

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

+ **W.P.(C) No. 5677/2016**

% **2nd January, 2017**

BRIDGE AND ROOF COMPANY (INDIA) LTD. EXECUTIVES'
ASSOCIATION Petitioner

Through: Mr. Vikas Mehta and Mr. Rajat
Sehgal, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Kirtiman Singh, Adv. for R-1.

Mr. Mohit Mathur, Sr. Adv. with Mr.
Abhilash Mathur and Mr. Manoj
Pant, Advocates for R-4.

Mr. Ashish Mohan, Adv. for R-6 & 7.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No.47860/2016 (early hearing)

This application is allowed in view of the fact that issues in this case are covered by the judgment dated 6.1.2015 in W.P.(C) No.1574/2014 filed by the same petitioner and titled as *Bridge and Roof Company (India) Ltd. Executives' Association Vs. M.K.Singh & Ors.*

CM stands disposed of.

W.P.(C) No. 5677/2016

1. In the present writ petition filed under Article 226 of the Constitution of India the challenge is laid to the appointment of respondent no.5/Sh. S.S. Rawat to the post of the Director (Project Management) of the respondent no.4/company.

2. The petitioner which is an association, and not a person, cannot be appointed as a Director (Project Management).

3. In the judgment dated 6.1.2015 in W.P.(C) 1574/2014, the following ratio has been laid down:-

(i) In service matters, it is settled law that there cannot be public interest litigation petition i.e in service matters a writ petition must be filed by the concerned person whose rights are affected or whose rights are sought to be vindicated. There is a clear cut distinction between an individual who has a separate legal persona for enforcement of his legal rights and as differentiated from an association of whom such an individual would be a member, and which distinction is vital as per the law as applicable to such writ petition. It is trite that a writ of certiorari/mandamus, as prayed for by the petitioner in this case, can only be claimed for vindication of personal rights and an association does not have personal rights merely because some members of association would also claim the

rights in their individual capacity. Surely an association is bound to have individual members, but on that ground it cannot be argued that such individual members would have personal interest to maintain a writ petition inasmuch as besides such interested persons association will have dozens and dozens of other persons who would not have personal interest in the matter. It is for this reason the Supreme Court has consistently laid down the law that in service matters there cannot be a Public Interest Litigation (PIL) i.e an enforcement of rights of others by some other persons and it is only specific individual persons who can come to the Court for enforcement of their rights. This writ petition therefore does not lie for this reason which has also been decided in the earlier judgment dated 6.1.2015 and which is that a writ of certiorari/mandamus can only be claimed by the affected individual person.

(ii) The second aspect decided in the earlier judgment dated 6.1.2015 was that a writ of *quo warranto* cannot be granted unless there are found in the writ petition averments of violation of statutory provision(s). I have gone through the writ petition, and I have also queried the counsel for the petitioner to show me averments and cause of action in the writ petition, as to which is the statutory provision which is violated, and hence, a writ petition seeking a writ of *quo warranto* will lie but no such cause of action

is found to be laid in the writ petition. At this stage itself I must hasten to add that merely because the relief clause in this writ petition does not use the expression '*quo warranto*' does not mean that the present writ petition does not seek the relief of a writ of *quo warranto*, inasmuch as, the first relief is for questioning the appointment of respondent no.5/Sh. S.S. Rawat as a Director (Project Management) of the respondent no.4/company and hence this relief clause is clearly seeking relief in the nature of a writ of *quo warranto*.

This writ petition therefore with respect to relief (a) and for related reliefs for questioning the appointment of respondent no.5/Sh. S.S. Rawat will not lie for seeking the relief of *quo warranto* in the absence of averments of violation of one or more statutory provisions.

(iii) The third aspect which has been decided in the earlier judgment dated 6.1.2015 in W.P.(C) 1574/2014 is that an association such as the petitioner or any third person who does not have direct interest may approach the Court by means of filing of a PIL to seek a writ of declaration as regards disentitlement of a person to hold a particular post, but admittedly, the present writ petition is not filed as a public interest litigation petition for seeking a writ of declaration as regards invalidity of

appointment of respondent no.5 as a Director (Project Management) of the respondent no.4/company.

4. In fact the earlier judgment dated 6.1.2015 in W.P.(C) 1574/2014, filed by the same petitioner which has filed the present petition, decides the very same issues of maintainability of this writ petition, and in fact I am surprised that the petitioner in spite of the earlier judgment passed on 6.1.2015 in W.P.(C) 1574/2014 has yet initiated another litigation in June, 2016 during the summer vacations period of this Court, although, to the knowledge of the writ petitioner, till the judgment dated 6.1.2015 in W.P.(C) 1574/2014 stands, the present writ petition would not be maintainable.

5. In view of the aforesaid observations, this writ petition is dismissed by adopting the ratio of the judgment dated 6.1.2015 in W.P.(C) 1574/2014.

CM No.47857/2016 (U/O I Rule 10 CPC by R-6 and 7)

This application is not pressed and liberty is granted as prayed for to respondent nos. 6 and 7 to file appropriate independent proceedings.

CM stands disposed of.

JANUARY 02, 2017/ib

VALMIKI J. MEHTA, J