

**(2002) 05 JH CK 0066**

**In the Jharkhand High Court**

**Case No : Writ Petition (PIL) No. 1624 of 2002**

Binay Kumar Sinha

APPELLANT

Vs

State of Jharkhand

RESPONDENT

**Date of Decision : 15-05-2002**

**Acts Referred:**

Air (Prevention and Control of Pollution) Act, 1981 — Section 4, 5

Constitution of India, 1950 — Article 14, 16, 226

Water (Prevention and Control of Pollution) Act, 1974 — Section 2, 4

**Citation : (2002) 50 BLJR 2223**

**Hon'ble Judges : Vinod Kumar Gupta, C.J.; Vishnudeo Narayan, J**

**Bench : Division Bench**

**Advocate : M.S. Anwar, for the Appellant; D. Jerath and Binod Poddar, Addl. A.G., for the Respondent**

**Final Decision : Allowed**

## **Judgement**

V.K. Gupta, C.J.—Residents of Sonathar village in the district of Jamtara had sent a petition addressed to the Chief Justice, Jharkhand High Court alleging and complaining that Sundera Mineral & Chemical Industry situated in Sonathar village, Jamtara District, was spreading pollution because of the operations of its Crushing Unit engaged in Silica Quarz Stones operations near the village. By order passed on 5.3.2002 in Chambers, the Chief Justice directed that this petition be treated as a Public Interest Matter and on being registered appropriately by the Registry of the High Court and on perusal of the report of the District Judge, a notice was directed to be issued to the following:--

1. The Deputy Commissioner, Jamtara.
2. The Superintendent of Police, Jamtara.
3. M/s. Sundera Mineral & Chemical Industry, Panchayat Bodhbandh. Village-- Sonathar, District Jamtara, and
4. Shyam Sundar Malpani. C/o. Sundera Mineral & Chemical Industry, Panchayat

Bodhbandh, village Sonathar. District Jamtara.

2. An interim restraint order was also issued on that day with respect to the operations and activities of the Unit concerned.

3. Because a restraint order was issued against the Unit, on 3rd April. 2002, the Unit, namely, respondent Nos. 3 and 4 came up with a Vacation Application submitting that we should embark upon a fresh exercise of obtaining a situation report with respect to the activities and operations of the Unit to ascertain whether it is causing and spreading any pollution in the area. It was at this stage that an idea struck us. We thought that since the State Pollution Control Board, has in the meanwhile been constituted, we could take the assistance of this Board in enquiring about the activities of the Unit and finding out whether it was causing any pollution at all, if so, causes thereof, the effect upon the villagers and remedial measures if required. It was with this in view that we requested the learned Addl. Advocate General to invite the Chairman of the Board in the Court on 4th April, 2002.

4. On 4th April. 2002, when the Chairman appeared before us and we started talking to him in order to elicit his views and opinion on the aforesaid questions, what we found has been aptly and clearly recorded in our order of that day. The extracts read thus:--"Shri Thakur Bal Mukund Nath Shahdeo. Chairman. State Pollution Control Board has appeared before us today in person. During the course of our conversation with him, we found (to our total horror, surprise, dismay and amazement) that he does not know anything at all about any aspect relating to pollution, or the control of pollution. In course of our extensive conversation with him, we found that the only academic qualification that he boasts of is "matriculation". He has no other academic or technical qualification whatsoever. When, by referring to Section 5(2)(a) of the Air (Prevention & Control of Pollution) Act, 1981, we asked him whether he has any special knowledge or any practical experience in respect of any matter relating to the environmental pollution, his answer was in the negative. We must record that during the course of our conversation with Sri Shahdeo, we were constantly helped and assisted by Mr. Poddar, learned Addl. Advocate General. We actually impressed upon Mr. Poddar the need of assisting Sri Shahdeo in answering our questions. Mr. Poddar very kindly lent his helping hand to us. What emerged was that Mr. Shahdeo has neither any general or special knowledge, nor any academic qualification, nor any experience whatsoever that may have anything to do with any matter or any aspect relating to the pollution, air pollution, water pollution, noise pollution, or any other pollution of any kind. What to speak of his having special knowledge or practical experience, he has neither any knowledge, general or special, nor any experience, practical or otherwise with respect to any matters relating to environmental pollution. We repeatedly asked him to inform us about one single such fact by which he could lay his claim to hold this office. He failed to inform us of even a single fact which could qualify him to hold this office. His only claim was that he is a politico-social worker. We asked him also as

to how he came to be appointed on this post. He says that he made an application to Mrs. Neelam Nath. Secretary, Forests, we asked him whether such an application was invited from him. He says that the application was invited from him. We asked him whether invitation was extended to him personally by Mrs. Neelam Nath or did it appear in any advertisement. He says that he, on his own, gave such an application and that it was neither invited personally from him nor through any advertisement. Prima facie, it appears to us that a person who does not have the requisite qualification, experience, or knowledge has been appointed on the post of Chairman, Pollution Control Board. Before we proceed any further, we would like Mr. Poddar, learned A.A.G. to produce before us the original records of the Govt. relating to the appointment of Mr. Shahdeo."

5. It was from this point onwards that a case arose within a case. Both the issues started being dealt with simultaneously by us, namely, the issue relating to Sundera Mineral & Chemical Industry and the propriety, legality and validity of the appointment of Mr. Shahdeo.

6. When the matter came up on 5th April, 2002, the file relating to Mr. Shahdeo's appointment was produced before us by Mr. Poddar, the learned Addl. Advocate General. We made some observations in the order dated 5.4.2002 with respect to the contents of that file, which we shall deal a little later. At this stage, on 5.4.2002 itself Mr. Pandey Neeraj Rai. advocate on his own appeared for Mr. Shahdeo and undertook to file a detailed counter affidavit. The following observations made in our order date 5.4.2002 may be pertinent with respect to the adjudication of the issues involved in this case:--

"Mr. Pandey Neeraj Rai. Advocate, on his own (without having been called upon by the Court at all) appears for Mr. Shahdeo. Since Mr. Shahdeo has chosen to appear through his counsel today, we being seized of this Public Interest Litigation matter relating to environmental pollution with respect to an Industrial Unit consider that, perhaps, it might be permissible for this Court while exercising the jurisdiction under Article 226 of the Constitution in this Public Interest Litigation matter to determine the legality and correctness of the appointment of Mr. Shahdeo as the Chairman of the State Pollution Control Board.

Of course, at some stage the question of jurisdiction for determining, such validity and legality of such appointment in these proceedings may have to be considered by this Court but we would like to issue notice to Mr. Shahdeo through his counsel Mr. Pandey Neeraj Rai to show cause and explain to us as to why, based on the contents of our order dated 4.4.2002 and the notings/ observations of the Chief Secretary, Govt. of Jharkhand, and the apparent lack of any academic qualification any special knowledge or any practical experience etc. this Court should not issue a writ of quo warranto against Mr. Shahdeo with respect to his aforesaid appointment to aforesaid public office that he is holding."

7. With respect to the Unit (actually this question became less important), the parties agreed that Experts of MECON Ltd. be deputed for the survey, inspection

and assessment and submit a report to us.

8. In the course of our order dt. 17.4.2002 after Mr. Shahdeo had filed his counter affidavit and based on its contents as well as the notings in me file relating to his appointment, we realised that, perhaps, in the course of our examination with respect to validity of his appointment, actions of the Chief Minister, Forest Minister and Forest Secretary may fall for our judicial scrutiny and since they were not parties before us, the interest of justice and fair play demanded that we should issue notices to them. The following observations in our order dated 17.4.2002 are apposite with respect to this question:--"As noticed earlier, this case was originally instituted through a letter (PIL). It is not a traditional adversarial litigation between two conflicting or contending parties. Therefore, in this case, neither the State of Jharkhand as such (properly and appropriately) nor any of its aforesaid functionaries have been impleaded as party-respondents. In order to be fair to all of them, and to strictly observe the principles of natural justice, we, therefore consider it appropriate that the learned Addl. Advocate General appearing for the State of Jharkhand communicates our aforesaid observations to all the aforesaid functionaries so that if they or any one of them, or the Govt. of Jharkhand, want to deal with these issues in any manner, they may file their respective counter affidavits in this Court by the next date. We are adopting this unusual course of action only because we want to ensure that no prejudice is caused to any person nor do we pass any order in this matter which may tend to act prejudicially to the interests of any person without affording opportunity of hearing to such a person. Not affording this opportunity of hearing, in our opinion, might violate the principles of natural justice.

We may hasten to add here that our aforesaid observations are only tentative and these have been recorded with a view to enabling the parties to put forth before us their respective versions and points of view. Actually even these tentative observations may not strictly be construed as any observations by us. These at best be treated as the formulations of the points of law as well as fact, which we may have to examine in the course of hearing this case. It is, thus, that only after we have before us the versions of the parties, and only after we have heard all the parties, can we come to an appropriate conclusion in this case.

9. On 29th April, 2002, we received the report from the Experts of MECON as also the affidavit filed by Smt. Neelam Nath. Secretary, Department of Forests and Environment, Govt. of Jharkhand (in answer to our order dt. 17th April, 2002). Mrs. Neelam Nath's affidavit in the very first para stated that she was duly authorised to swear this affidavit jointly on behalf of herself. Chief Minister and Forest Minister. Jharkhand, as also the Chief Secretary, Jharkhand. The MECON Experts opined that the Factory was not causing pollution because it had applied and adopted pollution controlling devices and accordingly the interim restraint order dated 14th March, 2002, was vacated, but by issuing certain directions with regard to the future operations of the Factory. On the question

relating to validity and legality of the appointment of Shri Shahdeo as the Chairman, however, on that day itself, the parties addressed extensive and detailed arguments and we reserved the judgment on this issue. It is in this background and in the aforesaid circumstances that this petition is being disposed of.

10. Section 4 of the Water (Prevention & Control of Pollution) Act, 1974 stipulates the constitution of a State Pollution Control Board ("State Board" for short). Sub-section (2) of Section 4 referring to the composition of the Board, in Clause (a) prescribes the eligibility criteria and qualifications with respect to the appointment of the Chairman. For ready reference, we reproduce herein-below the aforesaid relevant extract of Section 4 of 1974 Act:--

"4. Constitution of State Boards.--(1) The State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

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

(a) Chairman being a person 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, to be nominated by the State Government....." .

11. Whereas, Water (Prevention & Control of Pollution) Act, 1974, as its preamble clearly suggests, was enacted to provide for the prevention and control of water pollution and for the establishment, with a view to carrying out the purposes of the Act, of Boards for the prevention, control of water pollution etc., the Air (Prevention & Control of Pollution) Act, 1981 provides for the prevention, control and abatement of air pollution, and for establishment of the Boards to carry to effect the purposes of the Act. Environment (Protection) Act, 1986, is a legislation which does not restrict in its application to certain individual environmental matters nor does it specifically focus on pollution of any particular type. Statement of Objects and Reasons accompanying the 1986 Act clearly suggests that it is a general piece of Legislation with respect to environmental protection as such.

12. Whereas 1974 act does speak of the constitution of State Pollution Control Board, 1981 Act by itself does not provide for any machinery or mechanics for the constitution of such a Board, inasmuch as it clearly in Section 4 lays down that in any State in which 1974 Act is in force and a Board has been constituted, that Board would exercise the powers and perform the functions under 1981 Act also. For ready reference, we reproduce Section 4 of 1981 Act which reads thus:--"State Pollution Control Boards: In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) is in force and the State Government has constituted for that State a State Pollution Control Board

u/s 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted u/s 5 of this Act, and accordingly that State Pollution Control Board shall without prejudice to the exercise and performance of its powers and functions under that Act. exercise the powers and perform the functions of the State Board for the prevention and control of air pollution under this Act."

13. Basically, therefore, with a view to find out as to what are the eligibility criteria and the requisite qualifications and experience etc. we have to fall back upon Section 4 of 1974 Act which says that for a person to be eligible for being appointed a Chairman of the State Board, he should:--

(A) have special knowledge; or practical experience,

--in respect of matters relating to environmental protection.

OR

(B) He should be a person:--having knowledge and experience

--in administering Institutions dealing with environmental protection matters."

14. The expressions "special knowledge" or "practical experience" have not been defined either in 1974 Act or in any other identical piece of Legislation. The expression "environment" has been defined in Section 2(a) of 1986 Act to include water, air and land and the inter relationship which exists among and between water, air and land and human beings, other living creatures, plants, microorganism and property.

15. Related expression "environmental pollution" has been defined in Section 2 (c) of 1986 Act, to mean the presence in the environment of any environmental pollutant. It is significant here to observe and note that the expression "environmental protection" did not originally exist in 1974 Act, but was brought about through an amendment in 1978 by substituting the original words "matters relating to the use and conservation of water resources and the prevention and control of water pollution". Whereas, therefore, the Legislature originally in 1974 when the Act was enacted intended the Chairman of a State Board to possess "special knowledge" or "practical experience" in respect of matters relating to the use and conservation of water resources and the prevention and control of water pollution, the ambit and scope of the activities of the Chairman of the State Board were widened and made more broad- based by substituting the aforesaid limited water-related activities with a broader and wider horizon to include the general environmental related activities such as water, air and so on and so forth. The expressions "special knowledge" and "practical experience" are thus clearly relatable directly to environmental prevention matters. In the aforesaid background, therefore, we shall now proceed to examine whether Shri Shahdeo possesses the eligibility criteria and has the requisite qualifications and experience to be appointed as Chairman of the State Board.

16. Perhaps, the most relevant source of information regarding his claims to be appointed on and to hold such post should be available from his counter affidavit itself. Para 4 of the counter affidavit which is, despite being an introductory passage, perhaps, capable of summarizing everything about Mr. Shahdeo. It reads thus:--

"That the deponent belongs to an old respected family of Bihar, now Jharkhand and is an agriculturist like his ancestors who held extensive landed properties. He has immense first hand and practical experience in relation to afforestation, water management, water harvesting pollutants both chemical as also such as caused by indiscriminate use of fertilizers, pesticides etc,"

17. Coming to the specifics, para 6 of his affidavit is also revealing. It reads thus:--"That as stated earlier, the deponent has vast practical experience of about 40 years in relation to agriculture, irrigation and water works, namely, rivers, canals and ground water resources, etc. The deponent further acquired special knowledge of water pollutants, while interacting with experts who identified and pinpointed the pollutants, being industrial effluence, pollution caused by wrong and indiscriminate use of pesticides and fertilizers as also by human and domestic waste. The deponent made great contribution in the dairy sector, with ancillaries like bio-gas, vermiculture, etc."

18. With respect to the mechanics and modalities of his appointment as also the background with respect thereto. Mr. Shahdeo reveals in paras 9 and 10 of his counter affidavit. These two paras read thus:--

"9. That the deponent who is a social worker and an active member of the NGO "Johar". with a fond hope of serving society and sharing and putting to good use his vast practical and special knowledge in relation to water and environment pollution, as also industrial and air pollution, made an application to the Ministry of Forest and Environment, duly addressed to the Secretary, requesting that his candidature for the post be also considered duly supported by his bio-data."

10. That the deponent after taking prior appointment also apprised the Hon'ble Minister of Forests and Environment, about his achievement in the field as also about his vast practical experience and special knowledge on the subject. The deponent craves leave to refer to his bio-data with supporting documents at the time of the hearing of this application.

19. The affidavit is conspicuous with respect to the academic qualification of Shri Shahdeo or any documented proof with respect to his possessing "special knowledge" or "practical experience" in matters relating to environmental protection and, perhaps, rightly so because Shri Shahdeo has none. He says and admits that he is a matriculate: a plain and simple matriculate. Nothing more, nothing less. No other academic qualification.

20. On the file of the Department (which we had occasion to go through and upon which we shall make additional comments later), from pages 97 to 101 is

the bio-data of Shri Shahdeo. In the column of Academic qualification is mentioned: A. matric: Bihar School Examination Board. Patna. B. Higher Education: At home.

The bio-data contains a list of Shri Shahdeo being Member of institutions like Go Raksha (cow protection) Sonsthan, D.A.V. Education Council. Johar, all India Vanabasi Kendra and Red Cross Society. Then we have a table with respect to his practical experiences, knowledge. He mentions about land reforms, his role in the construction of check dams, agriculture, cattle feeding, bee-keeping, forest management, dairy, malaria eradication, maintenance of water sources, pesticide control and so on and so forth.

21. His bio-data is completely based on his self assessment. It is cent-percent self appraisal of Shri Shahdeo. It is not supported by any documentary evidence, any testimonials, any proof from any Organization. This is not very important. What is important is that in five pages of his bio-data which was on the file, not one item relates to showing, suggesting, demonstrating or establishing that he had ever anything to do with any matter relating to pollution control or environmental protection. He did not actually lay any claim to his having any special knowledge or possessing any practical experience in respect of any matter relating to environmental protection. Nor did he lay any claim that he was a person having knowledge and experience in administering institutions dealing in environmental protection matters. Actually he did not lay any claim to have administered any Institution ever in his entire life time. What thus emerges is that the bio-data filed by Mr. Shahdeo is nothing but an attempt in self-aggrandizement. Even in this self-aggrandizement exercise (which has nothing to do with any environmental protection matter or pollution control related activities) there is not an iota of supporting material from any organization worth the name. It is just like someone printing his visiting card and including in that a long list of self-professed and self-claimed achievements.

22. A self-styled socio-political worker, perhaps, at a village or talk level was picked up and shown to be an "expert" in matters relating to environmental protection and in this era of ultra-modern technology and gadgetry where people from IITs and with MBAs, from IIMs, and with decades of experience in recognised, established Institutions are available in abundance, the Forest Minister had proposed a simple village-level sociopolitical worker with no claim whatsoever with respect to any "special knowledge" or "practical experience" as was prescribed in Section 4(2)(a) of the 1974 Act. In a State with a population of more than 2-1/2 crores and with educational Institutions like BIT. RIT, a host of leading Engineering Colleges, all established for decades and decades (and boasting of one of the most highly industrialised States in the Country and with towns like Jamshedpur. Dhanbad and Bokaro and with almost 40% of the underground mineral resources of the Country) a person like Mr. Shahdeo was chosen and picked up to head the State Board.

23. The question of Mr. Shahdeo being ineligible by himself to hold this office



apart, what we see is that the basic principles emanating from Articles 14 and 16 of the Constitution of India were, also not observed by respondents in this case, because in a very arbitrary manner, respondents processed, examined and considered the case of just one Individual, thus thwarting the participation of all eligible candidates. This was done despite a noting by the officials that a large number of qualified and experienced persons were available for consideration.

24. During the course of hearing of the case, we had the opportunity of going through the contents of the report submitted by the Experts of MECON. We both while shuffling through the pages of MECON report were wonder-struck by the extent of hyper- technical expressions used in the report. We both were amazed to find to what extent the science and technology has advanced with respect to the matters relating to pollution, the causes of pollution, the effects so adversely the pollution causes and the remedial measures to eradicate pollution. Actually we were over-whelmed by the strides that science and technology has made in adopting and deploying the methods for controlling pollution, the gadgets used therefore and the machinery to be installed for this purpose. We must confess very candidly that we could not make out more than 5-10% of the actual in-depth meaning, the contours and the effect of the report of the MECON Experts. What about Mr. Shahdeo? If he was confronted with a document like this, what would he do? The answer could be that he might pass it on to his subordinates. But then why he be the Chairman at all if everything that comes his way is to be passed on by him to his subordinates?

25. Having said so, let us consider and examine the roles of the constitutional functionaries, statutorily conferred and invested with the powers to appoint the Chairman and the role played by the bureaucrats all this is discerningly and clearly revealed in the notings on the Department file which, on our directions was produced before us and which we had opportunity to carefully scan through.

26. The files began with the notings. as far as it is relevant to us, of the Under Secretary. The noting of the Under Secretary, Sri Rama Shankar Singh of 11th December. 2001 suggests that at all times after the formation of Jharkhand State, the Principal Chief Conservator of Forest, an Officer belonging to the Indian Forest service has been the part-time Chairman of the Board. This noting suggests that at one time one Shri Paritosh Upadhyay, perhaps, was the Chairman who was also the Principal Chief Conservator of Forest. At another time, Mr. Shahdeo Jha also Principal Chief Conservator of Forest was the part-time Chairman of the Board. Since Mr. Shahdeo Jha apparently was retiring on superannuation in February. 2002, the Under Secretary Shri Rama Shankar Singh in his note dated 19th December proposed that till a full-time Chairman was appointed, the Principal Chief Conservator of Forest may be continued as the part-time Chairman. On this the Forest Secretary in her note dated 20th December. 2001 appears to have instructed her department to find out the names of other retired PCCFs. Accordingly in the note dated 21st December names of three retired PCCFs were indicated. The note dated 7th January. 2002

enlists various other names of retired persons from Indian Administrative Service. Indian Forest Service and so on and so forth.

Some of the persons whose names appear to be under contemplation in these notes are as under;--

1. Shri B.D. Bhagat

2. Shri B.D. Sahay

3. Shri P.N. Singh

All former Principal Chief Conservator of Forests.

4. Shri Abhash Kumar Chatterjee

5. Shri A.K.M. Hassan

both IPS Retired.

6. Shri C.D. Pandey

7. Shri Budhi Chandra Jha both IFS Retired.

8. Shri K.K. Nag. Head of the Department. Agriculture, Ranchi University.

In her note dated 31.1.2002 (date is not very well legible but it is at page 9 of the file), the Secretary, Forest has noted as under:--

"The present PCCF has retired on 31.1.2002. As per Section 2(a) of the Act, the appointment of a whole-time Chairman may take some time. Therefore, in keeping with the practice in other States either the PCCF (Shri J.L. Srivastava) or the Departmental Secretary may be appointed as part-time Chairman".

Upon this note of the Forest Secretary on 31.1.2002, the Forest Minister made the following note:--

"This file relates to the appointment of the President of the State Pollution Control Board. In the past appointments of the part-time Chairman were made in a huff to save the Government from committing contempt of the High Court. At that stage. I had to leave for Madras on the advise of the local doctors for eye-turner operation of my younger son. I left for Madras at the same time. Because of my absence, the whole-time Chairman could not be appointed. But presently that is not the situation. The Government has full, complete control and power to appoint the Chairman of the State Pollution Control Board in Jharkhand. Jharkhand State has been carved out of Bihar because of the efforts of the local people here. Under these circumstances, therefore, it is in the interest of the people of Jharkhand that a son of the soil alone is appointed on this post. As far as the eligibility criteria are concerned, the same are contained in Section 4(2a) of 1974 Act. This can be seen in the file. The bio-data of Shri Thakur Bal Mukund Nath Shahdeo is at pages 97-101/n of the file. He conforms with the eligibility criteria to hold the post.

"An experienced, able and hard-working person should be appointed as the Chairman of the State Pollution Control Board. A perusal of the bio-data of Shri Shahdeo reveals that he has the knowledge with respect to the pollution related matters of water, air, earth, industrial units and other activities. In pollution control matters, he has under taken/accomplished many important tasks. I am fully aware and acquainted with his leadership capacity and dutyfulness. On Mr. Shahdeo's appointment as the Chairman of the Pollution Control Board, the people of the newly formed State of Jharkhand shall be benefited greatly with respect to the pollution control matters. Because of his appointment. State Pollution Control Board will get an identity and recognition. Mr. Shahdeo is a local resident of Jharkhand.

Accordingly, therefore, it shall be in the interests of the Jharkhand State and its people to appoint Shri Shahdeo as a whole-time Chairman of the Pollution Control Board. I am fully confident that because of his experience and administrative acumen, the Jharkhand State Pollution Control Board shall reach its goal.

"Accordingly sanction be accorded for his appointment as a whole-time Chairman of the Board. On this issue, the approval of the Hon'ble Chief Minister of Jharkhand Government be obtained."

27. On 6.2.2002, the Forest Secretary sent the following note to the Chief Secretary:--

"At pages 9-10/n are the departmental proposal and the Minister's orders. Approval of the Hon'ble Chief Minister can be obtained on the proposal of the Departmental Minister."

28. On this at pages 11-12/n is the note of the Chief Secretary. It reads thus:--

"At pages 9-10/n is the detailed note of the Minister, Forests which may kindly be perused. It is the Minister's proposal that Shri Thakur Bal Mukund Nath Shahdeo be appointed on the post of Chairman. Mr. Shahdeo's bio-data can be found at page 97-101/n. It clearly reveals that he is just a matriculate. He appears to have laid his claims with respect to water pollution control, forest pollution control, air pollution control etc. on the basis of practical knowledge and special experience and his being an Expert with respect thereto.

"With respect to the eligibility relating to the post of Chairman of Pollution Control Board, the prescription is contained in Section 4(2)(a) of 1974 Act and it reads thus:--

Chairman being a person 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, to be nominated by the State Govt."

"Clearly the aforesaid provision does suggest that since no academic qualification

has been prescribed, keeping that in view, it might be permissible to appoint even a matriculate as Chairman. But then the question arises whether it should be done and would it be proper to do so? As per the Act, extensive powers are conferred upon the Control Board and its Chairman. As per these powers, they can inspect any water source or industrial unit and issue directions for control of pollution in various respects. Various measures can be initiated at the cost of the owners and in the event of non-compliance with the directions issued cases can be instituted against the defaulters and the punishment prescribed includes "fine" as well as imprisonment up to sixty years. As per the Act and the Rules made thereunder, the Chairman has the power to appoint consultants and to make various other appointments. As per the Act sophisticated Laboratories are required to be established and the Board is required to undertake various technical and administrative works to achieve the purpose of the Act, as per the Rules, the Chairman and the Members are entitled to travel in First Class etc. Based on all these, therefore, perhaps, it is the intention of law that a highly qualified and very-very able person should be appointed on the post of President, not a mere matriculate. Accordingly, perhaps, the Administrative Department may like to reconsider the proposal. Till then, the existing arrangement whereby Shri Shahdeo Jha, out-going PCCF (who retired on 31.1.2002) and who was given the additional charge of the Chairman. Pollution Control Board, can continue with the additional charge. But the Department should immediately complete this task and the appointment must be done by the end of this month."

29. Now comes the all important note of the Chief Minister. It is at the bottom of page 12 of the file underneath the note of the Chief Secretary. Note is dated 29.2.2002. It reads thus: --

"As proposed by the Minister."

30. On the formation of the State, the Pollution Control Board was headed successively, even though on part time basis, by the Officers of the rank of Principal Chief Conservator of Forests, belonging to the Indian Forest Service Cadre, with experience running into almost more than three decades, persons, who had started their careers as young members of IPS at the entry level of Assistant Conservator of Forests, and who by dint of their years of experience in service had risen to the rank of Dy. C.F., Conservator of Forest, Chief Conservator of Forests, and ultimately Principal Chief Conservator of Forests. Also, Engineers with mechanical degree qualification: engineers with electrical degree qualifications, engineers of all hues and with additional qualifications of M.B. As. etc. are available in abundance, not only in Jharkhand but elsewhere. On the question of a "domicile" only being appointed, is it anybody's case that in Jharkhand State, nor one Engineer being the son of the soil is available. Is it the case of the respondents that this State does not have one local Engineer, one local technocrat, one local qualified person. Does the State of Jharkhand want to tell the people of this country that this State has only produced socio-political workers, the likes of Mr. Shahdeo and that's about all.

31. Forest Minister by proposing the name of Mr. Shahdeo has misused his public office. He appears to have indulged in an act of nepotism and favouritism and in the process violated specific provisions of law. If the Rules of Executive Business of the Government require that a proposal should be initiated by a Minister, the Minister being under an "oath" (which he subscribed before entering upon his office) is required to conform to the requirements of law. But here was a Minister who perhaps did not stand up to his oath. Here was a Minister who perhaps held out by his aforesaid action that Jharkhand State did not have a single qualified person to man the post of Chairman of the Pollution Control Board and that a semi-educated person with no "special knowledge", and with no experience worth the name (what to speak of a "practical experience") in any matter (what to speak of the matters relating to environmental protection) was being appointed on such an important post. The Minister being a repository of the public interest, entrusted with the responsibility of discharging his ministerial functions in accordance with the Constitution and the Laws was duty-bound to strictly conform to, and adhere with, all such statutory requirements. To us, it is absolutely clear that the Minister failed in his duty in conforming to the statutory requirements and abused his executive power and authority in proposing and recommending the name of Mr. Shahdeo.

32. Not only the Minister failed in his duty, even the role of Forest Secretary was no better.

Rule 56 in Part IV of the Rules of Executive Business of the Govt. of Jharkhand stipulates that a Secretary of a Department in each case shall be responsible for the proper transaction of business and the careful observance of the Rules and whenever he considers that there has been any material departure he shall personally bring the matter to the notice of the Minister in charge and the Chief Secretary. For ready reference we quote Rule 56 which reads thus:--

"The principal Secretary/Secretary of the Department concerned is in each case responsible for the proper transaction of business and the careful observance of these Rules and when he considers that there has been any material departure from them he shall personally bring the matter to the notice of the Minister-in-Charge and the Chief Secretary".

33. At one time, the bureaucracy in India was referred to as the "steel frame of Indian democracy". The Indian Bureaucracy has been the harbinger of the constitutional safeguards in the affairs of the Govt. and it has been inspiring the confidence of the people. A bureaucrat by training and by learning as also by temperament is supposed to be the custodian of public interest. The very basis of the system of the proposals being recorded on the files along with the notings of various officers and functionaries in the hierarchy ensures that any misuse of authority by anyone in the hierarchy is immediately detected, discovered and brought to the notice of the concerned. A bureaucrat failing in his duty is not a bureaucrat worth his name. Viewed in the aforesaid background, the role of the Forest Secretary, Smt. Neelam Nath, has been, to say the least, unbecoming of a

senior civil servant at the level of the administrative Head of a Department holding the post of Secretary to the Government. She knew the provisions of law and that is clearly discernible from her earlier notings. Or is it that she did not know these provisions? Or is it that she did not understand the import and consequence of the words and expressions "special knowledge" "practical experience" "matters relating to environmental protection" or "knowledge and experience in administering the institutions dealing with said matters"? She cannot be permitted to urge that she did not know them. It was a part of her duty to have known the meaning and import of these expressions as also their existence in the Statute Book. Did she consider Mr. Shahdeo to be an eminently suitable person for appointment as the Chairman in the context of the aforesaid expressions? If she did consider that Mr. Shahdeo was eminently suited to be appointed on that post, we may have nothing more to do, but if she did not consider so, was it not her duty to have brought and highlighted in her note the shortcomings, defects and the illegalities in the proposal of the Minister with her own observations? What is a Secretary meant for? Our understanding is that the duty of a Secretary is to correct the mistakes. Our understanding is that the Secretary is meant to bring on record any infirmities which might be committed by a political functionary. She should have stood up like a rock, like her Chief Secretary did and should have showed the beacon to her political bosses by an appropriately worded note to the effect that the law did not permit or contemplate appointing a person like Mr. Shahdeo as the Chief of the Pollution Control Board in the State.

34. We may also notice here at this stage that even though Smt. Neelam Nath, Secretary, Forests, pursuant to our order dated 17.4.2002 has filed her affidavit on behalf of herself, the Chief Minister, the Minister. Forest and the Chief Secretary, she has reiterated parrot-like her earlier stance that Mr. Shahdeo was both eligible as well as suitable to hold the post of the Chairman of the Board. A bureaucrat is a bureaucrat; it was expected that after we had so extensively considered the matter *prima facie* and had made some relevant, and perhaps adverse observations in this case. Mrs. Neelam Nath in her capacity as Secretary. Forest, may have re-examined the whole issue on its merits, dispassionately and in an objective manner and had she done so, she might have realised that despite her earlier acquiescence or silence, now the time had come to take a stand on merits and inform the Court about the true legal position, as it would emerge on the application of the facts of this case. We are sorry to say that even the second time she appears to have failed.

35. Compared to her, the Chief Secretary acted, performed, and conducted himself with an exemplary condour, with the fairness of a torch-bearer to his political executives. He succinctly and with elaborate expression highlighted, in an objective manner and in words which were most relevant and apposite, the infirmities in the proposal of the Minister vis a vis the provisions of law, the requirements and the demands of the office, and the various contingencies that may arise from time to time qua the proposed appointment. In a very objectively

worded note, the Chief Secretary pointed out that even though the law did not prescribe any academic qualification and on that reckoning perhaps a mere matriculate may not be held to be ineligible, yet would it be (according to him) proper in the present era to appoint a mere matriculate, and that too without any special knowledge or without any practical experience? We indeed wish to record our very deep sense of appreciation in favour of the Chief Secretary and hold that he conducted himself with exemplary fairness, objectivity and fearlessness.

36. In so far as the note of the Chief Minister is concerned as can be seen from its text the same is totally non-speaking. In the realm of administrative law, in a situation where the Chief Minister is caught on the cross fire of an untenable proposal of his Minister and a speaking and well reasoned note of the Chief Secretary (which is compatible and in conformity with specific provision of law) should he not, even though very-very briefly, indicate his reasons for agreeing or not agreeing with the proposal/note of either of them?

37. Whatever may be the contours of the aforesaid constitutional proposition (and we do not propose to examine this issue in this case) what we however would like to observe is that if the Chief Minister had a look at the bio-data of Shri Shahdeo and had he compared his bio-data with applicable statutory requirements, should he have approved the proposal of the Minister? That could have been indicated only if he had passed a speaking order even though briefly indicating his reasons.

38. In this era of speciality and superspeciality qualifications, when expertise and innovative technological strides are so commonly available attributes at every hook and corner of this great country, with the ever increasingly and intensely felt need to update and continuously upgrade both the diagnostic and treatment levels of the Pollution Control related activities and to handle the polluting Units with a firm and iron hand, with an urgent and paramount need of enforcing the Pollution Control Laws vigorously, with a choice between either treating the culprits or shutting them totally, the prime need is to appoint a person with a proven track record in the field of pollution control, not a village or block level socio-political worker. The choice is between a Mr. Shahdeo or his likes and a qualified engineer possessing speciality and super-speciality qualification, an officer belonging to the Forest Service, an officer belonging to the Administrative service, or for that matter any other technocrat with an established credentials duly documented by unimpeachable evidence, knowledge and experience. Rather than doing that, the Minister with a view to bestow favour and confer advantage to one of his political compatriots showered this largess to him but in the process he forgot that the public interest was being made a casualty; the public interest was being totally jeopardised and sacrificed. The political colleague's advantage was at the alter of the State interest, the interest of its people.

39. It was expected that to combat pollution, to fight this menace with the required vigour and to ease the miseries of the people of the State, the persons responsible would choose the best, the very best person, the most eminently

suited person to hold this post. Instead, they chose one who was totally unfit. The law needs a person who would provide leadership and direction. Leadership and direction are the qualities which come from learning, as well as experience. Leadership and direction are relative terms, differing in each case and situation. A socio-political worker may have the qualities of leadership and direction for socio-political work. That does not mean that he also would have the qualities of leadership and direction for heading a State Pollution Control Board. Each appointment has to be considered on the merits of the person, it is not necessary that every person would be suited to hold every office.

39-A. Even though in our order dated 5th April. 2002, it was clearly stipulated that the question of jurisdiction relatable to the appointment of Mr. Shahdeo in these proceedings was left open and would be considered at appropriate stage, since none of the parties raised the question of Jurisdiction in their pleadings nor did they urge this question before us during the course of hearing of the case, we are not called upon to decide this question.

40. It is in the aforesaid background and based on the aforesaid observations that we have come to the conclusion that in this case a writ of quo-warranto against Shri Shahdeo who admittedly, clearly and patently suffers from the disqualification to hold the public office of Chairman State Board, can be issued by us. Writ of quo-warranto is a writ which lies against the person, who according to the facts as are established in the proceedings is found not entitled to hold or occupy an office of public nature and is only an usurper of that office. In all circumstances, it is the person against whom the writ of quo-warranto is directed, who is required to show to the Court as to by, or under what authority of law that person claims his entitlement to hold the public office. As is well established and commonly known, the challenge with respect to holding or occupying the public office can be made on various grounds, including the ground that the holder of the office did not fulfill the required qualifications or that he suffered from any disqualification which, perhaps, might debar him to hold such an office. Originally the writ of quo-warranto was considered to be a civil writ and it was always understood to be in the nature of a writ of right by the Sovereign against one who usurped his public office. The writ of quo-warranto cannot be considered to be a substitute for a writ of mandamus, certiorari or any other writ or for an injunction and is not to be used to prevent an improper exercise of power lawfully possessed. On the other hand, the purpose of a writ of quo-warranto is to prevent the holder of the office purporting to act under that office from usurping a power which he does not constitutionally, statutorily or legitimately possess.

41. Looked at from the aforesaid legal perspective and in view of our clear findings that Shri Shahdeo did not possess the qualifications required of the Chairman, State Pollution Control Board, we have no hesitation, but to hold that it would be a violation of the law to allow him to continue as the Chairman of the State Board. We accordingly order and declare that the appointment of Shri



Shahdeo as Chairman. State Board, was not legal and valid and hence improperly made and. therefore, on these grounds we order and direct that he cannot continue to function as such. By issuance of a writ of quo-warranto, therefore, the appointment of Shri Shahdeo as Chairman. State Board, is quashed and set aside. Shri Shahdeo shall forthwith and with immediate effect cease to hold the office of Chairman, State Board. The post of Chairman. State Board is hereby declared to be vacant, and with immediate effect.

42. In so far as the question of appointment of the new Chairman of the State Board is concerned, we direct the Govt. of Jharkhand to constitute a multi-member Committee, comprising of senior Bureaucrats. Technocrats and Experts, preferably to be headed by the Chief Secretary, for selecting a suitable person for this post. Before, however, starting the selection process, the Government or the Committee is directed to lay down and prescribe the eligibility criteria, academic qualifications and experience etc. We leave it to the Committee to either invite applications from eligible persons or else to consider such eligible persons from out of some Panel or other sources as the Committee may like to devise. The task of selecting and appointing the Chairman on regular basis shall be completed in a period of three months from today. In the intervening period, however, we direct the Govt. of Jharkhand to give the additional charge of the office of Chairman. State Board, to a serving Govt. Officer who shall continue to discharge the functions of the Chairman nil a regular incumbent is appointed on this post.

43. Petition disposed of. No order as to costs.