

(2006) 01 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No. 9852 of 2004

Karnataka Urban Water Supply and Drainage Board
Employees' Association and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 226, 227
Karnataka Urban Water Supply and Drainage Board Act, 1973 — Section 4 (2), 6, 68,
68 (2) (b), 68 (2) (c)

Citation : (2006) 1 KarLJ 448

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Ashok Haranhalli, for the Appellant; B.T. Parthasarathy, General and S.Z.A. Khureshi, Government Pleader for Respondent No. 1, Udaya Holla for Respondent No. 2 and P.S. Rajagopal, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The first petitioner is the Trade Union and the second petitioner is its President. They have filed this writ petition for a writ of quo warranto declaring that the appointment and continuation of the third respondent as Managing Director of the second respondent-Karnataka Urban Water Supply and Drainage Board is illegal and for grant of consequential reliefs.

2. The first respondent-State Government appointed the third respondent as the Managing Director of the Board with effect from 31-1-1998 as per the Notification at Annexure-D. On the date of such appointment, third respondent was working as Chief Engineer of the second respondent-Board. Therefore, the petitioners herein preferred a writ petition before this Court in W.P. No. 44001 of 1995, dated 12-4-2002 (Karnataka Urban Water Supply and Drainage Board Employees' Association v. State of Karnataka and Ors. ILR 2002 Kar. 2435) challenging the aforesaid appointment. The main ground of attack was, the said appointment made in pursuance of the amendment to the Regulation is contrary

to Section 7(1)(d) of the Karnataka Urban Water Supply and Drainage Board Act, 1973 (for short hereinafter referred to as the "Act")-The said writ petition was contested by the very respondents in this writ petition. It was contended that the petitioners have not locus standi to prefer the writ petition. The appointment was made strictly in accordance with law and therefore no writ of quo warranto could be issued. The learned Judge who heard the matter, by a considered order dated 12-4-2002, held that the writ petition is maintainable, the petitioners have locus standi to maintain the writ petition, the amendment was contrary to Section 7(1) (d) of the Act and consequently the third respondent did not possess the requisite qualification to be appointed as the Managing Director of the second respondent-Board. Therefore, he allowed the writ petition declaring that the third respondent is disqualified to hold the post of Managing Director. Aggrieved by the said order, all the respondents preferred writ appeals before this Court in W.A. Nos. 2877 and 2878 of 2002. In the said writ appeals, an interim order staying the order of the learned Single Judge was granted. By virtue of the said order, the third respondent was continued to hold the post of Managing Director till 31-1-2004 on which date he retired on reaching the age of superannuation.

3. On the date of his retirement, a notification came to be issued appointing the third respondent as the Managing Director on contract basis with effect from 1-2-2004 until further orders. It is the said order of appointment which is challenged in this writ petition, which is produced as Annexure-A, dated 31-1-2004.

4. The petitioners contend that the impugned order of appointment is not made in accordance with the Karnataka Urban Water Supply and Drainage Board Service (Cadre and Recruitment) Regulations, 1985. The regulations provide" that the Managing Director can only be appointed on the basis of selection from among the Chief Engineers of the Board. Only in case suitable candidate is not available, an IAS Offices can be appointed, but should not be below the rank of Secretary to the Government. Regulations do not provide for appointment of the Managing Director on contract basis. As the appointment of the third respondent is made contrary to the Regulations and as he did not possess the requisite qualification to hold the said post and the appointment is made on the date of his retirement from service, the said appointment is illegal and also contrary to the Government circular prohibiting the appointment of a retired personnel and therefore the said appointment is liable to be quashed.

5. After service of notice, all the respondents have entered appearance and have filed their statements of objections.

6. The first respondent-State of Karnataka contends that the petitioners have no locus standi to maintain the writ petition. They contend that the Cadre and Recruitment Rules of the Karnataka Urban Water Supply and Drainage Board Rules, 1974 (for short, "Rules") have been amended on 21-8-2001 specifying the mode of recruitment for all officials of the Board except the post of Managing Director which is duly published on 30-8-2001. Therefore, the appointment of the

Managing Director of the second respondent is governed by Section 4(2) of the Act, which empowers the Government to appoint the Managing Director. The appointment of the Managing Director is outside the purview of the Rules and Regulations framed under the Act and the judgment rendered by this Court in the earlier writ petition has no application. The State has appointed the third respondent with an intention to utilize his vast experience and expertise in the area of water supply and therefore his appointment is legal and valid.

7. Second respondent-Board reiterates the stand of the State Government. They have referred to the earlier proceedings and the order of stay granted by the Division Bench of this Court. They have set out in detail the progress made by the Board under the leadership of the third respondent. They relied on Rule 15 of the Karnataka Civil Services (General Recruitment) Rules, 1977 and contend that the said rules empower the Government to appoint retired Government servants and also for appointment by contract. They have traversed in detail all the allegations made by the petitioners in the writ petition regarding the allegations of misconduct and irregularities committed by the third respondent in course of his employment.

8. Third respondent has also filed a detailed statement of objections substantially reiterating the stand taken by the State Government as well as the Board. In addition, he has denied the personal allegations made against him and contends that as his appointment is strictly in accordance with law and as he fulfills all the required qualification for holding the post for which he is appointed, no writ of quo warranto can be issued.

9. It is to be noticed that the respondents who had preferred writ appeals against the judgment of the learned Single Judge, withdrew the same and the findings recorded by the learned Single Judge has reached finality and binding on all the parties to the proceedings, which finding has a direct bearing on the issues involved in this writ petition also.

10. Learned Counsel for the petitioners Sri Ashok Haranahalli contended that as per the regulations, the third respondent was not a Chief Engineer on the day the impugned notification was issued and therefore he did not possess qualification for being appointed as Managing Director. Secondly, he contended, relying on a Government Circular which is at Annexure-G, dated 23-12-1994, where a total prohibition was imposed by the Government for appointing Government servants or for extending the services after they reached the age of superannuation, and therefore the appointment is contrary to the said regulations and the Government policy. Thirdly, it was contended that neither the Act nor the Regulations and the rules provide for appointment on contract basis. Therefore the said appointment is illegal, one without the authority, and it is liable to be quashed.

11. Per contra, the learned Advocate General appearing for the State contended that the Government has the authority to appoint the Managing Director u/s 4(2)

of the Act, who possesses the prescribed qualification and Rule 3 of the rules provides that the Managing Director shall be a person having experience in administration and capacity in commercial matters and therefore the appointment of the third respondent who satisfies the aforesaid qualification is legal and valid. The third respondent is an expert in the field, the world bank has granted funds for implementation of various projects, they were all time bound projects to be implemented within the stipulated time, failing which the funds earmarked would be withdrawn. It is under those circumstances, they chose to appoint him on contract basis in public interest and therefore no fault could be found with his appointment.

12. Sri Udaya Holla, the learned Senior Counsel appearing for the second respondent-Board took me through the various provisions of the Act and the rules and submitted that the appointment of the third respondent is strictly in accordance with law. The contention of the petitioners that the third respondent did not possess requisite qualification prescribed under the regulations has no substance because in the earlier proceedings this Court has held that the regulations are contrary to the Act, void and ab initio and therefore as the said order has become final, the Board could not invoke those regulations.

13. Sri P.S. Rajagopal, the learned Counsel appearing for the third respondent reiterated the aforesaid contentions and submitted that as the appointment of the third respondent is in accordance with law, there is no substance in this writ petition.

14. In order to appreciate the aforesaid contentions, it is necessary to look into the scheme of the Act, rules and Regulations. Chapter II of the Act deals with constitution of the Board. Sub-Section (2) of Section 4 provides for appointment of Chairman and Managing Director of the Board, and they shall possess the prescribed qualification, and the other Directors shall be appointed by the Government. Section 6 of the Act makes it clear that, all Directors including the Chairman and the Managing Director shall hold office during the pleasure of the Government. Section 7 of the Act deals with disqualification for appointment as Director of the Board. Rule 3 provides for qualification for appointment of the Chairman and the Managing Director. It provides that the Chairman shall be a person having experience in matters concerning public welfare, whereas the Managing Director shall be a person having experience in administration and capacity in commercial matters. Section 4(2) of the Act makes it clear that the Managing Director shall be a whole time officer of the Board and shall be paid Rs. 1500/- per month plus other allowances, such as conveyance allowance, HRA and D.A. at the rates admissible to Class I State Government Servants. Sub-rule (2) of Rule 18 provides that the Board's funds shall be operated by the Managing Director under his signature. The Managing Director shall be the Chief Executive Officer of the Board and shall exercise supervision and control over the acts and proceedings of all the officers and servants of the Board. In the absence of the Chairman the Managing Director shall preside at the meeting of the Board.

Section 68 of the Act provides that the Government, may after previous publication make rules for the purpose of carrying into effect the provisions of the Act and in the said rules they are empowered to provide for qualifications for appointment of and the grant of leave and allowances to the Chairman and the Managing Director of the Board. Similarly, the conditions of services of the Chairman, the Managing Director and the non-official Directors including the payment of any honorarium or sitting fees for attending the meetings of the Board and any other allowances and manner of filling casual vacancies in the office of the non-official Directors of the Board, Government is authorised to make rules. Section 69 of the Act provides for the Board to make Regulations not inconsistent with the Act and the rules for the purpose of giving effect to the provisions of the Act. Sub-section (3) of Section 69 of the Act makes it clear that no regulation or its cancellation or modification made by the Board shall have the effect until the same is approved by the Government. Sub-section (4) of Section 69 of the Act provides that the Government may, by notification, rescind any Regulation made in this section and thereupon the regulation shall cease to have effect.

15. In the earlier proceedings, it has been held that the office held by the third respondent is a public office, which finding has become final. Further, it has been held that the Board has no power to prescribe the method of appointment, qualifications and other service conditions of Chairman and Managing Director of the Board as this power is vested in the State Government under the provisions of Section 68(2)(b) and (c) of the Act by framing rules. u/s 69 of the Act, the Board can make Regulations only in respect of its officers and servants. The Managing Director is not an officer or servant of the Board. Therefore, the Board under the guise of this exercise of power u/s 69 of the Act, included the post of Managing Director in Schedule I to the Regulations by way of amendment. Therefore, the said amendment was held not only contrary to the provisions of Sections 7(1)(d) and 68 of the Act, Rules 3 and 4 of the rules, but also held to be without the authority of law and was struck down as void, ab initio. The said finding also has become final.

16. The appointment of the third respondent on 31-1-2004 which is impugned in this writ petition is not one made under Regulations, it is made under the Act. In the rules framed, the conditions of service of the Chairman or Managing Director of the Board are not prescribed. The said appointment is made by virtue of the power conferred on the Government under sub-section (2) of Section 4 of the Act. Therefore, the power of the Government to appoint the third respondent as the Managing Director cannot be disputed and is also not disputed. What is disputed is the manner in which the said power is exercised and the eligibility of the third respondent to be appointed to the office.

17. In the earlier proceedings this Court held that the regulation providing for qualifications for appointment of the Chairman and Managing Director is contrary to Section 68 of the Act. The said judgment was stayed in appeal, and the third

respondent continued to hold the office. On his retirement he was ineligible to be appointed as the Managing Director under the Regulations. By preferring an appeal against the judgment of the learned Single Judge, the Government was asserting that the Regulations are valid, and therefore when the stay order was operating, the regulation was in force. Therefore, they could not have made appointment ignoring the Regulations and contrary to the same. On the day he was reappointed on 31-1-2004 he had ceased to be a Chief Engineer and therefore he did not satisfy the qualification prescribed under the Regulations as it stood even before the amendment or after the amendment. Therefore, on 31-1-2004, his appointment is illegal, in terms of the Regulations. However, the Government chose to ignore the Regulations, took shelter under the judgment of this Court holding the Regulations ultra vires, and made appointment under the Act, relying on the qualifications prescribed therein. The Government Circular dated 23-12-1994 prohibited reappointment of the employees who retire from service or extending their services after their retirement. The third respondent has been reappointed in the very same post which he held till he retired which is contrary to the said Government Order. Section 4(2) of the Act provides for appointment of the Chairman and Managing Director. In the Act, rules and Regulations, there is no provision for appointment of the Managing Director on contract basis. If by virtue of Article 162 of the Constitution or sub-section (2) of Section 4 of the Act, such a power is exercised by the Government, the question is whether such power is properly exercised and in accordance with law.

18. The contract employment postulate a period for which appointment is made, in contrast to permanent or regular or temporary appointment. If the period is not stipulated, notwithstanding the nomenclature, it is an ad hoc or a stop-gap appointment, the duration of which has to be necessarily very short. If the duration extends to that of a regular appointment, then it ceases to be an ad hoc or stop-gap appointment.

19. The Supreme Court in the case of J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., , held:

... ad hoc employee should be replaced as expeditiously as possible by direct recruits. A little leeway to make ad hoc appointment due to emergent exigencies does not clothe the executive Government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair-play. The latter are the products of order and regularity. Every eligible person not necessarily be fit to be appointed to a post or office under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments.

It has further held:

Existence of statutory rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co-extensive with legislative power of the State and under Article 162, the State can create civil posts and fill them up according to executive instructions consistent with Articles 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointments shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but would only supplement the law.

20. The Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , has held thus:

It is well-settled rule of administrative law that an expectative authority must be rigorously held to be standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of the act, in violation of them.

21. The Constitution Bench of the Supreme Court in the case of *B.N. Nagarajan and Others Vs. State of Mysore and Others*, , held:

... it is not obligatory under proviso to Article 309 to make rules of recruitment etc., before a service can be constituted or a post created or filled. This is not to say that it is not desirable that ordinarily rules should be made on all matters which are susceptible of being embodied in rules. Secondly, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. It follows from this that the State Government will have executive powers in respect of List II, Entry 41, State Public Services. It was settled by this Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, , that it is not necessary that there must be a law already in existence before the executive is enabled to function and that the powers of the executive are limited merely to the carrying out of these laws. We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to Act under Article 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or Act contrary to that rule or act.

22. From the aforesaid statement of law, it is clear that when the Government decides to make an appointment other than one which is provided for under the Act, it is in the nature of an ad hoc appointment till a regular appointment is made. The nomenclature is immaterial. In such circumstances, an ad hoc employee should be replaced as expeditiously as possible by regular employee. A little leeway to make ad hoc appointment due to emergent exigencies does not clothe the executive Government with power to make regular appointments. Back door ad hoc appointments at the behest of power source or otherwise and regular appointments according to Act and rules are mutually antagonistic and

strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair-play. The latter are the products of order and regularity. These ad hoc appointments are therefore de hors the Act and rules. The executive power could be exercised only to fill in the gaps but such power cannot and should not supplant the law but only would supplement the law. Sub-section (2) of Section 4 of the Act does not expressly give the power to the State Government to make ad hoc/contract employment. No express power was conferred and in fact can be conferred. The impugned appointment is not a contract employment, as no period is fixed. To tide over unforeseen exigencies, power to make ad hoc or contract appointment may be visualised. But, it is only a stop-gap arrangement or a temporary arrangement till a regular appointment is made. An executive agency must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observe those standards on pain of invalidation of the Act, in violation of them.

23. In this background, it is necessary to know the law governing the writ of quo warranto, to decide whether the impugned appointment is in accordance with law:

What is quo warranto?

24. In Halsbur's Laws of England, Fourth Edition, Reissue Volume I, Page 368, para 265, it is found as follows.--

265. In general.--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 inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.

25. A Constitution Bench of the Supreme Court in the case of The University of Mysore and Another Vs. C.D. Govinda Rao and Another, , has explained the scope of the writ of quo warranto as under:

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.

26. Yet another Constitution Bench of the Supreme Court in the case of B.R. Kapur v. State of Tamil Nadu and Anr. : AIR2001SC3435 , has held as under:

... A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom a writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification, which debars the person to hold such office.

27. What are the limitations?

A Constitution Bench of the Supreme Court in the case of Statesman (Private) Ltd. Vs. H.R. Deb and Others, , held that the High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law.

28. The Supreme Court in the case of R.K. Jain Vs. Union of India and Others, , held that:

the High Court cannot sit in judgment over the wisdom of the Central Government in the choice of the person to be appointed as a President so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment on the ground that his track record was poor or because of adverse reports on which account his appointment as a High Court Judge had not materialised, is not a ground to interfere with such appointment.

Further it was held that:

Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or procedure adopted whether fair, just and reasonable. Exercise of judicial review is to protect the citizen from the abuse of the power of appointment was conferred on the executive and confided to be exercised wisely. When a candidate was found qualified and eligible and was accordingly appointed by the executive to hold an office as Member or Vice-President or President of a Tribunal, the Court cannot sit over the choice of the selection, but it be left to the executive to select the personnel as per law or procedure in this behalf.

29. The Supreme Court in the case of High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors. AIR 2003 SC 1201 : (2003) 4 SCC 712 : 2003 Lab. I.C. 1521, held that:

the jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. A writ of quo warranto can only be

issued when the appointment is contrary to the statutory rules. The only question which is required to be considered for issuance of quo warranto is whether the person holding the post fulfilled the qualifications laid down under law or not.

30. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointment to public offices, against relevant statutory provisions. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification, which debars the person to hold such office. Judicial review is concerned with whether the incumbent possessed qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. If the appointment is made in breach of statutory provisions of a mandatory nature, such appointment is liable to be quashed. If the High Court finds that a person appointed to the public office is not eligible or qualified to hold the post, the appointment has to be declared invalid by issuing a writ of quo warranto. To strike down usurpation of office is the function and duty of High Courts in the exercise of their constitutional powers under Articles 226 and 227 of the Constitution. This jurisdiction may be exercised not only to quash the initial appointment, but also to quash the continuation in the said office, if such continuation to hold the office has become illegal, though the initial appointment was valid. Public interest in Government Administration requires preventing continuation of usurpation of office. The whole object of these proceedings is to protect the public from usurpers of public office. However, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one. It should be slow to pronounce upon matters unless there is a clear infringement of the law. The High Court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed. Exercise of judicial review is to protect the citizen from the abuse of the power of appointment, which was conferred on the executive and confided to be exercised wisely.

31. It is in this background when we look at the material on record, it is clear that the Government somehow is bent upon appointing the third respondent to the post of the Managing Director though he does not possess the requisite qualification and though he was suffering from disqualification. Prior to 11-12-1997 the method of recruitment which was provided under the Regulations was that on the basis of selection from amongst officers holding the post of Chief Engineer, Grade II in the P.W.D. who have a minimum experience of five years in the field of PHE and Chief Engineers of KUWS and D Board. If no suitable candidate is available, a Senior Chief Engineer of the P.W.D. to be posted on deputation to fill up the vacancy. As the third respondent was not eligible, on 11-12-1997 the Regulation was amended to the effect that the appointment shall be made on the basis of selection from amongst the Chief Engineers of the Board, thus conferring eligibility on the third respondent. After such amendment he was appointed on 28-1-1998 not for a period of one year as prescribed under

the Regulations prior and after amendment, but until further orders. This appointment was made contrary to Section 7(1)(d) which prescribes a disqualification of appointment as a Director of the Board, i.e., an officer or servant of the Board was disqualified for such appointment. Third respondent was an officer of the Board holding the post of Chief Engineer and notwithstanding the amendment of the Regulations he could not have been appointed as Managing Director of the Board. The fact that no period was prescribed and it was stated that his appointment is until further orders was contrary to the very regulations under which the said power was exercised. It is that appointment which was challenged by the petitioner herein before this Court in W.P. No. 44001 of 1995. This Court allowed the writ petition on 12-4-2002, set aside his appointment and directed the Board to make fresh appointment. This Court thus declared that the third respondent is an usurper of the office of the Managing Director from 28-1-1998 till 12-4-2002. By virtue of the interim order of stay granted in writ appeal, the third respondent was allowed to continue in office contrary to the Regulations which had prescribed the period as only one year. The third respondent continued in service till 31-1-2004 on which date as he reached the age of superannuation, he retired from service from the afternoon of 31-1-2004. Even before the ink of the said order could dry, by virtue of the power conferred u/s 4(2) of the Act, the Government appoints the third respondent in the very same post and the said appointment came into effect from the next day i.e., 1-2-2004. Subsequently the writ appeals filed against the order of the learned Single Judge were withdrawn and the judgment of this Court in the earlier writ proceedings became final. Thus, the declaration made by this Court that the third respondent is the usurper of the office of the Managing Director of the Board from 28-1-1998 till he retired from service on 31-1-2004 became final.

32. When they reappointed the third respondent as a Managing Director, this time they did not invoke the Regulations for the reason that the third respondent does not possess the qualification prescribed under those Regulations before or after the amendment. They invoked Section 4(2) of the Act. But the appointment, was on contract basis "(guttige aadharada mele)". The reason given for such appointment in the statement of objections is that there were pending world bank projects to be executed, the work of the third respondent had been widely appreciated and therefore his continuation in the said post is very much necessary in public interest till a regular appointment is made. In other words, it was an ad hoc appointment till a regular appointment is made. The Act and rules do not provide for such contract employment. The Regulations which were invoked earlier provided a term of one year. The third respondent as on the date of reappointment had already enjoyed the office of the Managing Director for a period of six years uninterruptedly. The circular issued and referred to supra clearly prohibited such contract appointment of the persons who have already retired from service. Therefore, it is in this background the Government is persisting in the appointment of the third respondent and his contamination

without prescribing the term of office and under the guise of "until further orders" he is now continued nearly for two years. It is the land of Bharat Ratna Sir M. Visweswaraiah. It has produced engineers of international repute in abundance. There is no dearth for talent even now. It is an insult to the 5 crores people of Karnataka to say that any one is indispensable. If the Government of the day is unable to identify a competent person in two years time after the impugned appointment, it only shows the vision of the Government has blurred, which requires remedial measure. It also would dent the reputation of the State of Karnataka as one of the well-administered State. What is at stake is the public interest. The manner in which the Government has exercised its power of appointment and permitted such ad hoc/contract appointee to continue in office for nearly two years is arbitrary and is a negation of fair-play. The only inference that could be drawn is he is a blue eyed boy of the Government. rules are no rules, he is enabled to occupy the said post. Change of Government also did not make any impact on this appointment. Therefore, the conduct of the Government is not fair, just and reasonable. It is nothing but a gimmick. It is not a bona fide exercise of executive power of appointment. On the contrary it is a clear case of abuse of the power of appointment.

33. From the aforesaid material and foregoing discussion, it is clear the finding recorded in the earlier writ proceedings to the effect that the office in question is a public office, and the petitioners have locus standi to maintain the writ petition challenging the appointment of the third respondent to the said public office has become final and operates as res judicata in this proceeding and, therefore, the said issues cannot be reagitated over again. The further finding recorded that the appointment of third respondent as Managing Director of the Board with effect from 31-1-1998 as illegal as he was disqualified to hold the post also has become final. The resultant position is that the third respondent is a usurper of public office during the period 31-1-1998 to 31-1-2004 totally for a period of six years. Because of the stay order in appeal, on 31-1-2002 when he was reappointed to the same post, the said appointment is also illegal, as he did not possess the requisite qualification under the Regulation. His continuation in the said office under the guise of contract appointment, until further orders de hors the Act and rules nearing two years is illegal. Thus, the third respondent has usurped the office and continued in office uninterruptedly for eight years. It is a negation of rule of law, in a democratic set up governed by a written constitution. The exercise of the power of appointment by the Government is not bona fide. Public interest in administration requires preventing of continuation of usurpation of office. Hence, the third respondent's continuation in office is to be prevented by making appropriate declaration by issue of a writ of quo warranto.

34. Hence, I pass the following:

ORDER

(a) Writ petition is allowed;

(b) The appointment of the third respondent as Managing Director on contract basis with effect from 1-2-2004 as per Annexure-A and his continuation in the said office nearing two years is illegal and he is an usurper of the said public office;

(c) A writ of quo warranto shall issue ousting the third respondent from the office of the Managing Director of the Karnataka Urban Water Supply and Drainage Board.

No costs.