
(2010) 11 P&H CK 0174
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 18439 of 2008

Ajit Kumar Rana

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 5(2)
Constitution of India, 1950 — Article 14, 16, 226
Haryana Water (Prevention and Control of Pollution) Rules, 1978 — Rule 4
Water (Prevention and Control of Pollution) Act, 1974 — Section 3, 4, 4(2), 5(9)

Citation : (2011) 161 PLR 771

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—Through the medium of this petition filed under Article 226 of the Constitution of India, a writ in the nature of co-warrant is sought for the removal of Respondent No. 5 from the post of Chairman of Haryana Pollution Control Board (hereinafter referred to as "the Board").

2. The Petitioner who himself is an employee of the Board working as an Environmental Engineer equivalent to the post of Executive Engineer, has questioned the appointment of Respondent No. 5, on the following grounds:

(i) Respondent No. 5 is ineligible for appointment as the Chairman of the Board as he does not possess the requisite qualifications prescribed u/s 4(2)(a) of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 1974 Act) and Section 5(2)(a) of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "1981 Act");

(ii) Appointment of Respondent No. 5 has been made in a colistered manner in violation of Articles 14 and 16 of the Constitution of India;

(iii) Respondent No. 5 is 73 years of age and is ineligible to be appointed to the post in question.

3. With a view to examine the nature of challenge, it is not only desirable, but necessary to examine the requirements of law for the appointment of Chairman in the Board.

4. Environmental protection, though relevant, compulsory and integral part of the living organism, including human society did not receive the requisite attention at the hands of Governments till the commencement of 20th Century, with the growing hazardous pollution, a natural resultant of industrialization, urbanization and modern technology. In the race of development, the depleting natural resources were forgotten. It was only as late as 1972 that the world community woke up and the proclamation was made by the United Nations Conference on Human Environment in June 1972 at Stockholm. The veracity of man made harm was realized. As a consequence of this Conference, various countries enacted laws for the environmental protection. India being an important member of the United Nations Organization enacted various laws for the protection of the natural environment. Vide Act No. 6 of 1974, the Parliament enacted 1974 Act followed by 1981 Act and the Environmental Protection Act, 1986 (hereinafter referred to as the "1986 Act"). 1974 Act envisaged constitution of Central and State Pollution Control Boards to enable and monitor the functioning of the Act. Section 3 of the Act deals with the constitution of Central Pollution Control Board whereas Section 4 deals with the constitution of State Pollution Control Boards. For the purpose of present writ petition, constitution of the State Board is relevant. Section 4(2) of the Act deals with the appointment of Chairman and members of the Board. The relevant extract of the provisions of 1974 Act is reproduced as under:

4.XXX XXX XXX

(2) A State Board shall consist of the following members, namely:

(a) a [1][*** chairman, being a person having special knowledge or practical experience in respect of [2] [matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the State Government:

[3][Provided that the chairman may be either whole-time or part time as the State Government may think fit;]

(b) [4][such number of officials, not exceeding five,] to be nominated by the State Government to represent that Government;

(c) [5][such number of persons, not exceeding five,] to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

(d) [6][such number of non-officials, not exceeding three] to be nominated by the State Government to represent the interest of agriculture, fishery or industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;

[7][(f) 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.]

5. TERMS AND CONDITIONS OF SERVICE OF MEMBERS.

(1) Save as otherwise provided by or under this Act, a member of a Board, other than, a member-secretary, shall hold office for a term of three years from the date of his nomination:

Provided that a member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office....

5. Similar provisions are contained in the 1981 Act regarding the appointment of Chairman u/s 5(2). However, Board constituted under 1981 Act could only be constituted if there is no Board in existence under the Act of 1974. In so far 1986 Act is concerned, the Board constituted under the aforesaid two Acts is required to discharge duty under the 1986 Act as well.

6. Under Sub-section (2) of Section 4 of 1974 Act, a person having special knowledge and practical experience in respect of matter relating to environmental protection or a person having knowledge and experience in administering institutions dealing with such matters is to be nominated by the State Government as the Chairman of the Board. The principal ground of attack to the appointment of Respondent No. 5 by the Petitioner is that the said Respondent who has been simply a Lecturer in Chemistry has been appointed as the Chairman of the Board without having special knowledge of environmental protection or any practical experience in the field of environment. He has also no experience of administration of any institution dealing with environment and environmental protection. It is accordingly alleged that the said Respondent is totally ineligible to occupy the post of Chairman which is a public office. Respondent No. 5 is thus said to be a userper of the office and should be removed by issuing a writ of cowarranto.

7. In response to the averments/allegations made in the writ petition, Respondents No. 2, 3 and 5 have filed a common written statement. While emphasizing on the powers of the State Government to nominate the Chairman under Sections 4(2) of the 1974 Act and and 5(2) of the 1981 Act, it is pleaded that Respondent No. 5 is a highly qualified and experienced incumbent who is eligible in all respects to occupy post of Chairman notwithstanding his age. To support the contention and justify its action, reply refers to qualifications, experience and suitability of Respondent No. 5, the same is reproduced here under:

The State Government in exercise of powers enshrined u/s 4(2) of the Water Act, 1974, nominated Dr. Ajaib Singh Chahal as a Chairman of the Haryana State

Pollution Control Board vide order endst No. 2/21/2007- Env.-I dated 29.1.2008 (Annexure R-5/3) and notified by the Financial Commissioner & Principal Secretary to Government Haryana, Environment Department vide No. 2/22/08-1 Env. Dated 21.11.2008 (Annexure R-5/1) being highly qualified in the field of sciences (Chemistry & Physics) and having long theoretical and practical experience in teaching above subjects which are integral parts of Environment with following qualifications and experience:

Qualifications:

- i) B. Sc. Non-Medical (subjects- Physics, Chemistry and English from Punjab University, Chandigarh).
- ii) B. Sc. (Honors) from Punjab University (Papers-Physical Chemistry, Inorganic Chemistry, Organic Chemistry and Industrial Chemistry) from Punjab University.
- iii) M. Sc. (Honors) in Chemistry from Punjab University, Chandigarh.
- iv) Ph-D in Organic Chemistry from Punjab University, Chandigarh
- v) M.A. (History) Punjab University, Chandigarh.
- vi) One year certificate course in German from Punjab University Chandigarh.

Experience:

- i) Founder Life Member of Daya Nand National Academy of Environmental Sciences since 1994 which is intensively involved/engaged in promotion of Environmental Activities through seminars, lectures and conferences on Environmental Sciences.
- ii) Involved in imparting training to the students on environmental studies preparing for All India Civil Services (IAS & Allied Services) Examination in the Ambedkar Institute of Careers and Courses, Department of Welfare, Government of Punjab, 3 B-2, Mohali from November, 1995 to April, 1998 (Annexure R-5/4).
- iii) He has been awarded Bhartiya Shromani Puraskar by the Institute of Economic Studies (IES) for his commendable and excellent contribution in the field of Productivity, Quality, Innovation and Management as Chairman, Haryana State Pollution Control Board (Annexure R-5/5).
- iv) He has been closely associated with the Centre for Environment and Vocational Studies, Punjab University, Chandigarh and actively participated in various seminars/courses pertaining with Solid Waste Management and other Environmental Activities as exclusively for combating Environmental degradation as evident from (Annexure R-5/6).
- v) He has been associated as a voluntary faculty with the free Academic and Competition Coaching Classes for CE17PMT, organized by Sikh Missionary College in Association the Gurdwara Sahib, Sector 34 for the year 1993-2003. It unequivocally proves that he is outstanding Academician and he has been

associated with various organizations extensively involved in Environmental Protection Activities.

vi) A meeting of three Member Committee constituted by the Hon'ble Supreme Court of India to monitor/review the status of measures taken by distillery units of the Haryana State Pollution Control Board, was held on 10th November, 2008 under the Chairmanship of Sh. R.H. Khawaja, Additional Secretary, Ministry of Environment & Forests Government of India, New Delhi. Committee reviewed the status of all the distillery units operating in the Haryana State and appreciated the effort made by Haryana State Pollution Board in getting the reverse osmosis and nano filtration system installed in all four distillery units during last 7-8 months. The Committee especially underlined and appreciated the efforts made by Dr. A.S. Chahal, Chairman of the Haryana State Pollution Control Board in containing the pollution level in all the distillery units exponentially as explained in (Annexure R-5/6A).

vii) He has 37 years long experience of teaching Chemistry, which is integral part of the Environmental Sciences. Thus, Dr. A.S. Chahal, Chairman of Haryana State Pollution Control Board is highly qualified. He has theoretical, practical knowledge of Chemistry and Physics, the subjects richly involved in the day-to-day working of the Haryana State Pollution Control Board. It is worthwhile to mention here that more than 90% functioning of the Board intensively involves the intricacies of the Chemistry and is closely related to the integral part of environment as explained in (Annexure R/5/7).

viii) He is actively involved in the functioning of the Daya Nand National Academy of Environmental Sciences for the past fourteen years. His yeomrn's services and vital contribution in the field of productivity, quality, innovation and Management was honoured by the Institute of Economic Studies by conferring on him Bhartiya Shromani Puraskar and a Gold Medal recently while working as Chairman of the Board. His qualification culminating to Ph.D in Organic Chemistry, 37 years teaching experience of Chemistry (both theory and practical) and intensive involvement in environmental studies for the past fourteen years itself speaks the illustrious academic career of Respondent No. 5.

8. It is further pleaded on behalf of Respondents that the main and principal objective of the environmental laws referred to above is to control and prevent the pollutants emanating from the industrial activities, use of gadgets, automobiles and various kind of other plants/machinery etc. The nature of activities of the Board, inter-alia, involve collection and analysis of samples of air and water of various industrial units and natural products such as ferlizers, petroleum, refinery, dyes, & dyeing intermediates, basic drugs & pharmaceuticals, pesticides & insecticides, electroplating, fermentation (Distillery Brewery, Maltery), Sulphuric acid, Metallurgical industries, sugar, lead processing, leather tanning, inorganic chemical manufacturing asbestos, synthetic fibers etc., all involving chemical processes. Even Effluent Treatment Plants and Air Pollution Control measures of the industries and the testing of the

samples of polluting industrial units involves the sound knowledge of Chemistry. It is accordingly stated that Respondent No. 5 who is Ph.D in Chemistry and is renowned Scientist, well conversant with the scientific aspects is most suitable person to head the Board. From the credentials of Respondent No. 5, noticed here-in-above, it appears that Respondent No. 5 has carried out scientific research in Chemistry, particularly Organic Chemistry besides teaching experience for over a period of 28 years. He is also actively involved in promotion of environmental activities being a life member of Daya Nand National Academy of Environmental Sciences for the last more than 16 years. It has also been pleaded that he has been awarded Bhartiya Shromani Puraskar by the Institute of Economic Studies for his commendable and excellent contribution while functioning as Chairman of the Haryana State Pollution Control Board and even the Monitoring Committee constituted by Hon'ble Supreme Court appreciated the efforts of Respondent No. 5 as Chairman of the Haryana State Pollution Control Board in getting the Reverse Osmosis and Nano Filtration system installed in four distillery units having ferti-irrigation/composting system in Haryana during last 7-8 months.

9. With a view to sustain his claim against the ineligibility of Respondent No. 5, reliance is placed by the Petitioner upon the procedure adopted by the Central Government in the appointment of Chairman to the Central Pollution Control Board. The Petitioner has placed on record copy of a Circular dated 23.5.2008 (Annexure P-4) issued by the Government of India, Ministry of Environment and Forests whereby nominations were invited for the post of Chairman from various departments emphasizing that the person should be eminent scientist and suitable. The Circular also indicates that Search-cum-Selection Committee has been constituted to recommend the appointment of the Chairman of the Board. Copy of the vacancy circular is placed on record wherein the eligibility criteria for the post of Chairman is prescribed. The eligibility criteria and experience for the post, as per the vacancy Circular is as under:

Eligibility criteria: The eligibility criteria for the post are as follows:

Essential qualifications:

Ph.D in a relevant science or engineering discipline.

Desirable qualifications:

Ph.D in a subject pertinent to environmental management preferably relevant to pollution control.

Experience: The candidate should have a minimum of 15 years' experience in the field of environment related matters, particulars with the requirements of the Air and Water Acts and subsequent developments in theory and practice, as say, in industrial pollution mitigation, water treatment, air pollution control devices etc;

Age: 45 years or above but not exceeding 58 years.

10. Referring to the aforesaid vacancy circular, it has been vehemently argued on behalf of the Petitioner that some parameter should be applied for appointment of Chairman of the said Pollution Control Board. It has also been contended that for Central Pollution Control Board, the maximum age limit for appointment of Chairman is 58 years whereas Respondent No. 5 is 73 years of age and thus unsuitable to hold the post.

11. To counter the above contentions raised on behalf of the Petitioner, Mr. Hooda, learned Advocate General, Haryana while defending State's action, referred to Section 4 of the 1974 Act and Section 5(2) of the 1981 Act. He has contended that there is no statutory requirement of any particular academic qualification or age limitation. Only broader and general parameters are prescribed. The experience envisaged is not necessarily an academic experience. Respondent No. 5 is having to his credit Doctorate in Chemistry which is the most relevant subject for understanding and dealing with the Pollution Control. He also possesses teaching experience and his association with the environmental organization has given him vast experience in the field of environment and being an academician he, always upgrades his knowledge. It is further contended that the duties of Pollution Control Board, inter-alia, involve scientific analysis which primarily relates to the broader discipline of Chemistry. He is most suitable in all respects.

12. Major activities of the Board are indicated in Annexure R-5/7. From the perusal of the said Annexure, it is evident that the major activities of the Board involve chemical analysis of various pollutants, effluent treatment, emissions etc. and also require laying of the immediate standards for such pollutants.

13. Section 4(2) and 5(2) also prescribe broader and general parameters which an eligible person to be Chairman of the Board requires to possess. Respondent No. 5 has to his credit B. Sc. From Punjab University in the subjects of Physical, Inorganic, Organic and Industrial Chemistry at graduation (Honours) and M. Sc (Honours) levels from Punjab University. His scientific research is in the field of Organic Chemistry. He is admittedly highly qualified and has vast experience in Chemistry including the Environment. His role as a Chairman has been appreciated even by the Monitoring Committee appointed by Hon'ble Supreme Court. No maximum or minimum age is prescribed by any statutory provisions or administrative guidelines. Merely because the Central Government for appointment of Chairman of the Central Pollution Control Board has prescribed some upper age and some qualifications does not mean that the requirement has any statutory or legal sanction. Ineligibility is to be examined in the teeth of prescribed criteria u/s 4(2) of the 1974 Act. Besides Section 4, the State Government has also framed Haryana Water (Prevention and Control of Pollution) Rules, 1978 (hereinafter referred to as the 1978 Rules). Rule 4 deals with the conditions of service of the Chairman which reads as under:

4. Condition of service of the Chairman. Section 5(9)- (i) The Government may appoint any serving Engineer-in-Chief or Chief Engineer of the Public Works

Department (Public Health Branch) or a retired officer of equivalent status or any other person possessing the qualifications prescribed in 4(2)(a) of the Act.

14. Under the aforesaid rules, a serving Engineer-in-Chief or Chief Engineer of the Public Works Department (Public Health Branch) or a retired Officer of an equivalent status or a person possessing the qualification prescribed under Section 4(2)(a) of the Act is eligible to be appointed as Chairman of the Board.

15. By no parameter or even stretch of imagination, Respondent No. 5 can be said to be lacking the knowledge and experience in the environmental field. Rather his credentials are sufficient to make him more suitable for the post in question.

16. From the averments made in the writ petition, it appears that the Petitioner is primarily fighting his own battle. Though he is an employee of the Board, but he claims to be an interested person for the post. The claim of the Petitioner is that he was nominated for various courses has been seriously and forcefully refuted by the Respondents in the reply. It is stated that the Petitioner was sent for courses only in routine manner, on the basis of roster.

17. Be that as it may. The Petitioner does not have equal or better credentials than Respondent No. 5. Petitioner is not even in the status of Engineer-in-Chief or Chief Engineer and is otherwise ineligible to be considered for appointment as Chairman.

18. The other contention of the Petitioner that the appointment of Respondent No. 5 is cloistered by the violation of Articles 14 and 16 of the Constitution of India is also of not any help to him. Statutory provisions made under 1974 and 1981 Acts empower the Government to nominate a person to be the Chairman of the Board. It is not an appointment for which applications are to be invited. It is the prerogative of the Government, to select and nominate a person who possesses the eligibility as prescribed under the statutory provisions. I do not find that there has been any violation of Articles 14 and 16 of the Constitution of India, though it is desirable and prudent to have a broader consideration.

19. In view of the above, I find no merit in this petition which is accordingly dismissed. No order as to costs.