Chairman and Deputy Chairman shall be paid their salary to be determined by the Central Government from time to time. Further, Section 111 makes it clear that the decision of the Central Government in respect of policy shall be final. In addition thereto, Section 125 speaks about the power of Central Government to direct regulations to be made or to make regulations. Therefore, when the Chennai Port Trust is governed by the provisions of the Major Port Trusts Act, 1963 and the terms and conditions of the office of Chairman or Deputy Chairman, as the case may be, as per Section 3(1)(b) are regulated by the Central Government, with full pervasive control over the Port, the reason that since the petitioner is serving in an autonomous institution, he cannot be considered for appointment to the post of Chairman and Managing Director of Kamarajar Port Limited, is far from acceptance.

14. To make it apparently clear, a perusal of Section 7 of the Major Port Trusts Act, 1963, which is given as under,

"7. Term of office of Trustees.--(1) The Chairman and the Deputy Chairman shall hold office during the pleasure of the Central Government.

(2) Subject to the provisions of this Act,--

(a) every person elected or appointed by name to be a Trustee shall hold office to which he is elected or so appointed, for a term of two years commencing on the 1st day of April next following his election or appointment, as the case may be:

Provided that the term of office of a member elected to represent any body of persons shall come to an end as soon as he ceases to be a member of that body;

(b) a person appointed by virtue of an office to be a Trustee shall, until the Central Government by notification in the Official Gazette otherwise directs, continue to be a Trustee so long as he continues to hold that office."

would show that the Chairman and Deputy Chairman shall hold office during the pleasure of the Central Government. Therefore, when the petitioner is serving as Deputy Chairman in Chennai Port Trust and also earlier served as Chairman in-charge of the said port from 2.3.2016 to 29.9.2016, holding the office during the pleasure of the Central Government, it is not known how the petitioner can be excluded unreasonably on a totally unacceptable stand that he is serving in Chennai Port Trust, an autonomous body. If it is an autonomous body, the question of removal of the Deputy Chairman by the Central Government does not arise.

15. In the present case, when Section 7 of the Major Port Trusts Act, 1963 clearly speaks that the term of office of Deputy Chairman being held by the petitioner shall be during the pleasure of the Central Government, in my considered opinion, he is not only an employee of the Central Government, but is also fully eligible to apply as a candidate working in one of the Major Ports. Accepting this stand, after issuing the vacancy circular to all the Major Ports inviting applications, the petitioner's application submitted through proper channel was also forwarded with the approval of Secretary (Shipping) vide the letter dated 8.5.2017. Therefore, after scrutinising the petitioner's application and giving vigilance clearance for

consideration of his candidature to the post of Chairman and Managing Director of Kamarajar Port Limited, the respondent-Ministry of Shipping cannot say that in the meeting held on 19.4.2017, the Board decided that the candidates from autonomous bodies should not be considered eligible for shortlisting in line with IM decision dated 27.12.2016. This stand itself makes the claim of the respondent inconsistent, inasmuch as had the decision taken in the internal meeting held on 27.12.2016 been true, the vacancy circular dated 16.3.2017 would not have been addressed to the Chairmen of all Major Ports. Even if it is presumed that the said vacancy circular dated 16.3.2017 was addressed to all Major Ports inviting applications from the eligible candidates working on deputation basis from different organisations, the application of the petitioner forwarded by the Secretary of Chennai Port Trust on 13.4.2017 to the Under Secretary to Government, Ministry of Shipping could have been rejected, which has not been done.

16. Again, had it been true, as mentioned above, that there was an internal meeting held on 27.12.2016, based on which the Board decided on 19.4.2017 to exclude all the candidates from autonomous bodies for shortlisting, the Under Secretary to Government of India, Ministry of Shipping would not have issued the office memorandum dated 8.5.2017 stating that the applications of the petitioner and five others have been forwarded with the approval of the Secretary (Shipping). Moreover, when the petitioner is admittedly holding the post of Deputy Chairman in Chennai Port Trust, which is one of the Major Ports as per the provisions of the Major Port Trusts Act, 1963, the respondent-Ministry, before satisfying that his qualification and experience are found otherwise, cannot unreasonably preclude him on the mere ground that he is working in an autonomous body. Hence, in my considered opinion, such an approach of the respondent-Ministry is wholly arbitrary and irrational, as the candidates from Major Ports were considered on the earlier occasions viz., 2007 & 2012. It may be also mentioned herein that the present incumbent Mr.M.A.Bhaskarachar was also selected and nominated to the said post, when he had served as Deputy Chairman and Chairman in-charge of Kandla Port Trust, which is also one of the Major Ports. While so, the petitioner who is fulfilling all the qualifications cannot be disqualified merely on the ground that he is working in Madras Port, for, it is an autonomous body, which is legally not sustainable.

17. It is strange to say that the petitioner is fully eligible, however, as he is working in an autonomous institution, he is rendered ineligible. Once a candidate is found eligible on the basis of the educational qualification with requisite experience, legally he is entitled to be considered for the post, contrary thereto, rejecting his candidature on the ground that he is working in an autonomous institution discharging a similar nature of duty is wholly illogical. To put it otherwise, once a person is found eligible

on the basis of his qualification and experience, whether he is working in an autonomous institution or public sector undertaking cannot be the criteria, for, the purpose of searching a candidate for a high public office is to find out a well talented or meritorious one. Therefore, rejecting the candidature of the petitioner who worked as Chairman in-charge and continuously working now as Deputy Chairman in Chennai Port Trust which is one of the major Ports under the Act is wholly untenable, unreasonable and will not pass the test of Article 14 of the Constitution of India.

18.The judgment of the Apex Court cited by the learned Additional Solicitor General in Dhananjay Malik and others case (AIR 2008 SC 1913) holds that a candidate who has unsuccessfully participated in the selection process without any demur cannot be allowed to challenge the eligibility criteria later. But in the present case, the petitioner has applied on the ground that he is fully eligible and qualified, but he was not even permitted to take part in the process of selection. Therefore, the said judgment cannot be made applicable in the case on hand.

19.The respondents have considered 13 applicants for short-listing as they fulfilled the eligibility criteria. A perusal of the list shows that Mr.Hari Das Gujrati placed at second in the list is working as Director (O&BD), Dedicated Freight Corridor Corporation of India (DFCCIL). Another candidate Mr.Koppurath Ulahannan Thankachen is working as Managing Director, Central Railside Warehouse Company Ltd. Yet another candidate Mr.Hari Krishnan is also working as General Manager, Bharat Heavy Electricals Limited and Mr.V.Gopi Suresh Kumar, Executive Director, Engineering Projects (India) Ltd. It is clear that they are not even working in any Port, but they are working in different fields which have no nexus to the Port work. Therefore, when 13 applicants were selected on the ground that they fulfilled the eligibility criteria, rejecting the candidature of the petitioner who is working as a Deputy Chairman in Chennai Port Trust does not impress upon this Court to sustain the impugned order.

20.Therefore, for the reasons mentioned above, when the petitioner clearly falls under clause III(2)(b) of the eligibility as an employee of the Central Government, he is entitled to apply for the post of Managing Director of Kamarajar Port Limited. In Pepsi Foods Ltd., and another vs. Special Judicial Magistrate and others reported in 1998 (5) SCC 749, it is held that the nomenclature in which the petition has been filed is not relevant for rendition of justice and moulding of the prayers are permissible. Hence, when the said clause is not going against the petitioner, this Court is not inclined to quash clause III(2)(b) of the impugned circular dated 28.2.2017. For the same reasons, this Court is also not inclined to quash clause 8(b) and (iii) of the compendium of guidelines dated February 2017.

21. For all the aforesaid reasons, the respondents, having not rejected the application of the petitioner till now, are directed to permit the petitioner to take part in the interview for the post of Chairman and Managing Director of Kamarajar Port Limited and thereafter declare the results.

With these observations, both the writ petitions shall stand allowed. Consequently, W.M.P.Nos.14858, 14859, 16805 & 16806 of 2017 are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of India
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2. The Secretary
Public Enterprises Selection Board
Dept.of Personnel & Training
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4. The Secretary
Kamarajar Port Limited
Chennai.

+1cc to Mr.Venkatasamy Babu, Advocate, S.R.No.49540
+2cc's to Mr.S.Arulandu, Advocate, S.R.No.49538
+1cc to Mr.M.T.Arunan, Advocate, S.R.No.49546

W.P.Nos.13675 & 15499 of 2017

CS IV

CA(17/07/2017)

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