
(2002) 02 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 27827 of 2001

Parameswaran

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 ILR (Ker) 80

Hon'ble Judges : B.N. Srikrishna, C.J;K. Thankappan, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; M. Retna Singh and T.R.G. Warriar, for the Respondent

Judgement

B.N. Srikrishna, C.J.—This Writ Petition under Article 226 of the Constitution of India, in public interest, seeks a writ of mandamus and several directions to the respondents for laying down guidelines for appointment of persons as Chairpersons of Public Sector Undertakings, Statutory Corporations and Boards.

2. The petitioner is an Advocate practising in the High Court of Kerala as well as other courts within and outside the State of Kerala. He also is a former President of the Kerala High Court Advocates' Association and is the General Secretary of Indian Association of Lawyers, Kerala Chapter and Chairman (Seminars) of the Samatha Law Society. The respondents are the State of Kerala, the Chief Minister, Government of Kerala, and Smt. Padmaja Venugopal, Chairperson, Kerala Tourism Development Corporation Ltd., Trivandrum.

3. It is the case of the petitioner that Chairpersons of Public Sector Undertakings, Statutory Corporations and Statutory Bodies are appointed, not on the basis of merits, but on the basis of their connections with the politicians in or out of power. It is also alleged that all such appointments are motivated by favouritism and nepotism and intended to create dynastic rulership. The petitioner relies on a report in the New Indian Express in its issue dated 18th August 2001, wherein the Honourable Minister for Tourism, Sri. K.V. Thomas is reported to have stated

that the appointment of third respondent, Smt. Padmaja Venugopal, was a political appointment. According to the petitioner, the appointment was made by the Minister for Tourism and that the Chief Minister of Kerala approved the appointment on account of political compulsions. It is contended that such Chairpersons appointed on political considerations are neither technically qualified, nor educated in the subject which they are required to handle in the Public Sector Corporation under their leadership, though they are given wide powers to decide and dictate policies of such Public Sector Undertakings. It is specifically averred (vide para 8) that the offices of Chairpersons of different Public Sector Undertakings are distributed by way of sharing of the "spoils of office", to different political parties. Politics, Caste, Nepotism and Favouritism are alleged to be the bases on which the Chairpersons of Public Sector Undertakings are appointed, prejudicially affecting the economic and administrative health of the State.

4. The first respondent, State of Kerala, has filed a detailed counter affidavit in which the averments in the petition have been traversed. Interestingly, it is stated in the affidavit that, Chairpersons are appointed on part-time basis and their functions are to act, according to rules and regulations prescribed under the Indian Companies Act. If the public undertakings are statutory bodies, the statutory rules would govern the appointment of Chairpersons; in case they are Government Companies, the Board of Directors would decide the policies and Chairpersons are appointed in compliance with the provisions of the Companies Act. Generally such part-time Chairpersons are given honoraria of Rs. 2,000 per mensem, sitting fee for attending the meetings of the Board and sub-committees at the prescribed rates, T.A. for attending the above meetings, a car for official trips, telephone and certain other facilities. It is claimed that usually public personalities, senior officers or known professionals are appointed as Chairpersons of Corporations/Boards. It is also claimed that the third respondent, Smt. Padmaja Venugopal, has been appointed as Chairperson of the Kerala Tourism Development Corporation (hereinafter referred to as "K.T.D.C."), in exercise of the powers" vested in the State Government by the Articles of Association of K.T.D.C. The State admits in para 6 of the counter-affidavit that, "these are all politically recognised appointments and the same has been accepted as well-settled democratic practice. The predecessor in office of the 3rd respondent was the recipient of political patronage from the previous Ministry. But, that by itself is not a factor to be deprecated if the incumbent is otherwise competent and enjoys the complete trust and confidence of the Government".

5. The State Government submits that, apart from the qualifications required under the Companies Act, 1956 and the Memorandum and Articles of Association, the Chairperson need not possess any other qualification unless he/she is the Chief Executive of the organisation. What is considered is the "general acceptability of the person chosen, having regard to his ability to organise the affairs of the Public Sector Undertakings, which have weighed with the appointing authority in the past". Again, it is pointed out that Chairpersons are appointed

having due regard to their proven ability in the various fields. The State contends that the appointment of Civil Servants to head Public Sector Undertakings did not always prove successful. It is also not mandatory to fix norms or regulations prescribing qualifications for posts. The Council of Ministers have now decided that incumbents should possess the qualifications prescribed for being elected as a Member of the Legislative Assembly, besides being eligible under the Companies Act. Even if the person possess the above qualifications, that person would not be appointed, unless he/she enjoys the complete trust and confidence of the Government.

6. The State contends that the post of Chairperson in Public Sector Undertakings and Statutory Corporations is not a civil post coming within the ambit of Public Service Commission. The administration and implementation of the policy of the Government is done by the Chief Executive of the undertaking, who would have sufficient qualification, experience and knowledge. The object behind posting public men as Chairperson is that they would be able to "organise things in accordance with the popular will". It is stated that, in cases where policies are to be evolved, public men are well suited, because they have the capacity to reflect people's aspirations in the respective Corporations. No discredited political leader is appointed as Chairperson in a Public Sector Undertaking. The State maintains that political leaders in the State appointed as Chairpersons, in the opinion of the Government, are capable of doing the functions of such Chairperson. Dealing with the allegation that the appointments were on the basis of "spoils system", in para 19, the Chief Secretary of the State specifically says: "..... the Government has the discretion to appoint Chairmen to the Public Sector Undertakings and the same is not liable to be interfered with by the courts. The basis of this power is the principle of "spoils". The exercise of this power is in accordance with the constitutional concept".

7. With regard to the appointment of the third respondent as Chairperson of the K.T.D.C., it is contended that it is, "at the discretion of the Government. She is a graduate and she fulfils the eligibility criteria to be the Chairperson. She is not disqualified under any provisions of law". The Chairperson of K.T.D.C. is given honorarium, T.A., D. A. and other perquisites as per the existing guidelines issued by Government which are applicable to all Public Sector Undertakings. It is, therefore, urged that the Writ Petition should be dismissed.

8. At Annexure R1(a) to the counter affidavit of the State is a statement showing the manner of appointment of Chairpersons to 44 different Public Sector Undertakings, the details of the facilities enjoyed by them, annual financial expenditure, and whether the Chairpersons were part-time or full-time.

9. The third respondent has filed a counter affidavit in which she generally denies the allegations made in the Writ Petition, and puts forward the same justification as given in the counter affidavit of the first respondent. She states that the main object of the K.T.D.C. is, "to promote and operate schemes for the development of Tourism and Handicrafts in Kerala". She states that she is a graduate and

appointed to the Board of Directors of K.T.D.C. by the Government's Order, dated 18th August 2000 as a member and also as the Chairperson of K.T.D.C. She claims to be fully qualified to be the Chairperson of K.T.D.C. as she has the prescribed qualifications under the Companies Act, Memorandum and Articles of Association of K.T.D.C., and does not have any of the disqualifications prescribed thereunder. According to her, the only functions of the part-time Chairperson are: (a) to preside over the meetings of the Board of Directors or its Sub committees, if any, and (b) to approve the minutes of such meetings. The part-time non-official Chairperson is given Rs. 2000 per mensem as honorarium, allowed T.A. only for the purpose of attending the Board Meetings or other Sub-committee meetings. No other tours could be undertaken by the part-time Chairperson on official grounds, unless specifically approved by the Government. She too urges for the petition to be dismissed.

10. The petitioner contends that there is a distinction between appointment of Chairpersons to the Board of Directors of a private body and a body controlled by the State. As far as non-Government companies are concerned, it is the privilege of the shareholders to appoint any person as Chairperson. Such non-Government companies are intended for making profits for the shareholders, and as long as such Chairpersons enjoy the confidence of the shareholders in implementing the policy of maximising their dividends and the profitability of the company, no other specific qualifications are called for. In the case of Government Companies or Public Sector Undertakings, all shares are held by the State. It is the State, in the name of the Governor, which makes the appointment of the Chairperson. The State is not entitled to say that the person may be appointed at its discretion, merely on the ground that persons in power have reposed confidence in that person. He contends that arbitrariness is anathema to the Constitutional guarantee under Article 14. While the State may claim the right to appoint such Chairpersons, it cannot claim arbitrary power in the name of discretion even in such appointment.

11. Sri. Parameswaran contended that the so-called qualifications put forward, namely, the qualification of a Director under the Companies Act, and qualification for being elected as a Member of the Legislative Assembly, are merely illusory. There may be thousands of persons with these qualifications. If the State Government wants to justify the appointment of a particular person from amongst those persons, there should be some manner or guideline for choosing the person. The selection cannot be arbitrary or based on irrelevant considerations, like nepotism, favouritism or political connection. He also contended that "spoils system" is anathema to the Rule of Law and the Constitutional ethos of the country. The fact that the Chief Secretary in his affidavit admits that the appointments are the result of spoils system should be sufficient for the Court to interdict all such appointments and restrain the State from making the appointment on the basis of spoils system, according to the petitioner. The petitioner has attempted to justify his stand by reference to several Judgments of the Supreme Court to which we shall now advert.

12. In *Common Cause, A Registered Society Vs. Union of India (UOI) and Others*, the Supreme Court was concerned with the allotment of petrol pumps, oil agencies and gas agencies by the Central Government, the Supreme Court reiterated the observations made in its earlier Judgment in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, at pp. 1637-38 as following:

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down".

The Supreme Court also pointed out that allotments in question had been made by the Minister either on the ground of poverty or unemployment. Assuming that the allottees belonged to either of these two categories, then how the Minister had selected them out of millions of poor and unemployed in this country was not known. Since no criteria were laid down, nor guidelines kept in view, and no applications were invited, none knew how many petrol pumps were available. The allotment were thus made in an arbitrary and discriminatory manner.

13. In *Common Cause's* case (*supra*), at para 21, the Supreme Court stated:

"The Government today-in a welfare State -provides large number of benefits to the citizens.

It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts quotas and licences etc. Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the peoples" property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people. We have no hesitation in holding that Capt. Satish Sharma in his capacity as a Minister for Petroleum and Natural Gas deliberately acted in a wholly arbitrary and unjust (sic-unjust) manner. We have no doubt in our mind that Capt. Satish Sharma knew that the allottees were relations of his personal staff, sons of Ministers, son/relations of Chairmen and members of the Oil Section Boards themselves. The allotments made by him were wholly mala fide and as such cannot be sustained."

The Court held that there was no justification, whatsoever, to pick up the persons except that they happen to have won the favour of the Minister on mala fide

considerations, and that the exercise of discretionary power is wholly arbitrary and not permitted by Article 14 of the Constitution. It then said:

"....A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective criteria/procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications upto the stage of passing the orders and the reasons for allotment should be available for public knowledge and scrutiny. Mr. Shanti Bhushan has suggested that the petrol pumps, agencies etc. may be allotted by public auction-category-wise amongst the eligible and objectively selected applicants. We do not wish to impose any procedure on the Government. It is a matter of policy for the Government to lay down. We, however, direct that any procedure laid down by the Government must be transparent just, fair and non-arbitrary".

In *Ramanna Dayaram Shetty (supra)*, the Supreme Court held:

"it must, therefore, be taken to be the law.... that even in the matter of grant of largesses including award of jobs, contracts, quotas and licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would be violative of the law of the land."

14. The petitioner relied on the observations of the Court of Appeal in *Tamlin v. Hannaford* 1950 (1) KB 18, wherein it was pointed out thus:

"The British Transport Corporation, a statutory Corporation brought into existence by the Transport Act, 1947, had many qualities of Corporations of other kinds, but many differences. The English Court pointed out that the significant difference is that in such Corporations there are no shareholders to subscribe the capital or to have any voice in its affairs. The money which the Corporation needs is not raised by the issue of shares but by borrowing; and its borrowing is not secured by debentures, but is guaranteed by the Treasury. If it cannot repay, the loss falls on the Consolidated Fund of the United Kingdom; that is to say, on the taxpayer. There are no shareholders to elect the directors or to fix their remuneration. There are no profits to be made or distributed. The duty of the Corporation is to make revenue and expenditure balance one another, taking, of course, one year with another, but not to make profits. If it should make losses and be unable to pay its debts, its property is liable to execution, but it is not liable to be wound up at the suit of any creditor. The taxpayer would, no doubt, be expected to come to its rescue before the creditors stepped in. Indeed, the taxpayer is the universal guarantor of the Corporation. But for him it could not have acquired its business at all, nor could it now continue it for a single day. It

is his guarantee that has rendered shares, debentures and such like all unnecessary. He is clearly entitled to have his interest protected against extravagance or mismanagement".

15. The petitioner referred to the decision of the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, . In this case, the Supreme Court was concerned with the discharge from service of a large number of law officers. It was urged before the Supreme Court that law officer is a public office in which reposing of trust is of paramount importance and if the Government of the day is not able to repose confidence, the Government would be justified in discharging such law officers. The Supreme Court negated the contention by holding that law officers were recognised by statutory provisions and also by the rules of their appointment. Even if it was in the realm of contract, according to the Supreme Court, their discharge was amenable to the constitutional power of judicial review. The Supreme Court observed:

"21. The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains "Directives (sic-Directive) Principles of State Policy", which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against exclusion of Article 14 non-arbitrariness which is basic to rule of law -from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its power and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations

may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto an additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

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24. The State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on its all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must be invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of State activity."

16. In State of U.P. and others Vs. U.P. State Law Officers Association and others, , the Supreme Court echoed the same thought in the following words:

"17. The Government or the public body represents public interests, and whoever is in charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interest. This obligation imposes on them the duty to engage the most competent servants, agents, advisers, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty-bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public

bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

18. The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other methods such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was undertaken and the appointments were made only on the basis of the merit and not for any other consideration."

17. The petitioner also relied on *Pankajakshan v. State of Kerala*, 1986 KLT 901, and *Pachu v. Chief Engineer* 1987 (1) KLT 918, to contend that the Minister has to exercise the powers subject to the Constitution and the laws and that they cannot act arbitrarily. He also relied on the decision in *Padfield v. Minister of Agriculture, Fisheries & Food*, (1968) AC 997, wherein the House of Lords held that, Parliament conferred a discretion on the Minister so that it could be used to promote the policy and objects of the Act which were to be determined by the construction of the Act; his discretion was not unlimited and if his acts were to frustrate the policy of the Act, the Court was entitled to interfere.

18. The petitioner contended that these pronouncements of the Supreme Court, without doubt, indicate that the power vested in the State Government of setting up of Public Corporations or Statutory Bodies and appointing Chairpersons to guide their affairs must be exercised bona fide and in the interest of public. As a monopoly shareholder of a Government Company, the State Government is expected to appoint the best, the most competent and most talented person from all the qualified ones to head the Corporation. The person at the helm of affairs must be capable of navigating the ship through turbulent waters or else the ship is bound to sink. On whether such appointments can be justified on the ground of sharing of spoils or on the basis of "spoils system", the petitioner was very critical. He relied on the decisions in *Elrod v. Burns*, 427 US 347, *Powell v. McCormack*, 395 US 486, *Sugarman v. Dougall*, 413 US 634 and *Hampton v. Mow Sun Wong*, 426 US 88 and contended that the "spoils system" has been held unconstitutional and illegal both in the United States and in England.

19. The Spoils System has been explained by the Supreme Court as a system of distribution of office on political consideration or party lines. The Supreme Court has also denounced this system as unconstitutional. (See in this connection, the adverse comments on this system of appointment by the Supreme Court in *State of U.P. v. U.P. State Law Officers Association* (supra) *Shrilekha Vidyarthi v. State of U.P.* (supra), *Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others*, , *Hargovind Pant Vs. Dr. Raghukul Tilak and Others*, , *Mundrika Prasad Singh Vs. State of Bihar*, , Para 14 and *State of Mysore v. R.V Bidap*, AIR 1973

SC 2355 at pp 2358 para 6).

20. The learned Advocate General, defined the action of the State on the lines contained in the counter-affidavit. He urged that the representatives of the public need to be appointed to head Public Sector Undertakings so that the policy of welfare percolates into the governing body of the Public Sector Undertakings which would then not function merely by rigid, wooden headed bureaucratic methods. He submits that, in a vibrant democracy, the authorities at all levels must be responsive to public needs and aspirations. Mere efficiency cannot be an effective substitute in the matter of catering to the needs and aspirations of the public at large. This can only be done by choosing a representative of the public to head the Corporation, in the submission of the learned Advocate General. In a democracy like ours, there is only adult franchise without any requisite qualification for election to legislative bodies. Even for becoming a Minister, Chief Minister, or being the Prime Minister of the country, no qualification other than being elected was prescribed. To expect the Chairperson of a Public Sector Undertaking to have higher qualification, was both unnecessary and impracticable, according to learned Advocate General.

21. Though, at first blush, the submission sounds attractive, the analogy drawn is not apt. In facts, we pointed out to the learned Advocate General, that though, under the Constitution, the laws of the country are enacted by the people who may not have any requisite qualification, other than the so-called popular mandate, the laws have to be interpreted and implemented by persons who have the qualifications, prescribed by the Constitution. Thus, the absence of qualification would not by itself, be a justification for appointing Chairpersons to Public Sector Undertakings.

22. The learned Advocate General relied on the decision in *Narmada Bachao Andolan Vs. Union of India and Others*, , and contended that the courts in exercise of their jurisdiction will not transgress into the field of policy decision as courts are ill-equipped to adjudicate on a policy decision. He contends that, despite the existence of enormous constitutional power, the court cannot be called upon to or undertake Governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or nonuse of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. In matters of policy, the court will not interfere. When there is a valid law requiring the Government to act in a particular manner, the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.

23. The learned Advocate General also relied on the decision in *Zippers Karamchari Union Vs. Union of India and Others*, , where the Supreme Court held

that, in matters of trade and commerce or economic policy, the wisdom of the Government must be respected and courts cannot lightly interfere with the same unless such policy is contrary to the provisions of the Constitution or any law or such policy itself is wholly arbitrary. Heavy reliance was placed on the Judgment of the Supreme Court in *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , where the Supreme Court held that, in a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court. He highlighted the caution of the Supreme Court that, the wisdom and advisability of economic policies are ordinarily not amenable to judicial review, unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. It is not the function of the courts to consider the relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the court.

24. We are not really concerned with judicial review of the economic policy of the State Government. What is contended in this public interest litigation is that the State should formulate some guidelines or norms for appointment of Chairpersons, and follow them in the matter of such appointments.

25. The learned Counsel for the third respondent, Sri. T.R.G. Warriar, adopted the argument of the learned Advocate General and contended that petitioner has no locus standi or right to file this petition. He relied on the Judgment of Supreme Court in *Vinoy Kumar Vs. State of U.P. and Others*, . In our view, the Judgment in *Vinoy Kumar's* case (supra) has no application. It was a case where a criminal case which was pending in the Sessions Court was sought to be interdicted by a public interest litigation under Article 226. Rejecting the attempt, it was pointed out that, generally speaking, a person shall have no locus standi to file a Writ Petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded, nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. At the same time, the Court pointed out that the Court can exercise writ jurisdiction at the instance of a third party only when a legal wrong or legal injury or illegal burden is threatened and such person, or determined class of persons, is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief. The answer to the argument was given in the Judgment of the English Court in *Tamlin v. Hannaford*. It was held that the consequence of a wrong choice of the person at the helm of affairs of a statutory corporation falls on the tax payer. Every tax payer has, therefore, really an interest, in the matter of such appointments. It may be true that tax payer cannot directly interfere in the appointment of persons to head Public Sector Undertakings. But the tax

payer has the right to approach this Court. To that extent at least, the argument of no locus standi cannot prevail.

26. Mr. Warriar then contended that, at any rate, there is no prayer made in the petition for restraining the third respondent, who has already been appointed, from functioning, and all prayers are in the nature of general declarations. Hence also, he contends that the petition must fail as against third respondent.

27. There is considerable merit in the argument of the petitioner that Chairmanship of Public Sector Undertakings and Statutory Corporations/Boards cannot be distributed, as if it is largesse or to be shared under the "spoils system". All State actions must be capable of passing the test of public interest. It may be possible for the State to say that a person should be appointed to the managing body of the Public Sector Undertaking so as to act as interface between the rule bound bureaucracy or theory bound technocrats on the one hand and the democratic will of people. Even if that be so, the State must ensure that the person appointed has at least the rudimentary knowledge of the subject with which the Corporation or Public Sector Undertaking is concerned. For example, if the Corporation is K.T.D.C. then the person appointed must have some experience in the matter of tourism related areas. If it is an Agriculture Development Corporation, the person appointed must atleast be an agriculturist or have knowledge of agriculture. If the appointment is to a Chemical Corporation or an Engineering Corporation, or a Finance Corporation, the person appointed must necessarily have the expertise in their respective subject. It is, therefore, essential that the State should formulate for itself guidelines and follow them scrupulously, both to avoid the charge of arbitrariness, as has happened in this case, and to ward off the jockeying pressure by different persons seeking the plums of office. We strongly disapprove the stand taken by the State of Kerala that Chairpersonship of Public Sector Undertakings could be handed down as a matter of "spoils system". The spoils system is not only anathema to the rule of law, but is also positively unconstitutional. It is high time for the State to radically change its thinking on this subject. Even if the minimum-requisite qualifications indicated by the learned Advocate General are to be adopted, there is no guideline as to how a particular person, supposed to be the repository of trust of the Government and representative of the aspirations of the public at large, should be chosen from thousands of such equally placed persons. This is a matter with which the State should be seriously concerned and lay down for itself suitable guidelines to avoid political pressures.

28. Beyond indicating the necessity of having guidelines or criteria in the matter of appointment of Chairpersons to Public Sector Undertakings, we are not in a position for give any further direction to the State. If the Chairpersons are to be appointed to Statutory Corporations or Statutory Bodies, it is obvious that they cannot be appointed except as provided by the applicable statutory rules.

29. Turning to the case of the third respondent, we find that, apart from being a graduate, she neither claims to have any touch with the travel industry, nor does

the State say so. The petitioner vehemently urged that, her only qualification is that she is the daughter of the erstwhile discredited politician, and this post has been given to her just to placate her father, and to prevent rocking of the unsteady political boat. We take note of the allegations, but express no opinion thereupon. Fortunately for us, we do not have to interdict her appointment. As rightly pointed out by her Counsel, there is no such prayer in the Original Petition at all.

30. In the submission of the learned Advocate General, the post of part-time Chairperson appears to be purely ornamental. The only function required to be carried out by such part-time Chairpersons is to preside over the meetings and sign the minutes. This can very well be done by a Chairperson elected at a meeting. At this juncture, when the finances of the State are very critical, whether the State should undertake even such additional liability, however small it may be, is a matter which the State must ponder over. We are sure that the State will exercise its political wisdom in the matter and not yield to the temptation of appointing persons to such ornamental position, when there is no crying necessity for them.

In the result, we dispose of the Original Petitions with the aforesaid observations and directions, and leave the parties to bear their respective costs.