

(2016) 04 KL CK 0016
In the High Court Of Kerala
Case No : WP(C) No. 12356 of 2015 (S)

C.R. Neelakandan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 KerLJ 617 : (2016) 2 KHC 588 : (2016) 2 KLT 43

Hon'ble Judges : Ashok Bhushan, C.J.;A.M. Shaffique, J.

Bench : Division Bench

Advocate : Devan Ramachandran (Sr.), Adarsh Kumar, P.G. Suresh, G. Sudheer (Thuravoor), Rajan Vishnuraj and V. Harish, Advocates, for the Appellant; R. Prasanth Kumar, CGC, Spl. Government Pleader, Girija Gopal, George Zachariah Eruthickel and Alex George, Advocates

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J. - This writ petition filed as public interest litigation prays for issue of writ of certiorari quashing Ext.P1 order, by which, the Central Government has constituted State Level Environment Impact Assessment Authority (SEIAA), Kerala and State level Expert Appraisal Committee (SEAC), Kerala. A writ of quo warranto has also been prayed for against respondents 5 to 8. Counter affidavits have been filed by respondent Nos. 2, 5 to 8. Statement has also been filed by the counsel appearing for the first respondent.

2. Brief facts necessary to be noticed for deciding the writ petition are :- In exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, a notification has been issued by the Ministry of Environment and Forests dated 14.9.2006 providing for obtaining environmental clearance for construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the Schedule to the notification from the Central Government or as the case may be by the State Level Environment Impact Assessment Authority. As per clause (3)

of the notification, the Central Government was required to constitute a State Level Environment Impact Assessment Authority (hereinafter referred to as "SEIAA") comprising of three members, including a Chairman and a Member Secretary. Clause (4) refers to constitution of State Level Expert Appraisal Committee (hereinafter referred to as "SEAC") by the Central Government. Clause (3) of the notification (hereinafter called as "EIA notification") provides for manner and procedure of constitution of SEIAA, which are quoted as below :-

"3. State Level Environment Impact Assessment Authority:- (1) A State Level Environment Impact Assessment Authority hereinafter referred to as the SEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member - Secretary to be nominated by the State Government or the Union territory Administration concerned.

(2) The Member-Secretary shall be a serving officer of the concerned State Government or Union territory administration familiar with environmental laws.

(3) The other two Members shall be either a professional or expert fulfilling the eligibility criteria given in Appendix VI to this notification.

(4) One of the specified Members in sub-paragraph

(3) above who is an expert in the Environmental Impact Assessment process shall be the Chairman of the SEIAA.

(5) The State Government or Union territory Administration shall forward the names of the Members and the Chairman referred in sub-paragraph 3 to 4 above to the Central Government and the Central Government shall constitute the SEIAA as an authority for the purposes of this notification within thirty days of the date of receipt of the names.

(6) The non-official Member and the Chairman shall have a fixed term of three years (from the date of the publication of the notification by the Central Government constituting the authority).

(7) All decisions of the SEIAA shall be unanimous and taken in a meeting."

As per Clause (5) sub-clause (a) SEAC at the State Level has to be constituted by the Central Government in consultation with the concerned State Government. Clause (5)(a) is quoted as below :-

"The composition of the EAC shall be as given in Appendix VI. The SEAC at the State or the Union territory level shall be constituted by the Central Government in consultation with the concerned State Government or the Union territory Administration with identical composition."

Appendix VI to the notification provides for composition of the Sector/Project Specific Expert Appraisal Committee (EAC) for category A projects and the State level Expert Appraisal Committee (SEAC) for category B projects by the Central

Government. The eligibility criteria for members and chairman are described in clause (3) and clause (5) of the EIA notification. The Chairman and members of the SEIAA as well as SEAC shall fulfil the eligibility criteria as mentioned in Appendix VI. Appendix VI, which is relevant for the present case is quoted as below :-

"Appendix VI

(See paragraph 5)

Composition of the Sector/Project

Specific Expert Appraisal Committee (EAC)

For category a projects and the State/UT

Level Expert Appraisal Committees (SEACs)

For Category B Projects to be constituted by the Central Government

1. The Expert Appraisal Committees (EAC(s), and the State/UT Level Expert Appraisal Committees (SEACs) shall consist of only professions and experts fulfilling the following eligibility criteria:

Professional- The person should have at least (i) 5 years of formal University training in the concerned discipline leading to a MA/MSc Degree, or (ii) in case of Engineering/Technology/Architecture disciplines, 4 years formal training in a professional training course together with prescribed practical training in the field leading to a B.Tech/B.E/B.Arch. Degree, or (iii) Other professional degree (e.g.Law) involving a total of 5 years of formal University training and prescribed practical training, or (iv) Prescribed apprenticeship/article ship and pass examinations conducted by the concerned professional association (e.g.Chartered Accountancy), or (v) a University degree, followed by 2 years of formal training in a University or Service Academy (e.g. MBA/IAS/IFS). In selecting the individual professionals, experience gained by them in their respective fields will be taken note of.

Expert. A professional fulfilling the above eligibility criteria with at least 15 years of relevant experience in the field, or with an advanced degree (e.g. Ph.D) in a concerned field and at least 10 years of relevant experience.

Age. Below 70 years. However, in the event of non-availability of/paucity of experts in a given field, the maximum age of a member of the Expert Appraisal Committee may be allowed up to 75 years

2. The Members of EAC shall be Experts with the requisite expertise and experience in the following fields/disciplines. In the event that persons fulfilling the criteria of "Experts" are not available. Professionals in the same field with sufficient experience may be considered.

* Environment Quality: Experts in measurement, monitoring, analysis and

interpretation of data in relation to environmental quality.

- * Sectoral Project Management: Experts in the Project Management or Management of Process or Operations or Facilities in the relevant sectors.

- * Environmental Impact Assessment Process Experts: Experts in the conducting and carrying out Environmental Impact Assessment (EIA's) and preparation of Environmental Management Plans (EMP's) and other Management plans and who have wide expertise and knowledge of predictive techniques and tools used in the EIA process.

- * Risk Assessment

- * Life Science (Floral and Faunal management)

- * Forestry and Wildlife Experts

- * Environmental Economics with experience in project appraisal

- * Public administration or Management.

3. The Membership of the EAC shall not exceed 15 (fifteen) regular Members. However, the Chairperson may co-opt an expert as a member in a relevant field for a particular meeting of the Committee.

4. The Chairperson shall be an outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector.

5. The Chairperson shall nominate one of the Members as the Vice Chairperson who shall preside over the EAC in the absence of the Chairman/Chairperson.

6. A representative of the Ministry of Environment and Forests shall assist the Committee as its Secretary.

7. The maximum tenure of a Member, including Chairperson, shall be for 2 (two) terms of 3 (three) years each.

8. The chairman/Members may not be removed prior to expiry of the tenure without cause and proper enquiry."

The tenure of SEIAA and SEAC constituted for State of Kerala came to an end in November 2014. The State of Kerala vide its letter dated 28.10.2014 wrote to the Central Government for re-constitution of SEIAA and SEAC. By the said letter, the names of Chairman and members of both the bodies along with relevant details and bio-data were forwarded. The Central Government by letter dated 25.11.2014, made certain observations with regard to Dr. K.P.Joy, who was recommended as Chairman of SEIAA, though he has attained the age of 71 years. With regard to SEAC, observation with regard to certain members were also made. The State Government by letter dated 11.12.2014 has replied the letter of the Central Government and provided for necessary clarification. After

receipt of the letter of the State Government dated 11.12.2014, the Central Government issued notification dated 19.3.2015, Ext.P1, by which, it appointed the 5th respondent as the Chairman and 6th respondent as Member of SEIAA. By the same notification, the 7th respondent was appointed as Chairman and 8th respondent as Member of SEAC. The petitioner, who claims to be a social worker and environmentalist has filed this public interest litigation seeking for the following reliefs :-

"(i) Declare that the selection process to the various posts of SEIAA and SEAC must be in strict compliance with the eligibility criteria laid down in EIA Notification, 2006 and further to declare that the appointments reflected in Exhibit P1 are in violation of the said EIA Notification 2006 and/or also arbitrary, illegal, irrational, unconstitutional and without application of mind

(ii) Issue a writ of mandamus or any other appropriate writ directing the 1st and 2nd respondent to constitute an eligible panel of members for the SEIAA and SEAC without any further delay.

(iii) Issue a writ of certiorari or such other writ, order or direction quashing Exhibit P1 order issued by the 1st respondent as arbitrary, illegal, ultra vires, irrational, unconstitutional and in violation of the EIA Notification, 2006.

(iv) Issue a writ of quo warranto or such other writ, order or direction as against the 5th respondent, holding that the 5th respondent has no authority to continue in the post of Chairman of SEIAA

(v) Issue a writ of quo warranto or such other writ, order or direction as against the 6th respondent, holding that the 6th respondent has no authority to continue in the post of SEIAA member

(vi) Issue a writ of quo warranto or such other writ, order or direction as against the 7th respondent, holding that the 7th respondent has no authority to continue in the post of Chairman of SEAC.

(vii) Issue a writ of quo warranto or such other writ, order or direction as against the 6th respondent, holding that the 8th respondent has no authority to continue in the post of SEAC member.

(viii) Issue a writ of mandamus or such other writ, order or direction directing Respondents 1-2 to appoint appropriate Mining Experts to the 4th respondent body."

3. Learned counsel for the petitioner, questioning the appointment of respondents 5 to 8, contends that respondents 5 to 8 did not fulfil the qualification as laid down in the EIA notification dated 14.9.2006. Hence, they are not entitled to hold the office and writ of quo warranto be issued asking them to vacate their public office. It is contended that the Chairman and Members of SEIAA and SEAC are the important officers with onerous duties regarding protection of environment and the Central Government cannot make

appointment of persons, who have no experience in the field and are not eligible for the office. It is contended that none of respondents 5 to 8 are experts in environment. It is contended that the State, without proper application of mind and without finding experts in the field has forwarded the names of respondents 5 to 8, which is nothing but abdication of its jurisdiction. It is contended that in the State of Punjab, for constituting the aforesaid two bodies, public advertisement was issued in the news paper inviting applications, whereas, no such procedure was adopted in the State of Kerala. Learned counsel for the petitioner has further relied on an order passed by the National Green Tribunal dated 17.7.2014, wherein, the Tribunal has observed that appointment to SEIAA and SEAC should be made from the experts. Appointment to these bodies from non-environmentalists, who do not fall within the eligibility criteria of Appendix VI should not be made. The Chairman and Members, who have to deal with complex environmental issue, while considering grant of environmental clearance must be possessed with proper experience and qualification in the field.

4. Learned Special Government Pleader, Smt. Girija Gopal, refuting the submission made by the learned counsel for the petitioner, contends that respondents 5 to 8 are the persons, who have necessary qualification as laid down in Appendix VI of EIA notification. The State Government, after being satisfied by the qualification has made the nominations. It is submitted that the constitution of SEIAA and SEAC is by nomination and not by recruitment. There is no requirement of issuing any advertisement in the news paper. The constitution of both the bodies were in accordance with the statutory procedure prescribed. Hence, there is no merit in the writ petition, which deserves to be dismissed.

5. Respondents 5 to 8 have filed separate counter affidavits denying the allegations made in the writ petition and stating that they all fulfil the qualifications prescribed in Appendix VI of the EIA notification and the writ petition filed is without any basis. The details and credentials of the respondents have been stated in the respective counter affidavits.

6. Learned Central Government Counsel has also filed a statement justifying Ext.P1 order issued by the Central Government. It is submitted that respondents 5 to 8 have necessary qualification as prescribed in Appendix VI of the EIA Notification. Although, the 5th respondent has crossed the age of 71 years, appointment can be made upto 75 years as per the statutory provision. Hence, there is no error in the appointment of 5th respondent as Chairman of the SEIAA.

7. We have considered the submissions made by the learned counsel for the parties and perused the records.

8. The challenge in the writ petition is essentially with regard to lack of necessary qualification of respondents 5 to 8, who holds the respective offices in SEIAA and SEAC. This writ petition is a writ petition praying for issue of quo warranto against respondent 5 to 8.

9. Before, we proceed to examine the respective qualifications of respondents 5 to 8, it is necessary to look into the scope and ambit of judicial review in a writ of quo warranto. The Constitution Bench of the Apex Court in *University of Mysore v. Govinda Rao* (AIR 1965 SC 491) had occasion to consider the scope of writ of quo warranto. In the above case respondent Govinda Rao had filed a Writ Petition in the High Court under Article 226 of the Constitution praying for issue of a writ of quo warranto calling one Niya Gowda (respondent in the Writ Petition) to show cause as to under what authority he was holding the post of Research Reader in English in the Central College, Bangalore. High Court held that appointment of Niya Gowda was invalid. Appeal was filed by the University. The Constitution Bench examined the content and scope of writ of quo warranto and following was laid down in paragraph 6 and 7:

"6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

7. As Halsbury has observed*:

"An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined." Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

In *Centre For PIL v. Union of India* [(2011) 4 SCC 1], with regard to writ of quo

warranto the following was laid down in paragraph 51 which is to the following effect:

"51. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the Court inter alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority." Thus writ of quo warranto is for a judicial enquiry in which a person holding public office is called upon to show by what right he holds the said office. If the enquiry reaches to the finding that the holder of the office has no valid title the issue of writ of quo warranto will oust him from that office. Court in the proceedings can enquire as to whether appointment of defendant is made contrary to the statutory provisions."

10. The Apex Court in *Rajesh Awasthi v. Nand Lal Jaiswal* [(2013) 1 SCC 501] has laid down the following in paragraph 19:

"19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Coop. Transport Society Ltd. v. Govt. of Haryana*, 2002 (6) SCC 269 held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy (supra)*, this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in *Hari Bans Lal (supra)* wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules."

The judgment of the Apex Court in *Renu and others v. District and Sessions Judge, Tis Hazari and Another* [2014 KHC 4089] was also relied, wherein, the nature and ambit of writ of quo warranto was explained in paragraph 15, which is to the following effect :-

"15. Where any such appointments are made, they can be challenged in the Court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of

the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide: *The University of Mysore and Another v. C.D. Govinda Rao and Another*, 1965 KHC 518 : AIR 1965 SC 491 : 1964 (4) SCR 575 : ILR 1963 Mys 949; *Shri Kumar Padma Prasad v. Union of India and Others*, 1992 KHC 1021 : AIR 1992 SC 1213 : 1992 (2) SCC 428 : 1992 SCC (L and S) 561 : 1992 (20) ATC 239 : 1992 (1) LLN 951 : 1992 (2) SLR 210; *B. R. Kapur v. State of Tamil Nadu and Another*, 2001 KHC 937 : AIR 2001 SC 3435 : 2001 (3) KLT SN 100 : 2001 (7) SCC 231; *The Mor Modern Co - operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana and Another*, 2002 KHC 1716 : AIR 2002 SC 2513 : 2002 (6) SCC 269; *Arun Singh v. State of Bihar and Others*, 2006 KHC 1151 : AIR 2006 SC 1413 : JT 2006 (3) SC 389 : 2006 (9) SCC 375; *Hari Bansh Lal v. Sahodar Prasad Mahto and Others*, 2010 KHC 4620 : AIR 2010 SC 3515 : 2010 (9) SCC 655; and *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and Others*, 2013 KHC 4873 : 2014 (1) SCC 161 : 2013 (4) KHC SN 31 : 2013 (13) SCALE 477 : AIR 2014 SC 246."

In view of the law as laid down above, the enquiry in the present writ petition has to be confined as to whether respondents 5 to 8 have fulfilled the statutory qualification to be nominated as Chairman/Member of the SEIAA and SEAC. In an event, if they do not fulfil the statutory qualification, they have no right to continue to hold the posts, which is a public office of great importance. However, in an event, if respondents 5 to 8 possessed necessary qualification as provided in Appendix VI, it is not for this Court to enter into the issue as to whether they were better candidates or whether they ought to have been appointed or not. We, thus, proceed to examine the challenge accordingly.

11. The 5th respondent, Dr.K.P.Joy, has been appointed as the Chairman of SEIAA. The petitioner himself has annexed the bio-data of Dr. K.P. Joy as Ext.P3. Dr. K.P. Joy has awarded Ph.D degree from Mahatma Gandhi University in Environmental Communication. He has passed M.Sc in Zoology and Ichthyology. For the past 31 years, he has obtained experience in teaching, administration and research stretching through several institutions in India. It is necessary to extract the details of experiences obtained by Dr. K.P.Joy as mentioned in his bio-data, which are to the following effect :-

Organization Position Held and Period Duties and Responsibilities

Environment Impact Assessment Authority, Government of Kerala Member Since November 2011 EIA process and its legalities, screening, Environment scoping, appraisal, post project Impact Assessment monitoring, CRZ notification, analysis of impacts of development projects, interpretation of EIA reports and effective

intervention in the environmental clearance.

Mahatma Gandhi University, Kottayam, Kerala Founder Director (1994-1999) School of Environmental Sciences Served as the Founder Director of the Post Graduate Department of Environmental Sciences, organising and administering the Dept. as well as teaching. Developed its infrastructure including the library and laboratory, designed the curriculum and examination pattern for M.Sc and M. Phil courses in Environment Management, Impact Assessment, guided the academic programmes and research.

Kannur University, Kannur, Kerala Founder Director, School of Environmental Studies (2008-2010) Established the Department of Environmental Studies, organising and administering the Department, teaching Post Graduate Students, Developed its infrastructure including the library and laboratory, designed the curriculum including Environment Impact Assessment and examination pattern and guided the academic programmes research and project.

Baselius College, a Post Graduate Institution affiliated to Mahatma Gandhi University, Kottayam, Kerala. Principal(1996-1998) Served as its Principal, teaching, developing infrastructure facilities including college auditorium, computer centre, as well as administering and organising various academic activities.

Baselius College, a Post Graduate Institution India affiliated to Mahatma Gandhi University, Kottayam, Kerala Lecturer and later as Professor and Head of the Dept. of Zoology (1967-1974 and 1985-1996) Teaching Zoology in degree and pre-degree classes as well as monitoring the academic activities of the Dept.

Teachers Service Commission of the Govt. of Kenya Head of the Dept. of Biology (1974-1985) Organized ALevel course, coordinated the activities of the Dept and taught in A Level classes and London GCE courses while on deputation from Baselius College.

Nairobi University, Kenya Lecturer in Ichthyology (1982-1983) Teaching Degree students and guiding project works.

S.N.M. Training College, Moothakunnam, Kerala. Senior Lecturer in Education - Natural Science (1967-1968) Teaching Education and Methods of teaching Science in B.Ed degree Classes.

Apart from the aforesaid details, various training programmes on Environment Impact Assessment has been mentioned in paragraph (IV) of the bio-data. Special training in foreign countries has been mentioned again in "Academic and Professional achievements" in his bio-data. Various awards including award for the best book published in English, namely; "Environment : The Challenge of Balance", has been obtained by Dr. K.P. Joy. More than 17 books have been written and published by him, which are also enumerated in the bio-data at page No.38 of the paper book.

12. Now, we revert back to Appendix VI, which provides for eligibility for appointment of Chairman of SEIAA. Appendix VI refers to both Professional and Expert. An "Expert" has been explained in Appendix VI as "a professional fulfilling the eligibility criteria with at least 15 years of relevant experience in the field or with an advanced degree (Ph.D) in a concerned field and at least 10 years of relevant experience." The 5th respondent has fulfilled the eligibility of "Professional" as mentioned in Appendix VI. He has passed M.Sc degree. He has also possessed 15 years experience in the relevant field. He has served as Lecturer/Professor/Senior Lecturer in the different departments. Thus, he fulfilled the qualification to be an "Expert" as defined in Appendix VI. Apart from above, the 5th respondent served as Founder Director from 1994 to 1999 of School of Environmental Sciences in Mahatma Gandhi University, Kottayam and further, he served as Founder Director of School of Environmental Studies in Kannur University, Kannur from 2008 to 2010. The 5th respondent was also a member of SEIAA, Kerala from November, 2011 and has also worked as Chairman in the year 2014, when earlier Chairman, Dr. A.E. Muthunayagam had resigned. Appendix VI was amended on 9.10.2014 and the said amendment provides an additional qualification for a chairman, which is quoted as below :-

"4. The Chairperson shall be an eminent person having experience in environmental policy related issues, in management or in public administration dealing with various developmental sectors."

The additional requirement for a Chairman is that he shall be an eminent person having experience in environmental policy related issues in management or in public administration dealing with various developmental sectors. The 5th respondent had obtained sufficient experience and hence, he served as Founder Director of School of Environmental Studies and School of Environmental Sciences in Mahatma Gandhi University and Kannur University as noted above. Further, he had worked as a member of SEIAA from 2011-2014. From the above, it is evidently clear that the 5th respondent had fulfilled all the eligibility as provided in Appendix VI. He being a professional, expert and an eminent person having experience in environmental policy related issues and thus, there is no basis for holding that the 5th respondent does not fulfil the eligibility criteria as provided in Appendix VI and the challenge against his appointment is to fail.

13. One of the objections, which was raised with regard to the age of 5th respondent by the Central Government was that he was 71 years of age. In Appendix VI, the age mentioned is below 70 years and further, in the event of non-availability of/paucity of experts in a given field, the maximum age of a member of the Expert Appraisal Committee may be allowed upto 75 years. Therefore, the objection raised by the Central Government was replied by the State and when the 5th respondent was appointed as Chairman, it would clearly indicate the fact that he was permitted to continue till the age of 75 years, which is the permissible age of Appendix VI. Thus, the 5th respondent also fulfils the age qualification.

14. The 6th respondent, Dr. J. Subhashini, has been appointed as a Member of SEIAA. The bio-data of Dr. J. Subhashini has also been produced as Ext.P4. Her academic, educational, research and management experiences as disclosed in her bio-data are as follows :-

"I. Educational Qualification

Ph.D in Botany (Title of thesis "Bio Chemical Characterisation of the recessive parental oil palm (*Elaeis guineensis* Jacq) fruit-pisiera) University of Kerala, Trivandrum. M.Phil, Botany, University of Kerala, A Grade M.Sc. Botany (Genetics and plant Breeding)University of Kerala I class.

II. Academic Status

1. Teaching experience : 26 years of teaching experience in handling lecture classes in various discipline of plant science viz:- plant taxonomy, plant, bio chemistry, plant biotechnology, plant breeding and molecular biology for undergraduate and post graduate students.

Period Position Held

1981-1987 Lecturer in Botany

1988-1996 Senior Scale Lecturer

1997-2001 Selection Grade Lecturer

2002-2007 HOD

2008-2009 Principal

2. Research Experience

13 years research experience plant physiology, plant bio chemistry, Bio Technology and molecular biology on hand experience in molecular tools PCR and DDRT.

III. Management Experience

1. Five years as Head of the Department of Botany at various Government college.

2. Principal from 23.07.2008 in KNM Govt College, Kanjiramkulam."

With regard to an "Expert", paragraph 2 of Appendix VI states that a person shall be an Expert, who fulfils the requisite experience in the field and discipline mentioned in paragraph 2, that is; environmental quality experts, sectoral experts in Project Management and environmental impact assessment process experts, risk assessment experts, life science experts in floral and faunal management, forestry and wildlife experts and environmental economics expert with experience in project appraisal. In paragraph 2, it is also stated that "in the event that persons fulfilling the criteria of "Experts" are not available,

professionals in the same field with sufficient experience may be considered." The 6th respondent fulfilled the criteria being professional and expert. She has obtained M.Sc Botany, M.Phil Botany and Ph.D in Botany. She is having teaching experience of 26 years. Hence, she is an "Expert" within the meaning of clause (1) of Appendix VI. Further, she has also to be treated as life science experts in floral and faunal management on account of her rich experience. The 6th respondent was an earlier member of SEIAA from February 2014 to November 2014 and no objection was raised against her. The qualifications of the 6th respondent has been enumerated in the bio-data filed by the petitioner himself. On a perusal of the same, it would indicate that the 6th respondent fulfilled all eligibilities for being appointed as an "Expert" in SEIAA. It is thus, clear that the challenge to the appointment of 6th respondent must also fail.

15. Sri. . Gopinathan, the 7th respondent was appointed as Chairman of SEAC. With regard to the 7th respondent, it has been contended that he is not having any outstanding experience in environmental policy or has any qualification as prescribed in Appendix VI. Hence, he does not fulfil the qualification. The details of the 7th respondent, his experience and qualification have not been mentioned in the writ petition.

16. In the counter affidavit filed on behalf of the State, it is stated that the 7th respondent was an IFS Officer and Head of the Forest Force and Principal Chief Conservator of Forests, Kerala. The following was stated in paragraph 9 with regard to 7th respondent :-

"With regard to the contentions regarding the alleged "ineligibility" of 7th respondent as the Chairman SEAC, it is respectfully submitted that he was an IFS officer and Head of the Forest Force and Principal Chief Conservator of Forests, Kerala. The argument that to be an expert, the nominees must be qualified for EIA consultancy is irrelevant and baseless and not traceable to any rule or guidelines. Qualification for EIA consultancy for organisations is not the criterion for nomination of individuals to SEIAA/SEAC. He being in the rank of Secretary to Government, and familiar with environmental laws in his capacity as Principal Chief Conservator of Forests, fully fits in with the stipulations in para 3 of EIA notification 2006."

17. The 7th respondent has also filed counter affidavit. His academic qualification has been narrated in paragraphs 4 and 5, which are to the following effect :-

"4. I was a member of the Indian Forest Service for about 35 years and I retired from service as Head of Forest Force and the Principal Chief Conservator of Forest, which is equivalent to the rank of Chief Secretary of the State. I functioned as the Chief Wild Life Warden of the State of Kerala which is one of the most important conservation assignments in the State. I am a graduate in Civil Engineering and post graduate in Hydrology from Roorkee University, Madras. I also possess Post Graduate Diploma in Forestry from the Indian Forest College, Dehradun and also possess Law Degree from Calicut University. It is

submitted that I am fully qualified for appointment as the Chairperson of the SEAC. It is further submitted that it was after objectively considering my qualification and experience that I was appointed as the Chairman of SEAC.

5. It is submitted that the petitioner does not have a case that I am not possessing the qualification prescribed in appendix VI of Ext.P2 notification. As per Appendix VI of Ext.P2 notification, the Expert Appraisal Committees and SEAC shall consist of only professionals and experts fulfilling the eligibility criteria prescribed therein. Apart from a vague averment that I am not an outstanding and experience policy expert in management or policy administration with experienced in relevant development sector or qualified in environmental policy, management or policy administration, the petitioner has not pointed out any concrete evidence/proof to show that I am not entitled for holding the post. Apart from my experience in the Forestry and Wild Life Sector, I was also a Consultant in Kerala Technical and Industrial Consultancy Organization. I was also a Consultant in Kerala Technical and Industrial Consultancy Organization. I was also the Managing Director of the Kerala Financial Corporation and the Project Director of the Kerala State Transport Project. I have excellent track record in the above assignment and hence I fully satisfy the criteria for appointment as Chairman of SEAC. As stated in paragraph 4, I am fully qualified for appointment as Chairman of SEAC. It is submitted that my credentials were thoroughly scrutinised by the Government and only after being satisfied of the fact that I am eligible for appointment, that the Government nominated my name to the Central Government. The details forwarded by the State Government were scrutinised by the Central Government and only thereafter I was appointed as Chairman of SEAC. The Government took into consideration the fact that I was working in the rank of Secretary to Government and was familiar with Environmental Laws in my capacity as Principal Chief Conservator of Forest. It may be noted that the petitioner has not raised a case to the effect that any other better qualified persons were not considered for selection to the post of Chairman of SEAC. I have got more than three decades of direct experience of the environmental situation of the State having most of the World Heritage Sites (Western Ghats), Ecologically Fragile and Ecologically Sensitive areas etc."

Thus, it is clear that the 7th respondent has both the necessary qualifications as required for a Professional and an Expert, as prescribed in Appendix VI. It is relevant to note that in the heading of "Professional" in Appendix VI, the qualification for "Professional" is described in item (v) as follows :-

"a University degree, followed by 2 years of formal training in a University or Service Academy (e.g. MBA/IAS/IFS). In selecting the individual professionals, experience gained by them in their respective fields will be taken note of."

A person having University degree with formal training is the eligibility. A professional fulfilling the eligibility criteria with 15 years of relevant experience in the field is considered as an "Expert". The 7th respondent, having a professional

qualification and more than 15 years of experience in the field is an "Expert" within the meaning of Appendix VI. Paragraph 4 of Appendix VI requires that a Chairman shall be an eminent person having experience in environmental policy related issues, in management or in public administration dealing with various developmental sectors. Since the 7th respondent served as a member of the Indian Forest Service for about 35 years and he retired from service as Head of Forest Force and the Principal Chief Conservator of Forest and Chief Wild Life Warden of the State of Kerala, the qualification for the post of chairman as prescribed in Appendix VI has been fulfilled by him. Hence, the challenge with regard to qualification of 7th respondent, thus, also fails.

18. Now, we come to the 8th respondent, Er. P. Sreekumaran Nair, who has been appointed as an Expert in SEAC. With regard to the 8th respondent, it has been stated that the 8th respondent, who is an Engineer of the Kerala Water Authority, is again neither a professional nor an expert and therefore, he has no eligibility.

19. The 8th respondent has filed a counter affidavit. In paragraph 2 of the counter affidavit, the 8th respondent claims the following qualification :-

"I am having the following qualifications.

M.Tech in Civil Environmental Engineering Jr.Egg.-CPWD, AE, Ex.E, EE, SE, Chief Engineer - Kerala Water Authority, Technical Expert - Kerala Water Appellate Authority. Published two Technical papers Project Officer JBIC assisted Kerala Water Supply Projects. Senior Manager (Technical in State PMU, World Bank aided project. ASCI - World Bank Institute Certification Programme in Urban Management India 2008. Completed successfully certified Urban manager. Fellow Institution of engineers (India) in environmental engineering division

My qualifications and experience given above would clearly show that I am having professional qualification in environmental engineering and also have rich experience to be nominated as member of SEAC."

The 8th respondent claims that he is a professional as per the qualification prescribed in Appendix VI. He has M.Tech degree and 32 years of service in the field of water supply and sanitation. M.Tech degree was obtained by the 8th respondent in Environmental Engineering. The 8th respondent was, thus, an "Expert" having more than 15 years of experience in the field. It is relevant to note paragraph 2 of Appendix VI, which provides that, the members of the EAC shall have expertise and experience in the field/discipline mentioned therein. Although the said qualification does not refers to SEAC members, in paragraph 1, the qualification for professional and expert have been mentioned both for EACs and SEACs. Hence, non-mentioning of SEAC in paragraph 2 of Appendix VI is not a reason to believe that the qualification mentioned in paragraph 2 does not refer to SEAC members. In any view of the matter, even in paragraph 2 it is mentioned that in the event persons fulfilling the criteria of "Experts" are not available, professionals in the same field with sufficient experience may be considered. Thus, in no manner, the 8th respondent can be held to be ineligible.

Hence, the challenge to the appointment of 8th respondent, thus, also fails.

20. Learned counsel for the petitioner submits that the State of Kerala did not issue any advertisement in the news paper inviting applications for eligible person, whereas, the State of Punjab has issued advertisement in the news paper, which is produced as Ext.P4. In this context, it is relevant to note that as per paragraph 3 of the EIA notification, three members including a chairman and a member/secretary to be nominated by the State Government. The EIA Notification for constitution of SEIAA, thus, contemplated a nomination by the State Government and paragraph 3(v) of the EIA Notification has mentioned that the State Government shall forward the names of Chairman and Member to the Central Government. The constitution of SEIAA has thus, to be on the basis of the nomination by the State and the statutory procedure does not require any public advertisement. It is however, clear that there is no prohibition for public advertisement and what ways and means shall be adopted by the State Government for nominating a Chairman or a Member, the State has been left free and it is the discretion of the State to adopt any valid procedure. As per the procedure adopted by the Central Government, the nominations for SEAC have also been forwarded by the State on the basis of which, SEIAA and SEAC have been constituted by the Central Government. Thus publication of advertisement is not necessary for the constitution of SEIAA and SEAC.

21. Learned counsel for the petitioner has also referred to a judgment of the National Green Tribunal dated 17.7.2014 in Application No.116 of 2013, which is produced as Ext.P7, wherein, the National Green Tribunal has observed that the Chairman or Members, who are to deal with complex environmental issue while considering grant of Environment Clearance or otherwise to the proposed projects must be possessed of appropriate qualification and experience in that field. The following observations were made by the Green Tribunal :-

"If the members of this expert body are non-environmentalists and do not fall within the eligibility criteria of Appendix VI, then besides violation or infringement of such provisions, its direct impact would be on the environment. If people who are not strictly qualified and eligible and who do not professionally belong to this field, are selected as members of EAC/SEAC, the obvious result would be improper application of mind to the project reports and the application moved by the Project Proponent for grant of Environmental Clearance/ Authorization. The EAC/SEAC has to perform functions of a very scientific and technical nature and has to analyse comprehensive terms of reference and environmental impact assessment report in respect of the project activity and then submit its report and recommendations to the Government for grant/ consideration of the appropriate authority. Persons who are not eligible or are not having requisite expertise and experience in relation to the various fields of environment and the process involved therein, would cause serious prejudice to all the stake-holders and more particularly to the environment and ecology of the country."

The observation made by the Tribunal was taken into consideration by the Government and there has been amendment to Appendix VI by notification dated 9.10.2014, Ext.P2. The observation of the National Green Tribunal has to be read along with the statutory rules that in any event, persons, who are made Members or Chairman of SEIAA and SEAC does not fulfil the statutory qualification, they cannot be held to be fulfilling the qualification on the basis of the observation made by the Tribunal. The Tribunal has rightly emphasised about the necessity for selecting persons having experience in the environment and ecology, which has to be taken into consideration by the State Government while recommending names of Members or Chairman for constituting SEIAA and SEAC.

22. One further submission, which has been pressed by the learned counsel for the petitioner is that there were certain vigilance enquiry pending against some earlier members of SEIAA, whose term came to an end by 2.11.2014. Hence, those persons were not eligible to be included in the SEIAA. The petitioner has referred to certain vigilance enquiry with regard to issue of Environmental Clearance Certificate. Even if it is assumed that certain enquiry is pending against some earlier members with regard to grant of environmental clearance, that does not disqualify the respondents herein from being selected as member of the aforesaid bodies. Ext.P11 letter, which has been referred to by the petitioner refers to an environmental clearance certificate issued pertaining to the districts of Thiruvananthapuram, Kollam and Pathanamthitta till the period 18.8.2014. In the said letter, it is only mentioned that Non Liability Certificate cannot be issued. On the above ground, no disqualification can be attached to any of respondents 5 to 8.

23. Learned counsel for the petitioner has also placed reliance on the judgment of the Apex Court in Centre For PIL v. Union of India [(2011) 4 SCC 1]. In the above case, the appointment of the Chief Vigilance Commissioner was questioned before the Apex Court. In the Writ Petition although there was no ground that the incumbent does not possess qualification for appointment as Chief Vigilance Commission. In the above case the Court examined the appointment of Central Vigilance Commissioner under the Central Vigilance Commission Act, 2003. Under Section 4 of the said Act the appointment of Central Vigilance Commissioner was to be made after obtaining recommendation of a Committee consisting of the Prime Minister, Minister of Home Affairs and the Leader of the Opposition in the House of the People. The Apex Court held that while making recommendation the High Power Committee performs a statutory duty. The Apex Court has noticed in the said case that the High Power Committee failed to take into consideration the pendency of a criminal case against the incumbent where sanction was also accorded by the State Government for prosecution. On the above background the Court held that recommendation of the High Power Committee are vitiated. In this context it is relevant to quote paragraphs 35, 47 and 49 which are to the following effect:

"35. Section 4 refers to appointment of Central Vigilance Commissioner and

Vigilance Commissioners. Under Section 4(1) they are to be appointed by the President by warrant under her hand and seal. Section 4(1) indicates the importance of the post. Section 4(1) has a proviso. Every appointment under Section 4(1) is to be made after obtaining the recommendation of a committee consisting of -

- (a) The Prime Minister -- Chairperson;
- (b) The Minister of Home Affairs -- Member;
- (c) The Leader of the Opposition in the House of the People -- Member.

47. We may reiterate that institution is more important than an individual. This is the test laid down in para 93 of N. Kannadasan's case (supra). In the present case, the HPC has failed to take this test into consideration. The recommendation dated 3rd September, 2010 of HPC is entirely premised on the blanket clearance given by CVC on 6th October, 2008 and on the fact of respondent No. 2 being appointed as Chief Secretary of Kerala on 18th September, 2007; his appointment as Secretary of Parliamentary Affairs and his subsequent appointment as Secretary, Telecom. In the process, the HPC, for whatever reasons, has failed to take into consideration the pendency of Palmolein case before the Special Judge, Thiruvananthapuram being case CC 6 of 2003; the sanction accorded by the Government of Kerala on 30th November, 1999 under Section 197 Cr.P.C. for prosecuting inter alia Shri P.J. Thomas for having committed alleged offence under Section 120B IPC read with Section 13(1)(d) of the Prevention of Corruption Act; the judgment of the Supreme Court dated 29th March, 2000 in the case of K. Karunakaran v. State of Kerala and Another in which this Court observed that, "the registration of the FIR against Shri Karunakaran and others cannot be held to be the result of malafides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities and in such cases probes conducted are required to be determined on facts and in accordance with law". Further, even the judgment of the Kerala High Court in Criminal Revision Petition No. 430 of 2001 has not been considered.

49. For the above reasons, it is declared that the recommendation made by the HPC on 3rd September, 2010 is non est in law."

24. The above case was on facts of that case and it was held that recommendation made by the High Power Committee were non-est since pendency of a criminal case against the incumbent was not noticed. Present is not a case where any such argument has been raised. Thus the above case is clearly distinguishable.

25. In view of the foregoing discussions, we are of the view that respondents 5 to 8 have fulfilled all the statutory qualifications as mentioned in Appendix VI to the EIA Notification and no grounds are made out to quash Ext.P1 or the appointment of respondents 5 to 8 in the writ petition. Accordingly, this writ

petition is dismissed.