

(1997) 03 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 3982 of 1995

G. Jagannatha Pillai and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 17, 4 (2), 4 (2) (a), 5 (1), 6 (f)

Citation : (1998) 6 KarLJ 126

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri S. Vasudeva, for the Appellant; Sri S. Udaya Shankar, Government Advocate and Sri M.R. Janardhana, for Sri V.R. Datar, for the Respondent

Judgement

1. The challenge in this petition is directed against the appointment of the 3rd respondent Dr. Bangeri, as Chairman of Karnataka State Pollution Control Board. The petition which inter alia seeks a writ of quo warranto and purports to have been filed in public interest assails the appointment in question on precisely speaking two distinct grounds. Firstly, it is urged that respondent Dr. Bangeri does not qualify for appointment in the light of the requirements of Section 4(2) of Water (Prevention and Control of Pollution) Act, 1974, in that he does not possess any special knowledge or experience in administering institutions dealing with the said matters. Alternatively, it is urged that the petitioner is disqualified from being appointed as Chairman u/s 6(f) of the Act on account of he being the proprietor of a concern called M/s. B.P. Consultants, Hubli, which was providing consultancy service in Environmental Engineering to various private organisations and was on the panel of approved consultants of the State Pollution Control Board.

2. The respondents have stoutly defended the appointment under challenge and urged that Dr. Bangeri was fully eligible for appointment and did not suffer from any disqualification prescribed u/s 6 supra. In the light of the view that I propose

to take I consider it proper to deal with the alternative submission made on behalf of the petitioners first.

3. Section 6 of the Act prescribes the disqualifications for appointment as a member of the Board and to the extent the same is relevant for our purposes reads thus:

"Section 6. Disqualifications.--(1) No person shall be a member of a Board, who.-

(a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors; or

(b) xxx xxx xxx; (c) xxx xxx xxx; (d) xxx xxx xxx; (e) xxx xxx xxx; (f) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any control with the Board, or with the Government constituting the Board, or with a Local Authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of sewerage schemes or for the installation of plants for the treatment of sewage or trade effluents; or

(g) xxx xxx xxx".

4. According to the petitioners the 3rd respondent was at the time of his appointment associated with M/s. B.P. Consultants which was carrying on business, as a consultant for installation of plants for treatment of sewage and/or sewerage schemes. The respondent Dr. Bangeri, has not disputed the fact that he was the proprietor of M/s. B.P. Consultants or that the said concern was dealing with pollution control systems and had its registered office at Hubli. It is also not disputed that the M/s. B.P. Consultants had been registered under the Karnataka Sales Tax and the Central Sales Tax Acts and was a duly approved Consultant of the State Pollution Control Board as is otherwise also apparent from a list of the said consultants produced by the petitioner as Annexure-E to the writ petition. According to Dr. Bangeri, he had written to the Authorities under the State and Central Sales Tax Acts, to discontinue the Registration of M/s. B.P. Consultants with effect from 1-1-1995 and that as on 18th January, 1995 when he was nominated as the Chairman of the 5th respondent-Board, he was neither a Director nor a salaried officer or employee of any firm having any contract with the Board or with the Government for carrying out of sewerage schemes or for the installation of plants for the treatment of Sewage. These facts have not been refuted by the petitioners. All that was argued by Mr. Vasudev, appearing for the petitioner was that the Laboratory established by the 3rd respondent-Dr. Bangeri, was one of the consultants approved by the respondent-Pollution Control Board, which according to the learned Counsel was sufficient in itself to disqualify the third respondent from the appointment either as a member of the Board or as the Chairman thereof. I, however, find no substance in this submission. A careful reading of the provisions of Section 6(f) supra would show that in order to disqualify a person from becoming a member of the Board, it is essential that he should be a Director, a Secretary, Manager, or other salaried

officer or employee of any firm having a contract with the Board or with the Government constituting the Board or with the Local Authority in the State or with a Company or a Corporation owned, or managed by the Government for carrying out the sewerage schemes or for the installation of plants or the treatment of sewerage or trade effluents. What is, therefore, important is not only that the person concerned should hold a salaried or other position in any Company or Firm, but that such Company or Firm should have a subsisting contract with the Board to which the appointment is being made or with the Government constituting such Board or with any Local Authority in the State or with a Company or Corporation owned, controlled or managed by the Government for the purpose of carrying out sewerage schemes or for the installation of plants for the treatment of sewerage or treatment effluents. The petitioners have not, however, placed any material on record to show that any contract as envisaged by Section 6(f) at any stage existed between M/s. B.P. Consultants on the one hand and the Board, Government, Local Authority, Company or the Corporation referred to in Section 6(f) on the other. In the absence of any such material the mere fact that M/s. B.P. Consultants or the laboratory of Dr. Bangeri was on the list of approved consultants or the respondent-Board would not disqualify the respondent Dr. Bangeri from appointment. I have therefore no hesitation in rejecting the challenge mounted by the petitioners to the appointment in question on that account.

5. That brings me to the question as to whether the 3rd respondent was qualified for appointment as Chairman, keeping in view the requirements prescribed for the said post by Section 4(2) of the Act. Section 4(2) reads thus:

"Section 4(2): A State Board shall consist of the following members namely:-

(a) a Chairman, being a person having special knowledge or practical experience in respect of (matter 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:

(provided that the chairman may be either whole-time or part-time as the State Government may think fit;)

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

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

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

(e) two persons to represent the companies or corporations owned, controlled or

managed by the State Government, to be nominated by that Government;

(f)a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government)".

6. A plain reading of the provision shows that in order to be qualified for appointment as Chairman the person concerned must have special knowledge or practical experience in respect of matters relating to Environmental Protection. Persons having knowledge and experience in administration of institutions dealing with the matters aforesaid, are also made eligible for appointment. In the instant case, the appointment of Dr. Bangeri, is sought to be justified on the ground of his possessing special knowledge or practical experience in matters relating to Environmental Protection. It was admitted by Counsel appearing for the parties that the said respondent did not have any knowledge or experience in administering institutions dealing with matters pertaining to Environmental Protection. It was also not disputed that before his appointment as Chairman of the respondent-Board, Dr. Bangeri, was working as a lecturer in Zoology in a Pre-University College at Mundgod, North Kanara and had thus held no position in any institution dealing with Environmental Protection so as to give him any knowledge or experience in administering such institutions. According to the Petitioners, Dr. Bangeri, had earlier made an abortive attempt to get appointed as a Scientific Officer, on deputation with the Department of Ecology Environment and Forests. Having failed to secure an appointment against a much lower position, the said respondent had managed to get appointed against a much higher post in the Board only on account of his political connections, lack of the mandatory special knowledge and practical experience relating to Environmental Protection notwithstanding.

7. The respondents have, however, tried to justify the appointment on the basis that Dr. Bangeri possessed special knowledge and practical experience in respect of matters relating to Environmental Protection. Dr. Bangeri has in particular referred to and heavily relied upon certain research papers and books authored by him, showing his specialised knowledge in respect of effect of industrial pollutants on fish life. According to the said respondent, the publications in question sufficiently establish him as an ecologist with sufficient Research experience no matter limited to the effect of industrial pollutants on fish. He has also relied upon his Post-Graduate Degree in Zoology and research on fresh water fishes, in support of his claim that he possessed the requisite special knowledge and practical experience in matters relating to Environmental Protection.

8. The crucial question that falls for consideration then is whether or not the petitioner was qualified in the context of the cases set up by the parties for appointment as Chairman of the Board by reference in particular to Section 4(2) of the Act. The question, in other words, is as to what should constitute special knowledge or practical experience "in respect of matters relating to

Environmental Protection". The Act does not define the expressions "Special Knowledge" or "Practical Experience" nor is the expression "matters relating to Environmental Protection", defined. When seen in the light of the functions of the Board as set out in Section 17 of the Act, matters relating to Environmental Protection would present a broad spectrum beginning with planning of comprehensive programmes for prevention, control and abatement of pollution of streams and wells and ending with laying down of standards of Sewerage and trade effluents and advising the State Government as regards the location of the Industries. The expression "matters relating to Environmental Protection" is therefore of wide amplitude taking within its sweep not only matters relating to formulation of plans and policies regarding pollution control but dissemination of information, conduct of investigation and research. Inspection of sewerage or trade effluents works and plants for the treatment of sewerage and laying down and/or modifying the effluent standards etc. Suffice it to say that in the absence of any specialised assistance know-how or expertise, it would be difficult, if not impossible, for this Court to examine the credentials of a person claiming to possess such knowledge on the basis of the research work done or the academic qualifications acquired by him. In a writ of quo warranto, the Court is primarily concerned with examining whether the person appointed to the public Office possesses the requisite qualification prescribed. It is necessary that the Court should be in a position to authoritatively answer the question one way or the other before granting or refusing relief. Such a course may be relatively easy in cases where the statute governing the appointment prescribes conditions of eligibility for appointment in terms of academic qualifications. In any such case, all that the Court would be required to examine is whether or not the person appointed possess the requisite qualification. The position, however, is different where the qualification prescribed is not by reference to any academic degree or other achievement but on the basis of special knowledge or practical experience possessed by the person appointed as in the instant case. In a case like the present the Court may have to take assistance of expert bodies while deciding whether or not the person concerned possess the requisite qualification. This difficulty appears to have been noticed even by the State Government, for it is not in dispute that after Dr. Bangeri's initial appointment as Chairman for a period of one year when the question of extension of his tenure arose, the Government, while ordering extension till further orders appointed an Expert Committee to select and recommend a suitable person for appointment as Chairman. This is apparent from Notification dated 18th March, 1996, which extended the appointment of Dr. Bangeri, until further orders and the following order passed by the Chief Minister in regard to the Constitution of an Expert Committee.

"I have examined all aspects of the matter and I direct that following action to be taken in this regard:

(a) Dr. K.V. Bangeri may be continued as Chairman, Karnataka State Pollution Control Board until further orders;

(b) Dr. Shivalingaiah may be continued as Member Secretary until further orders;

(c) To constitute an Expert Committee consisting of three members in the field to make recommendations about the appointment of Chairman and Member-Secretary. The proposal for constitution Expert Committee may be put up to me alongwith terms of reference".

9. Pursuant to the above order, the Government appointed an Expert Committee to search and recommend a panel of candidates for appointment to the post of Chairman by a Government Order No. FEE 2 EPC 94, Bangalore, dated 28th March, 1996. The order being vitally important for the disposal of this petition may be extracted in extenso:

"Proceedings of the Government of Karnataka

Sub: Constitution of an Expert Committee to recommend a panel of names for appointment to the post of Chairman, Karnataka State Pollution Control Board.

ORDER

No. FEE 2 EPC 94, Bangalore, dated 28th March, 1996

Government are pleased to constitute the following Expert Committee to search and recommend a panel of candidates for appointment to the post of Chairman, Karnataka State Pollution Control Board, Bangalore.

1.

Development Commissioner.

Chairman.

2.

Sri Gulam Ahmed, Retd. Engineer-in-Chief and Former Chairman, Karnataka State Pollution Control Board.

Member.

3.

Dr. H. Sharathchandra, Prof, and Head of Department of Micro-Biology, Indian Institute of Science, Bangalore.

Member.

4.

Dr. Cecil J. Saldanha, Centre for Taxonomical Studies, St. Joseph's College, Bangalore and Member, Environmental Clearance Committee.

Member.

5.

Secretary to Government II (Environment and Ecology), Government of Karnataka and Chairman, Environmental Clearance Committee.

Member Convenor.

Terms of Reference.-

1.The Committee, in the first instance, will prepare a preliminary panel of five candidates for selection to the post of Chairman, KSPCB.

2.The Committee will thereafter select from these five candidates a panel of two names for the final selection by the Chief Minister.

3.The selection process shall be completed within a period of sixty days from the date of this Order.

4.While selecting the panel, the Committee shall take into consideration:

(a)The requirements of the Water (Prevention and Control of Pollution) Act, 1974. The Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986 and other related laws;

(b)The technical qualifications of the candidates -- preferably a Doctorate Degree in the disciplines of Environment, Ecology and Bio-Sciences;

(c)Professional competence and field experience as evidenced from personal tract records;

(d)Original contributions in the form of research papers in Environmental Science, Pollution Control and such related fields;

(e)The current or former official status of the individual, at least a Professor, a Chief Engineer or a Head of the Department; and

(f)An impeccable personal reputation.

By order and in the name of the Governor of Karnataka,

Sd/- 28-3 (M.D. Ravindranath), Under Secretary to Government, Department of Forest, Ecology and Environment".

10. A perusal of the above would show that the Committee comprised two experts in the field besides the former Chairman of the Board, apart from the Development Commissioner as its Chairman and the Secretary to Government Environment and Ecology as its member-convenor. The terms of reference, required the process of selection to be completed within a period of 60 days, recommending two names for the final selection by the Chief Minister out of a panel of five to be drawn up by the Committee. The selection, it is apparent from Para 4 of the order, was to be made keeping in view the requirements of the relevant enactments the technical qualifications of the candidates, their professional competence and field experience and the contributions made by them in the form of research papers in Environment Science, Pollution Control

and such related fields. The Committee examined the credentials of Dr. Bangeri, apart from eight others and eventually recommended three persons in the order of priority for appointment as Chairman of the Board:

- (1) Dr. R. Venkatraman;
- (2) (a) Mr. B.N. Thyagraja;
- (b) Dr. B. Shivalingaiah.

While the matter stood thus, Sri P.C. Siddanagoudar, the then Minister for Sugar, Textiles, Science and Technology, Environment and Ecology, appears to have recommended the case of Dr. Bangeri to the Chief Minister for appointment as Chairman for a period of three years u/s 4(2)(a) read with Section 5(1) of Water (Prevention and Control of Pollution) Act, 1974. According to the Hon'ble Minister Dr. Bangeri, was eminently suited for the job and had been discharging his functions as Chairman quite satisfactorily. As to how the need for recommending the appointment of Dr. Bangeri, arose when the matter stood referred to the Expert Committee is not very clear from the note recorded by the Minister on the file nor is it clear as to how the Minister proposed to justify the reversal of the steps already taken by the Government in the direction of identifying a suitable person for appointment as Chairman. Incidentally it was the same Hon'ble Minister who had on his own recommended Dr. Bangeri for the first time for appointment as Chairman in his letter dated 26th December, 1994, addressed by him to the Chief Minister. The communication sent by the Minister did not disclose the process by which he had picked up Dr. Bangeri, for recommending his name as Chairman. Official record in fact gives an impression as though the Minister was satisfied not only as to the eligibility of Dr. Bangeri but also his suitability to hold the post. This is apparent from the note recorded by the Hon'ble Minister in the light of the opinion tendered by the Special Secretary to the Government expressing doubts whether Dr. Bangeri, was the proper choice for appointment against an important post like the Chairman of the Pollution Control Board.

11. The English translation of the Note as furnished by Mr. Udaya Shankar, reads thus. -

"Nothings of the then Minister of Environment and Ecology

(Para 8) I have considered in detail the opinion tendered by the Special Secretary at paras 1 to 5.

I believe that the comments made by the Special Secretary regarding qualification and other matters pertaining to Dr. K.V. Bangeri are tendentious. (Para 9) The qualification and experience possessed by Dr. K.V. Bangeri meets the requirements of this post in large measure as Environmental Science is an "inter-disciplinary science" and Dr. Bangeri has got expertise and also knows the subject. There is no doubt about this. It is pertinent to note that previously a Mechanical Engineer was appointed to this post.

Orders or the then Chief Minister

Be appointed for one year (probationary). If he shows expertise in his work, the matter be again reconsidered.

Sd/-12-11-1995 Chief Minister".

12. In the meantime while the Expert Committee had yet to submit its recommendations, the Chief Minister appears to have received a communication dated 6th of July, 1996 from Sri A.B. Patil, a former Minister recommending Dr. Bangeri, for appointment as Chairman of the Board for a period of three years u/s 4(2) of the Water (Prevention and Control of Pollution) Act, 1974. The Chief Minister on the very same day, sent out a note directing the Chief Secretary to issue the necessary orders for immediate appointment of Dr. Bangeri as Chairman for a period of three years. The note reads thus:

"Placed below is the letter from Sri A.B. Patil, former Minister regarding appointing Dr. K.V. Bangeri as Chairman, Pollution Control Board.

The Chief Secretary to issue necessary orders immediately appointing him as Chairman, Karnataka State Pollution Control Board for a period of 3 years from today as per Section 4(2)(a) of Water Act, 1974.

Sd/- (J.H. PATEL)"

13. The above direction issued by the Chief Minister, it is obvious, is totally opposed to the decision earlier taken by the Government and culminating in the issue of Government Order dated 28th March, 1996. Neither the note of the Hon"ble Chief Minister nor the official record produced by Mr. Uday Shankar sets out the justification behind this somersault, that too while the Expert Committee had already short listed the candidates and held a number of meetings to finalise its recommendations. What is disturbing is that the decision to appoint Dr. Bangeri is taken for no better reason than a recommendatory letter received by the Chief Minister from a former Minister; without so much as getting the matter examined at the appropriate level, for at least finding out whether Dr. Bangeri was or was not even eligible to hold the post. Even assuming that the direction to appoint Dr. Bangeri was issued by the Chief Minister in ignorance of the earlier decision and the Government Order issued on the subject, although I find it difficult to attribute such ignorance to the head of the State administration, yet there was no way an appointment to an important statutory position could be ordered in such a fashion. Before formal orders of appointment could be issued, the Expert Committee's recommendations were received by the Government. The recommendations were as under:

"Recommendations

The Committee, after careful consideration of the five candidates as at Annexure-II, recommend the following, in order of priority, for consideration of Government:

(1) Dr. R. Venkatraman

(2) (a) Mr. B.N. Thyagaraja;

(b) Dr. B. Shivalingaiah.

In the view of the Committee both MR. B.N. Thyagaraja and Dr. Shivalingaiah are equally placed, and therefore, they are shown at serial 2 as priority two. The Committee found it difficult to distinguish between the two and hence both of them have been bracketed together at priority two.

Sd/- Sd/- (J.K. ARORA) (H. SHARATHCHANDRA), 22-7-1996 22-7-1996 Development Commissioner Prof. and Head of Department cum Agricultural Production of Micro-Biology, Commissioner and Chairman Indian Institute of Expert Committee. Science, Bangalore and Member, Expert Committee.Sd/- Sd/- (CECIL J. SALDHANA) (A.C. LAKSHMAN) 22-7-1996 22-7-1996 Centre for Taxonomical Secretary Studies, St. Joseph's College, to Government II, (Environment Bangalore and Member, and Ecology), Government of Expert Committee. Karnataka and Member Convenor, Expert Committee".

The Principal Secretary to Government FEE Department made a reference to the above and submitted the file to the Chief Secretary who in his note dated 27th July, 1996, indicated that the Chief Minister's order regarding appointment of Dr. Bangeri, appears to have been issued in ignorance of the earlier policy decision taken on the subject. More importantly, he pointed out that Committee had considered the candidature of Dr. Bangeri, alongwith others and found him unsuitable, in that the Committee had recommended the names of three other persons for appointment. The Chief Secretary accordingly recommended to the Chief Minister the appointment of Sri R. Venkataraman, the first choice of the Expert Committee as Chairman of the Board for a period of three years with immediate effect. This recommendation made by the Chief Secretary happens to be the last note recorded on the file whereafter the Government have taken no decision, in the matter. There is nothing on record to suggest that the note prepared by the Chief Secretary was at any stage submitted to the Chief Minister nor have the reasons for not doing so been disclosed. The position that exists today therefore is that an interim arrangement made by the Government continues even when the Expert Committee appointed for the purpose has on the basis of a thorough exercise conducted by it, made its recommendations identifying three persons who in its opinion were the most suitable persons for appointment as Chairman of the Board.

14. Mr. Vasudeva, learned Counsel appearing for the petitioner argued that the very fact that the Committee had considered the candidature of Dr. Bangeri, also and omitted to recommend his name for appointment established that Dr. Bangeri, was not considered to be qualified for appointment, so that his continuance as Chairman despite the said finding was tantamount to his usurping a public office. It is true that the recommendations made by the Committee do not include the name of Dr. Bangeri, but it is difficult to hold on that basis alone

that Dr. Bangeri was considered ineligible for appointment by the Committee. The recommendation submitted by the Expert Committee does not indicate the reasons for not including the name of Dr. Bangeri or others left out by it. While it is possible that Dr. Bangeri, may as well have been considered unqualified to hold the position, yet it is also possible that the Committee may have excluded his name on account of the others being considered more meritorious and suitable for the job. In the absence of disclosure of the reasons for Dr. Bangeri's exclusion from the panel recommended by the Committee it is not possible to hold that the said exclusion was relatable only to his being ineligible. What is, however, clear from the recommendations made by the Committee is that Dr. Bangeri, was not considered to be one of the possible choices in the opinion of the Committee. The Committee has recommended only three names excluding all others. Such being the position, the Government ought to have quickly taken a decision accepting one of the three names recommended by the Committee instead of sleeping over the matter and thereby frustrating the very purpose underlying the constitution of the Committee and the exercise undertaken by it. I say so because having appointed an Expert Committee to identify a suitable person for appointment and keeping in view the fact that the selection of the person concerned, was a matter which was best left to the expert in the field the Government would have had a very limited role to play on the submission of the recommendations. All that could perhaps be considered was whether the Government had any serious objection to the appointment of one out of those recommended by the Committee of Experts. Any such objection in order that it may give the decision the much needed objectivity, had to be real and substantial and not a mere pretence only to ignore or reject the recommendations made. Recommendations made by expert bodies constituted with the object of selecting the most qualified and the best suited candidate, to important public offices have to be respected by the Government as much as by the Courts unless the entire process of selection is shown to be vitiated by a legal or procedural vice which it may be difficult to countenance. No such illegality has been pointed out by the respondents, which could warrant the rejection of the panel submitted by the Committee. What was argued by Mr. Janardhan learned Senior Counsel appearing for Dr. Bangeri was that the power to accept or reject the recommendation vested entirely with the State Government; and that the latter could not be directed to necessarily accept the recommendations made to it. That is not, however, a universally true statement of law. Whether or not the recommendations made to the Government are binding upon it is a matter that would depend upon a variety of factors most important out of them being the statutory requirements, if any prescribed; and the background in which the recommendations are made. But what is clear is that even when recommendations made to the Government may not be per se binding, the power of the Government to ignore the same is circumscribed by the existence and disclosure of valid grounds for doing so. There is nothing like an arbitrary uncanalised naked power to reject a recommendation made to it by a body of experts nominated by the Government itself for a purpose which fully

justified the setting up of such a body nor can any such power be assumed or arrogated to itself by the Government. The following passage from the decision of the Supreme Court in *Rohtas Industries Vs. S.D. Agarwal and Others*, is in this regard instructive:

"In public regulation of this sort there is no such thing as absolute and untrammelled "discretion" that is that action can be taken on any ground or for any reason that can be suggested to mind of the Administrator no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however, capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but, they are always implied as exceptions. "Discretion" necessarily implies good faith in discharging public duty; there is always a perspective within a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption".

15. Reference may also be made to Wade's Administrative Law, 6th Edition, whereafter indicating that "the powers of public authorities are essentially different from those of private person", it has been succinctly stated at pages 400 and 401 as under:-

"The whole conception of unfettered discretion, is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American Law, it is equally prominent in French Law. Nor is it a special restriction which fetters only local authorities; it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration; it operates wherever discretion is given for some public purpose, for example, where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plenty this can have no application in public law.

For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere".

16. In the totality of the above circumstances therefore, I allow this petition but only in part and to the extent that the State Government shall take a final decision on the recommendations made to it by the Expert Committee in its report dated 22-7-1996 and pass appropriate orders on the subject within a

period of three months from today. The interim arrangement made by the Government in appointing respondent 3 as Chairman of the Pollution Control Board shall however continue for the above period of three months or till the decision is taken by the Government which ever is earlier. The petitioners shall also be entitled to costs assessed at Rs. 2,000/- only.