

(2013) 12 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28392 of 2013

T. Sharath and Another

APPELLANT

Vs

The Govt. of A.P. and five Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 2 ALT 176 : (2014) LabIC 1113

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : M. Ravindranath Reddy, for the Appellant; N. Vinesh Raj, Counsel for the 3rd Respondent, Sri N. Krishna Rao, Counsel for the 4th Respondent, Sri T.S. Anand, Counsel for the 5th Respondent and Sri T.S. Praveen Kumar, Counsel for the 6th Respondent, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.

"Khadi is the sun of the village solar system. The planets are the various industries which can support khadi in return for the heat and the sustenance they derive from it. Without it other industries cannot grow. But during my last tour I discovered that, without the revival of other industries, khadi could not make further progress. For villagers to be able to occupy their spare time profitably, the village must be touched at all points."

Mohandas Karamchand Gandhi.

1. Khadi, which was catapulted to the pinnacle of fame during the freedom struggle, now finds itself in a yawning abyss of indifference and neglect with the ignoramus being placed at the helm of affairs of an institution established with the sole object of realising what the Father of the Nation propagated and preached. The petitioners, Advocates by profession, have invoked the jurisdiction of this Court contending that the appointment of respondents 3 to 6, as Chairman and Members of the Andhra Pradesh Khadi and Village Industries

Board (hereinafter called the "Board"), is contrary to Section 3(2)(i) of the A.P. Khadi and Village Industries Board Act, 1958 (for short, the "State Act"). A writ of Quo-Warranto is sought by them to direct respondents 3 to 6 to disclose the authority under which they are holding the office of Chairman and non-official members of the Board, and to direct respondents 3 to 6 to vacate, or in the alternative remove them from, the office which they are now holding. 2. Facts, to the extent relevant, are that respondents 3 to 6 were nominated by the 1st respondent as the Chairman and non-official members of the Board vide G.O.Ms. No. 59 Industries & Commerce (MSME) Department, dated 02.07.2013. The petitioners claim that, on 09.08.2013, they came across an article in the daily newspapers regarding the first meeting of the Board held on 08.08.2013; and they had caused enquiries which revealed that respondents 3 to 6 had been nominated as the Chairman and Members (Non-official) respectively of the Board without possessing the qualifications prescribed u/s 3(2)(i) of the Act. The 2nd petitioner claims to have obtained all documents connected with G.O.Ms. No. 59 dated 02.07.2013, including the bio-data of respondents 3 to 6 and the note file relating to their appointment, under the Right to Information Act.

2. G.O.Ms. No. 59 dated 02.07.2013 was issued by the first respondent in the exercise of its powers u/s 3(1) & (2) r/w. Section 5 of the Act as amended by the Andhra Pradesh Khadi and Village Industries Board (Amendment) Act, 1997, and in supercession of the earlier orders notified in G.O. Rt. No. 879 dated 27.12.2012. The said G.O. dated 02.07.2013 records that the non-official members, referred to therein (i.e., respondents 3 to 6 herein), had shown active interest in the production and development of Khadi and Village Industries. While others were appointed as official members of the Board, appointment of respondents 3 to 6, as Chairman and Members, was for a period of one year with effect from 02.07.2013.

3. The challenge in this writ petition is confined to the appointment of respondents 3 to 6 as the Chairman and non-official members of the Board. The bio-data/profiles of respondents 3 to 6, copies of which are enclosed to the Writ Petition and form part of the government records placed before this Court, make interesting reading and for convenience sake, the relevant portions thereof, are extracted hereunder:

Col Nos.

Particulars

3rd respondent

4th respondent

5th respondent

6th respondent

1)

Name of the person

Gopisetty Niranjan

Mahankali Srinivas

M.L.N. Murthy Rao

M. Narayan Reddy

2)

Parentage/Spouse Name

Late G. Narayana

Narayana

M. Narasinga Rao

Hanmanth Reddy

3)

Sex

Male

Male

Male

Male

4)

Caste & Category

BC - D (Munnuru Kapu)

Padmasali (BC)

Indian Hindu Brahmin

Hindu Reddy (OC)

5)

Date of Birth & age

60 yrs/2013

13.1.1969

41 years

Marital Status - No. of children, ages, etc

Married - One son and two daughters.

Married -

1) Bal Reddy, B.Tech. at present Hyderabad.

2) Tina married staying at USA.

6)

Native District

A) Temporary address & Phone No

b) Permanent address

Hyderabad

H. No. 13-1-64/4/A, Avanthi Nagar, Glass Factory Road, Sanath-nagar, Hyderabad, Mobile No. 9849200860

-do-

Mahabubnagar District

H. No. 8-1-69, Near Tuljaram Temple, Gadwal Town 9440645789

-do-

Ellutla (Village & Post) ,Gurramkonda Mandal, Pileru (Const) , Chittoor District.
Pin: 517305, E-mail ID: Min.murthyrao@gmail.com., 9441820456/7702896342

H. No. 3-5-170/A/5, Near Shanthi Talkies, Narayan-guda, Hyderabad., Ph. No. 040-23220674 9849434493

Potharam Village of Shivampet Mandal, Medak District.

7)

Educational Qualification

M.Com., LLB

B.Com.

B.Tech. (Textiles)

MBA (Marketing) B.A.

8)

Party Affiliation/Sympathizer

Congress

Congress Party

Congress party

9)

Region/District

Telangana/Hyderabad

Mahabubnagar District

Telangana/Medak

10

Family back-ground

His family has no political background Hails from an agriculture family. Father Elected as Sarpanch Ellutla, served as Society President, Vayalpad Taluk Youth Congress Vice President, Director of Pileru Ag. Mkt. Committee Mother elected as Chair Person Watershed VI Batch and present Chair Person Mega Water Shed Ellutla. Agriculture/political

11

Occupation

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12

Position held

He is General Secretary, APCC, Chairman of Akkanna Madanna Temple and also Chairman of Rajiv Gandhi Sadbhavana Commemoration Committee a) Councillor, Gadwal Municipality

13

Past

A) Official

He worked in several positions in City Congress committee.

b) Political

He is General Secretary, APCC, Chairman of Akkanna Madanna Temple and also Chairman of Rajiv Gandhi Sadbhavana Commemoration Committee.

Present:

a) Official

Nil

b) Political

Active Congress Leader since 1999 elected as Sarpanch Ellutla for the term 2001-2006 and President Sarpanches Forum Gurramkonda Mandal, Elected as Congress MPTC Ellutla for the term 2006-2011 and worked as Mandal Vice

President Gurramkonda and also President MPTC Forum Gurramkonda Mandal.
Single window Chairman (1988-1999) DCCB Director (1992-1995) > Single
Window vice Chairman.

14

Property particulars

a) Movable assets as on 28.02.2013

Four wheeler

a) One Car

b) Immovable assets as on 28.2.2013

Own house

b) One house and two acres of land

c) Financial status

Average

Normal One Car

15 acres of Agriculture land and one house at Potharam village, one house at
Narayana-guda, Hyderabad and one plot at Alwal. Medium

15

General Reputation

a) Personal Habits

1) Good Habits

2) Bad Habits

b) Character

Good

Good

c) Conduct

Good

Good

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Good

Good

Good

Good

16

Carrier in brief (brief political and personal)

From the beginning he is in Congress party and worked in several positions in City Congress Committee. At present he is worked as Genl. Secretary of the APCC. He is a businessman and has been working in Congress party for the last 10 years and was elected as Councillor in the last Municipality elections. He worked as Single Window Chairman, DCCB Director and Single Window Vice Chairman.

17

Involvement in criminal & controversial activities etc.,

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Nil

NIL

18

Current activities

Full time Congress worker

19

Integrity

Good

Good

Good

20

Loyalty to the party

Loyal

21

Positive aspects of the person

He has good hold among his caste people and blessings of M. Shasidhar Reddy, MLA and other Congress leaders.

NIL

He is a senior Congress Leader and loyal to party. He is maintaining good

relations with local people as well as his community people.

22

Negative aspects of the person (mention in detail)

Nil.

Nil

Nil

23

Whether he is able to strengthen the Congress party either in the district or at State level Able to strengthen the party

24

Suitability to hold the post Suitable

He is sincere, hardworking besides having strong hold in his community.

Suitable

Suitable

I. RIVAL CONTENTIONS:

4. Sri M. Ravindranath Reddy, Learned Counsel for the petitioners, would submit that there was no material before the Government to show that respondents 3 to 6 had shown active interest in the production and development of Khadi and village industries; their bio-data merely refers to their political affiliation as the sole qualification for holding these offices; their appointment is ultra vires the provisions of the Act, and is not authorised by law; the locus standi of the petitioners is wholly irrelevant in Quo-Warranto proceedings; the functions, which the Board is required to discharge under the Act, are among the goals which Articles 41 and 43 of the Constitution of India - the directive principles of State Policy - require the State to endeavour to achieve; "public office" is an office created by Legislation - plenary or sub-ordinate; the earlier limitations, on a writ of Quo-Warranto being issued only to public offices discharging sovereign functions, are no longer applicable; a notification should have been issued inviting applications from all those who were eligible to hold such offices; a fair and transparent process, of identifying those who had shown an active interest in the production and development of Khadi and village industries, should have been adopted; and failure of the 1st respondent to do so is in violation of Article 14 of the Constitution of India.

5. Learned Additional Advocate-General, appearing on behalf of respondents 1 and 2, would submit that the information available on record does not disclose the manner in which the qualifications of respondents 3 to 6, for being appointed as Chairman and members of the Board, was ascertained by the Government;

the impugned G.O. is also silent in this regard; and, as the Act and the Rules do not specifically prescribe the method of appointment, the 1st respondent has the power to nominate persons of its choice as the Chairman and members of the Board.

6. Sri N. Vineet Raj, Learned Counsel for the 3rd respondent, would submit that neither the Act nor the Rules require a notification to be issued for appointment of a non-official member of the Board; the offices of the Chairman and members of the Board are not "public offices"; appointment to these offices is at the pleasure of the Government, and is not permanent; it is only those offices, whereby sovereign functions are discharged, which are "public offices"; for appointment to offices, other than a "public office", a writ of Quo-Warranto is not maintainable; and the petitioners have maliciously instituted these proceedings to avoid an enquiry being caused into the illegal activities of the Chief Executive Officer of the Board.

7. Sri N. Krishna Rao, Learned Counsel for the 4th respondent, would submit that the object of the Legislation is to appoint non-official members to assist official members; such persons neither hold "public offices" nor do they discharge public functions; the 4th respondent, who belongs to the weavers' community, did not submit his bio-data to the Government; and the copy of the bio-data, filed along with the writ petition, does not even contain his signature.

8. Sri T.S. Anand, Learned Counsel for the 5th respondent, would submit that it is only if a member suffers a disqualification, under Rule 3(a) of the Andhra Pradesh Khadi and Village Industries Board Rules, 1969, is a writ of Quo-Warranto maintainable; the petitioners have been set up by the Chief Executive Officer of the Board against whose illegal acts an enquiry was being caused by respondents 3 to 6; the 5th respondent hails from an agricultural family and his qualifications are B.Tech, (Textiles) and M.B.A., (Marketing); and he has been evincing active interest in promoting khadi and village industries.

9. Sri T.S. Praveen Kumar, Learned Counsel for the 6th respondent, would submit that neither the chairman nor the members of the Board receive salary; they are merely paid honorarium; in the absence of any remuneration being paid to them, they cannot be said to hold any office under the Government, more so a "public office"; the 6th respondent worked as a Single Window Chairman of the District Co-operative Central Bank and as its Director; the District Cooperative Central Banks are established to provide financial assistance to Primary Agricultural Co-operative Credit Societies some of which are also involved in the growth of khadi; and as he has grown cotton, over an extent of 15 acres of land, the 6th respondent must be held to have shown active interest in production and development of khadi and village industries.

II. WRIT OF QUO-WARRANTO" - ITS SCOPE:

10. Quo-warranto, in English law, was originally in the nature of a writ of right at "the instance of the Crown to prevent usurpation of a prerogative power of the

Crown, and later came to acquire the character of a mere information laid by the Attorney-General of the Crown, first in the name of the King and later at the instance of even a private relator, to call upon a specified person to prove or produce the authority under which he is functioning in a particular office if he fails to make good his authority. (P.S. Venkataswamy Setty Vs. University of Mysore and Others, . The jurisdiction of the High Court to issue a Writ of Quo-Warranto is limited. While issuing such a writ, the Court merely makes an order of declaration and would not consider its impact or other factors which may be relevant for issuance of a writ of Certiorari. An information, in the nature of a quo-warranto, lies against a person, who has usurped an office, to enquire by what authority he supported his claim in order that the right to the office might be determined. Quo-warranto proceedings affords a judicial enquiry in which any person holding an independent substantive public office is called upon to show by what right he holds the said office. 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 relevant statutory provisions. It also protects a citizen from being deprived of a public office to which he may have a right. These proceedings are intended to protect the public from usurpers of public office. In some cases persons not entitled to a 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 if, in such cases, the jurisdiction of the courts to issue a writ of quo-warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. Before a citizen can claim a writ of quo-warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by the usurper without legal authority. This necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not, (Halsbury's Laws of England, 3rd Edition, Vol. II, Page 145; Ahmed Ehtesham Kawkab Vs. The Government of India, Ministry of Commerce and Industry (Department of Commerce) and Others, , and whether statutory provisions have been contravened in making the appointment. (The University of Mysore and Another Vs. C.D. Govinda Rao and Another, A writ of quo-warranto is issued to prevent a continued exercise of unlawful authority. Centre for PIL and Another Vs. Union of India (UOI) and Another, 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. The challenge to the appointment to a "public office" can be made on various grounds including on grounds that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification which debars him from holding such office. B.R. Kapur Vs. State of Tamil Nadu and Another, ; Ahmed Ehtesham Kawkab Vs. The Government of India, Ministry of Commerce and Industry (Department of Commerce) and Others,

11. A writ of quo-warranto lies only when the appointment is contrary to a

constitutional or a statutory provision/rule. Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, Centre for PIL and Another Vs. Union of India (UOI) and Another, ; Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another, Pappu Venkata Rao Vs. Commissioner of Endowments and Others, High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others, ; Rajesh Awasthi Vs. Nand Lal Jaiswal and Others, Quo-warranto proceedings afford a judicial remedy for removal of the usurper, from the office which he holds without title, by a judicial order. N. Kannadasan Vs. Ajoy Khose and Others, If there is any complaint about appointment of an officer, who is not eligible under the statute/statutory rules to be appointed, the proper remedy is to make an application for the issue of a writ of quo-warranto. Mir Ghulam Hussan and Others Vs. The Union of India (UOI) and Others, Ahmed Ehtesham Kawkab). It is the duty of the Court, as soon as its attention is drawn to the fact that a person who is not qualified is holding a public office, to declare that he is not entitled to that office and to prevent him from acting as such. Kashinath Laxman Bhide and Others Vs. The State of Bombay,

III. ARE RESPONDENTS 3 TO 6 ENTITLED TO HOLD THE OFFICE OF CHAIRMAN AND MEMBERS OF THE BOARD?

12. Section 2(1) of the State Act defines "Board" to mean the Andhra Pradesh Khadi and Village Industries Board constituted u/s 3 of the Act. Section 2(v) defines "khadi" to mean any cloth woven on handlooms in India from cotton, silk or woolen yarn handspun in India or from a mixture of any two or all of such yarns. Section 2(viii) defines "Regulations" to mean regulations made by the Board under the Act. Section 2(x) defines "village Industries" to mean all or any of the industries which form the normal occupation, whether whole time or part time, of any class of the rural population of the State and includes any other industry which the Government may, of their own motion or on the recommendation of the Board, declare by notification to be a village industry for the purpose of the Act. Section 3 of the Act relates to the Establishment and Constitution of a Board and, under sub-Section (1) thereof, the Government is empowered, by notification, to establish a Board called "The Andhra Pradesh Khadi and Village Industries Board" which is to be a body corporate having perpetual succession and a common seal. Section 3(2)(i) of the Act stipulates that the Board shall also consist of five non-official persons to be appointed by the Government who have shown an active interest in the production and development of khadi or in the development of Village Industries of whom one member shall be nominated as the Chairman and another member as the Vice-Chairman.

13. The condition stipulated in Section 3(2)(i) of the Act, for appointment of persons as non-official members of the Board, is that the Government should ascertain and ensure that they have shown active interest in the production and

development of khadi and in the development of village industries. The Government should have adequate information before it that the persons, to be appointed as Chairman and members of the Board, have shown active interest in the production and development of khadi and village industries. The government records and the relevant note files have placed before this Court for its perusal. The records contain a letter dated 01.07.2013 addressed by the Secretary to the Chief Minister to the Secretary (Food & Processing), furnishing a list of persons to be appointed as the Chairman and Directors of the Board as desired by the Chief Minister, requesting for necessary orders to be issued, and for formalities to be completed immediately. The list enclosed to the letter dated 01.07.2013 is signed by the Chief Minister, and contains the names of five persons (including respondents 3 to 6), the district they hail from, their caste, their educational qualifications and the post to which they should be appointed. While the column relating to education, in so far as the 3rd respondent is concerned, is left blank, the said list records the qualification of the 4th respondent as B.Com., the 5th respondent as B.Tech. (Textiles) and M.B.A.; and the 6th respondent as B.A. The information furnished in the list makes no reference to respondents 3 to 6 having shown any interest, much less active interest, in the production and development of khadi and village industries. The letter dated 01.07.2013 was received by the Secretary to Government (Food and Processing) on 02.07.2013. While it is not clear from the records whether the bio-data of the five individuals, whose names finds mention in the list, were forwarded with the letter dated 01.07.2013, the records placed before this Court contain their bio-data/profile. The profile of Sri Manchu Chandrayya, who was appointed as the Vice-Chairman (and whose appointment is not under challenge in this Writ Petition) shows that he was actively involved with weavers co-operative societies; cloth production and marketing co-operative societies; State Handloom Weavers Co-operative Societies; spinning mills etc. The profiles/bio-data of respondents 3 to 6 merely highlight their affiliation to the political party in power, other personal details, the properties they own, and their financial status. Except for the aforesaid bio-data/profiles, the government records does not contain any other information regarding the interest shown by them in the production and development of khadi and village industries.

14. The Government note file records that, as per the note received from the Secretary to Chief Minister, it was submitted for orders whether the Khadi Village and Industries Board be constituted, among others, with respondents 3 to 6 for a period of three years u/s 3(1) & (2) r/w Section 5(1) of the Act; proposals, for constitution of the Board, be approved duly mentioning the period of office; and, after orders are passed, the file be circulated to Hon"ble Minister for approval. The note file also records that the Secretary (Food and Processing), who was out of station on official duty on 02.07.2013, was informed over phone; he had, in turn, informed that the term of office of the Chairman and other members of the Board should be for one year as per Section 5 of the Act; and, accordingly, orders in circulation of Hon"ble Minister be obtained, and orders be issued and

submitted to the Secretary (Food & Processing) after issuance of the Orders. The approval of the Minister was obtained on 02.07.2013. Curiously G.O.Ms. No. 59 dated 02.07.2013 is shown to have been issued by the Secretary to the Government (Food and Processing) though the note file records that he was not in station on that day. At para 34 of the Note file is the endorsement of the Secretary (Food and Processing) dated 10.10.2013 to check, from the Chairman and the members of the Board, their background in khadi activities. It is evident, therefore, that it is only after the Writ Petition was filed before this Court on 30.09.2013, and after a draft counter-affidavit was placed before him, did the Secretary (Food and Processing) consider it necessary to enquire and ascertain whether or not the Chairman and members of the Board (respondents 3 to 6 herein) had shown active interest in producing and developing khadi and village industries. It is also clear that no effort was made by the Government, before G.O.Ms. No. 59 dated 02.07.2013 was issued, to ascertain whether respondents 3 to 6 satisfied the requirements of Section 3(2)(i) r/w Section 2(v) & (x) of the Act. From the record placed before this Court, it does appear that the letter addressed by the Secretary to the Chief Minister dated 01.07.2013, along with the list enclosed thereto, was construed as a directive necessitating implicit obedience without even examining whether the conditions prescribed u/s 3(2)(i) of the Act were satisfied.

15. In processing the file and in issuing the impugned G.O, without ascertaining whether or not respondents 3 to 6 fulfilled the requirements of Section 3(2)(i) of the Act, the 1st respondent has acted mechanically and without application of mind. A person must be held to have usurped an office, necessitating a writ of quo-warranto being issued, not only when he suffers from the statutorily prescribed disqualifications but also when he does not fulfil the statutorily stipulated qualifications. As there was no material on record before the Government to show that they fulfilled the requirements of Section 3(2)(i) of the Act, it matters little whether or not they suffered disqualification under Rule 3(a) of the Rules. As respondents 3 to 6 were appointed by the 1st respondent, as the Chairman and members of the Board, without ascertaining whether they satisfied the requirements of Section 3(2)(i) of the Act, a writ of Quo-Warranto must be issued since respondents 3 to 6 continue to hold office without authority of law and contrary to the aforesaid statutory provision. Before doing so the other contentions, urged by Learned Counsel on either side, necessitate examination.

IV. LOCUS STANDI:

16. If the writ asked for is strictly a writ of quo-warranto in respect of a public office, the petitioner need have no personal interest as he is hardly ever an aggrieved person, but is really in the nature of an informer. In England the petitioner, in such circumstances, is not called a petitioner at all, but only a relator i.e., one who relates facts on the basis of which the Court itself takes action in the name of the King. All that is necessary is that the petitioners should act bona fide in public interest, and should not be a mere man of straw acting at

the instance of others or on ulterior motives. (Dr. P.S. Venkataswamy Setty). He need not have any special interest. The real test is to see whether the person holding the office is authorised to hold the same as per law *Rajesh Awasthi Vs. Nand Lal Jaiswal and Others*, *Dr. Kashinath G. Jalmi and another Vs. The Speaker and others*,

17. Information in the nature of quo-warranto can be filed on the relation of private parties. It is open to a private individual to bring it to the notice of the Court that a person who is disqualified to hold an office is still holding it. (*Mocherla Venkataraya Sarma Vs. Y. Sivarama Prasad and Others*, In Quo-Warranto proceedings the applicant does not seek to enforce any right of his as such, nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from office. The legality of an appointment to a high office can be challenged by any citizen. *M.S. Mahadeokar Vs. The Chief Commissioner Union Territory, Chandigarh and others* *Vinoy Kumar Vs. State of U.P. and Others*, *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, *Ahmed Ehtesham Kawkab Vs. The Government of India, Ministry of Commerce and Industry (Department of Commerce) and Others*,); and *Mocherla Venkataraya Sarma Vs. Y. Sivarama Prasad and Others*, A writ petition, for issuance of a writ of quo- warranto would be maintainable, even at the instance of a busy body. *N. Kannadasan Vs. Ajoy Khose and Others*, *Ahmed Ehtesham Kawkab Vs. The Government of India, Ministry of Commerce and Industry (Department of Commerce) and Others*,

18. The locus standi of the petitioners, to invoke the jurisdiction of this Court seeking a writ of Quo-Warranto, is wholly irrelevant as even a relator, who may not be a "person aggrieved", can inform the Court that persons who do not fulfil the stipulated statutory conditions - either plenary or subordinate -have been appointed/nominated to hold statutory posts/offices. An enquiry, whether or not the petitioner is a person aggrieved, is not contemplated in Quo-Warranto proceedings.

V. MALICE:

19. A writ of quo-warranto is not issued as a matter of course but ex debito justitiae. *Mocherla Venkataraya Sarma Vs. Y. Sivarama Prasad and Others*, . The said writ is purely discretionary, and will not issue unless the Court is satisfied that it is necessary to issue it in public interest. *P.S. Venkataswamy Setty Vs. University of Mysore and Others*, . In *A.N. Sastry v. State of Punjab* 1988 Supp SCC 127, and *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*, the Supreme Court held that a writ of quo-warranto should be refused where it is the outcome of malice or ill will; and an imposter, invoking a public law remedy at the hands of a Constitutional Court suppressing material facts, has to be dealt with firmly. On the other hand, in *Dr. Kashinath G. Jalmi* and *N. Kannadasan*, the Supreme Court held that, while examining if a person holds a public office under valid authority

or not, the Court is not concerned with the technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. A writ of quo- warranto is a writ which merely asks the question as to whether there is a warrant of appointment for holding the office and the question of malafides is completely irrelevant to the matter. P.L. Lakhanpal Vs. A.N. Ray and Others,

20. While the jurisdiction of this Court to issue a writ of Quo- Warranto is no doubt discretionary, and this Court may refrain from exercising its discretion to issue such a Writ if the proceedings have been instituted out of malice, ill-will or to wreck vengeance, the assertions of respondents 3 to 6, in their respective counter-affidavits, that the petitioner has been set up by the Chief Executive Officer of the Board with a view to avoid an enquiry being caused into his conduct, has been specifically denied in the reply affidavit wherein the petitioners deny acquaintance or any relationship with any Member of the Board, including the Chairman or Vice-Chairman, or with any employee of the Board, and assert that no malice can be attributed to them. Except for the bald and vague allegations in their counter-affidavits, which have been denied by the petitioners in their reply affidavit, no other material has been placed on record by respondents 3 to 6 in support of their plea that these proceedings have been instituted by the petitioners out of malice. The burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. E.P. Royappa Vs. State of Tamil Nadu and Another,

21. Even otherwise if any other member of the public, to whom the oblique motive and conduct alleged against the petitioner in the present case could not be attributed, can file such a writ petition for the same relief, this disability on the ground of oblique motive and conduct would not attach to him. This being so, the relief claimed by the petitioner in the writ petition being in the nature of a class action, without seeking any relief personal to him, ought not to be dismissed merely on this ground, since it is a matter of public concern and relates to the good governance of the State itself. (Dr. Kashinath G. Jalmi). It would be wholly inappropriate for this Court, therefore, to refuse exercise of its discretionary jurisdiction, to issue a writ of quo-warranto, on this ground.

VI. IS THE OFFICE OF "CHAIRMAN" AND "MEMBER" OF THE BOARD A "PUBLIC OFFICE"?

A. SOVEREIGN FUNCTIONS:

22. Is a writ of quo-warranto, whereby the right or title to hold a "public office" is determined, confined only to those offices discharging sovereign functions? In Satish Chander Sharma Vs. The University of Rajasthan and Others, reliance on which has been placed on behalf of the respondents, the Rajasthan High Court, placing reliance on Ferris on Extraordinary Legal Remedies, held that a "public

office" is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by Law; in other words, it implies a delegation of a portion of the sovereign power; and it is a trust conferred by public authority for a public purpose embracing the ideas of tenure, duration, emolument and duties. In *B. Srinivasa Reddy*, on which also the respondents place reliance upon, the Supreme Court observed:--

..... The Notification dated 31.1.2004 clearly states that the appointment is on contract basis and until further orders. While laying down the terms of appointment in its order dated 21.4.2004, the Government of Karnataka clearly stated that "term of contractual appointment of Sri B. Srinivasa Reddy shall commence on 1st February, 2004 and will be in force until further orders of the Government and this is a temporary appointment." Section 6(1) of the Act categorically states that the Managing Director shall hold office during the pleasure of the Government. Power and functions of the Board are laid in Chapter V of the Act. A reading of the Act clearly shows that neither the Board nor its Managing Director is entrusted with any sovereign function. Black's Law Dictionary defines public office as under:

Public Office: Essential characteristics of "public office" are (1) authority conferred by law, (2) fixed tenure of office, and (3) power to exercise some portion of sovereign functions of government, key element of such test is that "officer" is carrying out sovereign function. *Spring v. Constantino* 168 Conn. 563, 362 A.2d 871, 875. Essential elements to establish public position as "public office" are position must be created by Constitution, legislature or through authority conferred by legislature, portion of sovereign power of government must be delegated to position, duties and power must be delegated to position, duties and powers must be defined, directly or impliedly, by legislature or through legislative authority, duties must be performed independently without control or superior power other than law, and position must have some permanency and continuity, *State ex rel. E.lli Lilly and Co. v. Gaertner*, Mo. App 619 S.W. 2d 6761, 764.

Carrying out sovereign function by the Board and delegation of a portion of sovereign power of Government to the Managing director of the Board and some permanency and continuity in the appointment are quintessential features of public office. Every one of these ingredients are absent in the appointment of the appellant as Managing Director of the Board. This aspect of the matter was completely lost sight of by the High Court.

The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of quo-warranto. The jurisdiction of the High Court to issue a writ of quo-warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.....

(emphasis supplied).

23. In examining whether a "public office" is confined only to offices discharging sovereign functions, we need to first examine what the word "sovereignty" means. The traditional sovereign functions were the making of laws, the administration of justice, the maintenance of order, repression of crime, carrying on of war, making of treaties and peace, and other consequential functions. The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, The Corporation of the City of Nagpur Vs. Its Employees, N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, ; P. Viswanathan Vs. Dr. A.K. Burman and Another, . The distinction between sovereign and non-sovereign functions can be categorised as regal and non-regal. The former is confined to the legislative power, the administration of the laws and the exercise of judicial power N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, The activities, which can be properly described as regal or sovereign, are functions which a Constitutional Government can and must undertake for governance, and which no private citizen can undertake. In other words "the primary and inalienable functions of a Constitutional Government" The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, ; Coomber v. Justices of Berks (1883) 9 AC 61). Regal functions are inescapable and inalienable. Non-regal functions may be assumed by means of the legislative power. (N. Nagendra Rao & Co. 29; Federated State School Teachers" Assn. of Australia v. State of Victoria (1928-29) 41 CLR 569).

24. One of the tests to determine if the legislative or executive function is sovereign in nature is whether the State is answerable for such actions in courts of law. For instance, acts such as defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. They are not amenable to the jurisdiction of the ordinary Civil Court. The earlier theory of sovereignty was an outcome of thought, in the social set-up then prevailing, where the monarch was the sovereign and all powers legislative, executive and judicial vested in him. In Laski's words "sovereignty is the supreme coercive power, and it is by possession of sovereignty that the State is distinguished from all other forms of human association". The original concept of sovereignty was of a unitary State. Hibert, in his book on Jurisprudence, explains the term "sovereign" as "a political superior who is not subject to any other political superior". Holland explains sovereignty thus: "the sovereignty of the ruling part has two aspects. It is "external", as independent of all control from without; "internal" as paramount over all action within". A State or a country or a nation which does not enjoy independence, or is controlled by the other State or external power, cannot be considered a "sovereign" in the ordinary sense. N. Nagendra Rao and Co. Vs. State of Andhra Pradesh,

25. The doctrine of sovereignty, as propounded by theorists in the medieval period, has radically changed. Manifestation of sovereignty in the medieval

period was the freedom to protect its border, negotiate peace, enter into treaty, etc., whereas in the modern period it is the liberty to enact laws, provide machinery for enforcing it, maintain law and order, administer justice etc. The modern doctrine of sovereignty, which heralded the end of the medieval period, saw the rise of new Nation States anxious to assert their independence in an age of economic expansion, to reject all feudal notions of overlordship or papal interference, and with virtually unlimited capacity to make new laws. Austin's "sovereign" was an illimitable, indivisible entity. Bentham accepts divided and partial sovereignty. According to Dias, sovereign power is indefinite unless limited by express convention or by religious or political motivation. The sovereign may consist of more than one body, each of which is obeyed in different respects, the power of each is limited by the other, and each has a limited power to prescribe for the other. This change in outlook is the consequence of a gradual growth of the concept that sovereignty vests in the people. The English doctrine of parliamentary sovereignty was superseded in America by the doctrine of popular sovereignty. Wills in the book on Constitutional Law of the United States observed: "Who then is, in the United States, the sovereign? It is the people." In the words of Pt. Jawaharlal Nehru, while moving the Objective Resolution in the Constituent Assembly on 13-12-1946, "all power and authority of the sovereign independent India, its constituent and part and organs of the Government are derived from the people". Justice Douglas in his book from Marshall to Mukherji observed : "India and the United States both recognise that people are the basis of all sovereignty. N. Nagendra Rao and Co. Vs. State of Andhra Pradesh,

26. The old and archaic concept of sovereignty does not survive as sovereignty now vests in the people. The legislature, the executive and the judiciary have been created and constituted to serve the people. The concept of sovereignty in the Austinian sense - that the king was the source of law and the fountain of justice - was never imposed in our country by the British. N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another, The distinction between sovereign and non-sovereign power no longer exists. The question of "sovereignty" is one of authority. Who in the State can be said to possess plenum dominium depends on the Constitution and the nature of the adjustment. Under our Constitution, the legislature is free to legislate on topics and subjects carved out for it. Similarly, the executive is free to implement and administer the law. The distinction between sovereign and non-sovereign powers was not relevant either before or after the Constitution came into force. No legal or political system today can place the State above the law. The modern social thinking is to do away with archaic State protection and place the State or the Government on par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound as it is contrary to modern jurisprudential thought. In a Welfare State, the functions of the State are not limited only to the defence of the country or administration of justice or maintaining law and order but extends also to regulating and

controlling the activities of people in almost every sphere, educational, commercial, social, economical and political. The demarcating line between sovereign and non-sovereign powers, for which no rational basis survives, has largely disappeared. *N. Nagendra Rao and Co. Vs. State of Andhra Pradesh*, While any such limitation may have been justified in the days of yore, it would be wholly inappropriate, in the context of the present times where the distinction between sovereign and non-sovereign functions stands substantially obliterated, to limit "public offices" only to those exercising sovereign functions.

B. JUDGMENTS OF COURTS CANNOT BE READ OUT OF CONTEXT:

27. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute, and that too taken out of their context. *Amar Nath Om Prakash and Others Vs. State of Punjab and Others, Collector of Central Excise, Calcutta Vs. Alnoori Tobacco Products and Another*, ; *London Graving Dock Co. Ltd. v. Horton* 1951 AC 737; *HOME ER All v. 294 (2) 1970 Co., Yacht Dorset Office>Shepherd Homes Ltd. v. Sandham* 1971 (1) WLR 1062 *British Railways Board v. Herrington* 1972 (2) WLR 537). What is of the essence in a decision is its ratio and not every observation found therein. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi. It is only the principle laid down in the judgment that is binding under Article 141 of the Constitution. *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, State of Orissa and Others Vs. Md. Illiyas, ICICI Bank Ltd. and Another Vs. Municipal Corporation of Greater Bombay and Others*, ; *Girnar Traders Vs. State of Maharashtra and Others*, ; *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, ; *Quinn v. Leatham* (1901 AC 495 : (1900-03) All ER Rep. 1 (HL); *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, . Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. In interpreting words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. *Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das*, ; *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*,

28. In *B. Srinivasa Reddy* appointment of the appellant, as the Managing Director of the Karnataka Urban Water Supply and Drainage Board, was under challenge. The Regulations were amended providing for appointment of the Chief Engineer of the Board as the Managing Director, and the appellant was appointed to the said post. He retired as the Managing Director and was, thereafter, re-appointed to the said post. The Supreme Court opined that the High Court did not record any finding that the appellant did not possess the qualification as prescribed

under the rules for appointment as the Managing Director of the Board; Section 7(1)(d) of the Karnataka Urban Water Supply and Drainage Board Act did not apply to an officer or servant who ceased to be such on the date of his appointment as the Managing Director; as the appellant was an erstwhile employee of the Board, the disqualification u/s 7(1)(d) disappeared when he retired from service; the High Court was under the misconception that the appellant had been reappointed to the said office, whereas it was a fresh appointment under the provisions of the Act; and the appellant was appointed as he fulfilled the qualification and eligibility criteria prescribed under the Act. Appointment of the appellant as the Managing Director was upheld, by the Supreme Court in B. Srinivas Reddy, since he was found to possess the statutory qualifications prescribed for appointment to the said post. While the Supreme Court has no doubt observed that carrying out sovereign function by the Board, and the delegation of a portion of sovereign power of the Government to the Managing Director of the Board, are the quintessential features of public office, it also held that the jurisdiction of the High Court to issue a writ of quo-warranto is limited to cases where the appointment is contrary to statutory rules. When read in context, it is evident that the Supreme Court, in B. Srinivasa Reddy, did not confine a "public office", for maintaining quo-warranto proceedings, only to offices discharging sovereign functions.

C. THE SUBSEQUENT JUDGMENT OF THE SUPREME COURT, WHEREIN THE EARLIER JUDGMENTS WERE CONSIDERED, IS ALONE BINDING ON THE HIGH COURT:

29. In the present case, appointment of respondents 3 to 6 as the Chairman and Members of the Board is contrary to, and in violation of, Section 3(2)(i) of the State Act. In Rajesh Awasthi, the Supreme Court held:-

....a writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in The Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner and Secretary to Govt. Haryana and Another, held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others,), this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.....

(emphasis supplied).

30. Where the earlier judgments of the Supreme Court have been considered in its subsequent judgment, it is the law declared by the subsequent judgment of the Supreme Court which would bind the High Court. Sakinala Hari Nath and

Others Vs. State of Andhra Pradesh and Others, V. As B. Srinivasa Reddy has been understood by the Supreme Court, in Rajesh Awasthi, as conferring jurisdiction on the High Court to issue a writ of Quo-warranto if the appointment is contrary to statutory rules, and as it is evident that the appointment of respondents 3 to 6 is contrary to Section 3(2)(i) of the Act, the contention that no sovereign functions are discharged by persons holding the office of Chairman and member of the Board is irrelevant, and cannot justify refusal to issue such a writ.

D. "PUBLIC OFFICE" - MEANING OF:

31. What then do the words "public office" mean? Quo-warranto, unless enlarged by statute to cover private offices, is confined to testing the right or title to public office of a civil character. The Office must be of a public nature and a substantive office and not merely the function or employment of a deputy or servant held at the will and pleasure of others A. Ramachandran Vs. A. Alagiriswami, Govt. Pleader High Court, Madras and Another, (DB; Darley v. Reg 1846-8 ER 1513 44, American Jurisprudence, 100 & 101). An information, in the nature of quo-warranto, will lie in respect of any particular office which satisfies the following conditions: (1) the office must have been created by charter from the Crown or by Statute. (2) The duties of the office must be of a public nature. (3) The office must be one the tenure of which is permanent in the sense of not being terminable at pleasure. (4) The person proceeded against has been in actual possession and user of the particular office in question. (Halsbury's Laws of England, X 1909 Edn. 129 and 130 and 131; Anand Bihari v. Ram Sahay AIR 1952 Madhya Bharat High Court (1883) 9 AC 61; P.S. Venkataswamy Setty Vs. University of Mysore and Others, . In order to constitute a "public office" it is not always necessary that the appointment to the office should be made by the Government. A person appointed to perform public duties is a public officer. A. Ramachandran Vs. A. Alagiriswami, Govt. Pleader High Court, Madras and Another, ; Kuppu Govinda Chettiar Vs. Uttukottai Co-operative Society,

32. The nature of office, in respect of which quo-warranto will lie, must be taken to be an office created by the Constitution itself or by any statute and invested with the power or charged with the duty of acting in execution or in enforcement of the law. The office may either be an elective office or one in respect of which a nomination or appointment is made by a specified authority P.S. Venkataswamy Setty Vs. University of Mysore and Others, N. Kannadasan Vs. Ajoy Khose and Others, . The test to be applied is whether there has been usurpation of an office of a public nature and an office substantive in character, i.e., an office independent in title. (Mocherla Venkataraya Sarma Vs. Y. Sivarama Prasad and Others, ; H. v. Speyer and R. v. Casse (1916) 1 KB 595). The difference between an "office" and a mere "contractual employment" must be borne in mind. The alleged usurper should be in possession of the office and to have acted in it. (H.W.R. WADE & C.F. FORSYTH'S ADMINISTRATIVE LAW (Tenth Edition). A "Public Officer" is "every one who is appointed to discharge a public duty, and

receives a compensation in whatever shape, whether from the Crown or otherwise." "A public officer is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public." The chief characteristics of a public office is the discharge of duties towards the community or some section of it, and these duties are usually connected with the Government, whether Central or Local, and whether the occupier of the post is or is not remunerated. (A. Ramachandran). While it is possible to say in a particular case whether an office is a public office or not, it is not practicable to formulate a definition that will comprehend all cases partly because no particular feature is absolutely decisive. (A. Ramachandran).

33. The State, as constituted by our Constitution, is specifically empowered under Article 298 to carry on any trade or business. The State is thus comprehended to include bodies statutorily created for the purpose of promoting the economic interests of the people. Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, Where a statute appoints a body of persons to carry out purposes of public benefit, the persons constituting such a body ipso facto become holders of a "public office". There is nothing to prevent a person from undertaking public duties without receipt of emoluments. The test is not whether a man receives any emoluments, but the nature of acts to perform which he is appointed or which he is legally liable to perform. (1917) ILR 40 125 A. Ramachandran Vs. A. Alagiriswami, Govt. Pleader High Court, Madras and Another, Satish Chander Sharma Vs. The University of Rajasthan and Others, ; (1917) ILR 40 125 ; Henley v. Mayor of Lyme (1828) 5 Bing 91). While non-payment of emoluments would not denude the office from coming within the ambit of a "public office", in the present case the Act and the Rules provide for payment of salaries or honoraria or allowances to the holders of the "office" of the Chairman and members of the Board. Section 9 of the State Act stipulates that the conditions of service of the Chairman and Vice-Chairman and the terms and conditions of service of other members of the Board, including the salaries or honoraria and the allowances to be paid to them, shall be such as may be prescribed. As noted hereinabove, Section 2(7) of the Act defines "prescribed" to mean prescribed by rules made under the Act and, consequently, the terms and conditions of service of the Chairman and members of the Board shall be as is prescribed in the Rules. Rule 6(b) of the A.P. Khadi and Village Industries Board Rules, 1969 relates to the honoraria and allowances of the Chairman, and Rule 8-A relates to the honoraria and allowances of the members of the Board.

E. ARE THE OFFICES OF "CHAIRMAN" AND "MEMBERS" OF THE BOARD HELD AT THE WILL AND PLEASURE OF THE GOVERNMENT?

34. Section 5(1) of the Act stipulates that the Chairman, Vice Chairman, non-official members of the Board shall hold office for a period of three years from the date of their appointment, but may resign their office earlier by giving notice in writing to the Government, and shall cease to be a member on the resignation

being accepted by the Government. u/s 5(2) of the Act, notwithstanding anything in Sub-section (1), the Government may reduce the term of office of Chairman, Vice Chairman or any Member before the expiry of his term of office, without giving any notice to such member and appoint any other person in his place. u/s 15(1)(c) of the Act if, at any time, the Government is satisfied that it is otherwise expedient or necessary to dissolve the Board it may, by notification, dissolve the Board for such period as may be specified in the notification and declare that the duties, powers and functions of the Board shall, during the period of its dissolution, be discharged, exercised and performed by such person or authority as may be specified in the notification.

35. Section 5(2) of the Act does not indicate that the relationship between the Chairman and Members of the Board on the one hand and the Government on the other, is contractual. It merely means that termination can be resorted to, even during the subsistence of the term of appointment. The words "without giving notice" is not to be equated to "without existence of any reason". It merely means that the appointee need neither be put on notice nor be asked to show cause why his services should not be terminated. The reason for which the termination is made need not also be assigned or communicated to him. The reasons must however exist, otherwise, the decision would be arbitrary. This does not result in denuding the office of its public character nor does it mean that the appointment is at the sweet will of the Government which can be terminated, even without the existence of any cogent reason, during the subsistence of the term. *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, ; *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*,

36. u/s 5(1) of the State Act the tenure of office, of the Chairman and members of the Board, is for a specified period. Neither is their appointment contractual nor do they hold office at the will and pleasure of the Government. Neither Section 5(2) nor Section 15(1)(c) of the State Act, which undoubtedly confer power on the Government either to reduce the term of office of the Chairman and members or to dissolve the Board itself, can be construed to mean that they are held at the pleasure of the Government for any such construction would render the stipulation of a tenure, u/s 5(1) of the Act, redundant. Even otherwise, it is difficult to understand why in principle an office held at pleasure should not equally, with an office of a permanent character, be the subject of the remedy of a quo-warranto proceedings, provided the office be of a public and substantive character, particularly as an office held at pleasure is often in effect of a permanent character. (*Rex v. Speyer*, *Rex v. Cassel* (1916) 1 KB 595; *A. Ramachandran Vs. A. Alagiriswami*, Govt. Pleader High Court, Madras and Another,

F. THE FUNCTIONS DISCHARGED BY THE BOARD PARTAKE THE CHARACTER OF PUBLIC DUTIES:

i. KHADI - ITS IMPORTANCE IN THE STRUGGLE FOR FREEDOM:

37. Before referring to the relevant statutory provisions, to determine whether or not the functions discharged by the Chairman and members of the Board partake the character of public duties it is necessary to briefly note the importance attached to khadi and village industries by Mahatma Gandhi - the Father of the Nation, and those who participated with him in the freedom struggle, and later drafted the Constitution. Peasants and artisans, in pre-industrial India, wore Khadi made from locally grown organic cotton, harvested by local labourers, spun into yarn by their womenfolk and woven into cloth by men from various specialist weaving castes. In its 1920 Nagpur session, the Indian National Congress first stated its aim to promote Khadi, as the nationalist fabric. Pandit Nehru called it the "Livery of Freedom". ("Reference of Gandhian economics in modern society with special reference to his theory of Khadi" Verma, Ramesh). The All-India Congress Committee, meeting at Bezwada on 31 March, 1921, passed resolutions "calling upon all workers to concentrate their attention, among others, on introducing 20 lakh Charkas (spinning wheels) into Indian households - all this before 30 June, 1921". In its meeting at Bombay on 28th July 1921 the All-India Congress Committee sent detailed instructions to all Congress organizations asking them to concentrate their attention upon manufacture of Khaddar by stimulating hand-spinning and hand-weaving. (The History and culture of the Indian people - Struggle for freedom -R.C. Majumdar).

38. It was around 1921 that Gandhiji used khadi as the uniform for the promotion of "Swadeshi" as part of the Non-Cooperation movement. The "Gandhi cap", made of khadi, had strong symbolic overtones - that of the Indo-British battle over the looms of Manchester and a bid for a modern Indian identity. ("Reference of Gandhian economics in modern society with special reference to his theory of Khadi" - Verma, Ramesh; The History and culture of the Indian people - Struggle for freedom - R.C. Majumdar).

39. Participating in the Constituent Assembly Debate on 25th November, 1949, a little more than two years after India achieved independence, Dr. B. Pattabhi Sitaramayya said:--

..... In this manner we have implemented in developing our Constitution, those principles which had been advocated by Mahatmaji. You may remember in his tours of 1921, he was always mentioning only three sentences in each village and taking away three to thirty thousands of rupees from there. These related to Khaddar, Untouchability and Hindu- Muslim Unity. Khaddar we have perpetuated as the fore-runner of village industries and we have emphasised the development of cottage handicrafts in the development of the country.....

(emphasis supplied).

ii. DIRECTIVE PRINCIPLES OF STATE POLICY- ITS AIM IS ALSO TO ACHIEVE ECONOMIC DEMOCRACY:

40. The importance attached by the framers of the Constitution, on the development of Khadi and Village Industries, is evident from the pride of place it

is given in Part IV of the Constitution of India. As a "Village industry" is defined in Section 2(h) of the Khadi and Village Industries Commission Act, 1956 (hereinafter called the "Central Act") to mean (i) any industry located in a rural area which produces any goods or renders any service with or without the use of power and in which the fixed capital investment per head of an artisan or a worker does not exceed one lakh rupees or such other sum as may, by notification in the Official Gazette, be specified from time to time by the Central Government. The Schedule to the Central Act gives a list of village industries which include cottage match industry, manufacture of fireworks and agarbatties, cottage pottery industry, cottage soap industry, poly-vastra etc. The term "Village Industries" brings within its fold "cottage industries" as is referred to in Article 43 of the Constitution of India.

41. The Preamble of the Constitution promises socio-economic justice, the fundamental rights confer certain justiciable socio-economic rights and the Directive Principles fix the socio-economic goals which the State must strive to attain. These three together constitute the core and conscience of the Constitution. *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*,). In the constituent Assembly debates, Dr. B.R. Ambedkar has underscored that one of the objectives of the Directive Principles of State Policy is to achieve economic democracy and left that in the hands of future elected representatives. *Bhim Singh Vs. Union of India (UOI) and Others*, The Directive Principles set out proximate goals. *Atam Prakash Vs. State of Haryana and Others*,). Although the provisions of Part-IV are not enforceable by any court, the principles laid down therein are not mere homilies. They are fundamental in the governance of the country, and the State is under an obligation to apply them in making laws. Whenever the State makes laws, it must do so consistently with these principles with a view to securing social and economic freedom so essential for the establishment of an egalitarian society. (*Jacob M. Puthuparambil*). Austin considers these directives to be aimed at furthering the goals of the social revolution or to foster this revolution by establishing the conditions necessary for its achievement. (*Granville Austin-The Indian Constitution: Cornerstone of a Nation*, pp. 50-52). He explains:

..... By establishing these positive obligations of the State, the members of the Constituent Assembly made it the responsibility of future Indian governments to find a middle way between individual liberty and the public good, between preserving the property and the privilege of the few and bestowing benefits on the many in order to liberate "the powers of all men equally for contributions to the common good.....

42. The directives emphasise, in amplification of the Preamble, that the goal of the Indian polity is a welfare State, where the State has a positive duty to ensure to its citizens social and economic justice and dignity of the individual. It is meant to serve as an "Instrument of Instructions" upon all future governments, irrespective of their party creeds. The objective of the State Act, as set out in the

statutory scheme, is the implementation of Part IV of the Constitution. As development of Khadi and Village Industries is mandated by Article 43 of the Directive Principles of State Policy, the State must take all initiatives for the survival of village industries which form the backbone of development of the economy at the village level. (A. Madheswaran v. The State of Tamilnadu Judgment of Madras High Court D.B. in W.A. No. 308 of 2005 and Batch dt.26.04.2006; H v. Wife, Residing At 59, Sonawala Judgment of Bombay High Court in Civil Revision Appl. No. 562 of 2012 dt.08.03.2013.

iii. FUNCTIONS WHICH THE BOARD IS REQUIRED TO DISCHARGE UNDER THE STATE ACT:

43. The State Act is an Act provided for establishment of a Board for the development of khadi and village Industries in the State of Andhra Pradesh and for the matters connected therewith. The object of establishing the Board, under the State Act, is a part of the State's endeavour, under Article 43 of the Constitution of India, to promote cottage industries. The functions which the Board is required to discharge, u/s 11 of the State Act, includes training of personnel, supply of raw material at economic rates to persons engaged in the production of khadi, sale and marketing of khadi and products of khadi and village industries, to assist and encourage production of khadi and village industries, to help people providing them with work at their homes and with monetary help, and to train people and equip them with the necessary knowledge for starting khadi and village industries. The aforesaid functions, which the Board is statutorily obligated to discharge, partake a public character as the economic development of a substantial part of rural India is sought to be achieved thereby.

44. u/s 20 of the State Act, the Board prepares a budget which is sanctioned by the Government. To enable the Board to effectively discharge its statutory functions, funds are provided by the Commission established under the Central Act and the State Government. The Board is accountable to the State legislature as Section 22 of the State Act requires the annual report, prepared by it and forwarded to the Government, to be placed on the table of the legislative assembly of the State. Section 29, which enables regulations to be made for the discharge of functions under the State Act, confers on the Board the power of subordinate legislation. Section 12-A(1) of the Central Act enables the Commission to constitute zonal committees. Clause (b), thereunder, stipulates that this committee shall consist, among others, of one representative of each of the State Khadi and Village Industries Boards of the States. The functions of the Board, as stipulated under the State Act, partake the character of public duties, and as the Board discharges governmental functions of promoting economic independence and self-sufficiency at the village level, the Chairman and members of the Board hold "public offices". The statutory obligation cast both on the Commission under the Central Act, and the Board under the State Act, is to promote the development of village industries, including the "cottage industries"

referred to in Article 43 of the Constitution of India. The object of constituting the Board under the State Act is also a part of the State's endeavour to promote industries on an individual or cooperative basis in rural areas, and in pursuance of the State's obligation to make effective provisions for securing the right to work under Article 41 of the Constitution of India. The aforesaid powers vested in the Board, and the functions which it is statutorily required to discharge, establish that the Board discharges public functions, and the Chairman and members of the Board hold a "public office".

VII. OTHER CONTENTIONS:

a. CAN THE HIGH COURT, IN PROCEEDINGS UNDER ARTICLE 226 OF THE CONSTITUTION, ADJUDICATE WHETHER OR NOT RESPONDENTS 3 TO 6 POSSESS THE PRESCRIBED QUALIFICATIONS, WHEN THE STATUTE CONFERS POWERS ONLY ON THE GOVERNMENT TO EXAMINE THESE ASPECTS?

45. It is contended on behalf of respondents 3 to 6 that, from their respective counter-affidavits, it is evident that they have shown active interest in the production and development of khadi and village industries; and, as respondents 3 to 6 possess the statutorily prescribed qualifications for being appointed as the Chairman and members of the Board, this Court should refrain from issuing a writ of quo-warranto. In P.G. Dhananjayan Vs. State of Kerala and Others, on which reliance is placed on behalf of respondents 3 to 6, the Kerala High Court held:--

..... Submission of the learned counsel was, relying on the decision, that the order of appointment cannot be justified and the jurisdiction has to be found either in the face of the order or on the basis of the concerned finding. It may be that there are other valid reasons to support the order but reasons which did not come to the notice of the authority, passed the order cannot be pressed into service, in justification thereof. In my judgment the observations are in the different context and relate to a situation of judicial review of administrative actions. The petition before me is for a writ of Quo Warranto where the Court has to ascertain as to whether the public office has been usurped. It is not possible to accept the observations because they are in the different context. It is not possible to accept both these submissions for the reason that in a petition for a writ of Quo Warranto, the Court has to see and find out as to whether a public office is usurped and therefore in the context the approach can never be restrictive in nature on any count. In this context, if in the usual conduct of business an Under Secretary of the respondent No. 1 for preparation of the return calls for the record and documents, maybe from respondent No. 3 also, it cannot be inferred that the respondent No. 1 would have to be held as totally unaware of the material. The usual conduct of business at once becomes present to the mind on reading annexure to the reply by the petitioner in the context.....

(Emphasis supplied)

46. Section 3(2)(i) of the State Act obligates the State Government to ensure

that only persons, who have shown active interest in the production and development of khadi and village industries, are appointed as the Chairman and the members of the Board. Except for their bio-data/profile, there was no other material on record before the Government to show that respondents 3 to 6 had evinced any such interest. Curiously the 4th respondent, in his counter-affidavit filed before this Court, states that no bio-data had been collected from him; the alleged bio-data, filed along with the Writ Petition, was not a bio-data nor was it submitted by him; he was not aware as to who had prepared the same; and it is not even signed by anyone including himself. If, as is now contended before this Court, no bio-data was submitted, then there was no material at all before the Government to show that the 4th respondent fulfilled the requirements of Section 3(2)(i) of the Act. The bio-data/profiles of these four individuals do not even refer to their being aware of, much less having shown active interest in the, production and development of, Khadi and Village Industries.

47. Respondents 3 to 6 have filed separate counter-affidavits. The 3rd respondent claims to be a follower of Gandhian principles and to be wearing only khadi cloth from his student days; to believe in the Gram Swaraj movement and in promotion of khadi and village industrial products; to have interacted and involved himself with several issues regarding village industries and development; to have toured rural areas in Andhra Pradesh; to have encouraged several people to take up avocation in cottage and village industries including khadi; and to have actively participated in the propagation and implementation of the 20 point economic programme of the Government of India, which included the development of khadi industries. The 4th respondent claims to hail from the weavers community; to have actively participated in the khadi co-operative movement in Gadwal; to have keen interest in the production and development of khadi and village industries; that most of his family members, including himself, were eking out their livelihood from weaving; and that he had actively participated in the weaving movement.

48. The 5th respondent's bio-data records his educational qualifications as B.Tech (Textiles). In his counter-affidavit, the 5th respondent asserts that he is a Graduate in Textile Engineering; he hails from an agricultural family, and is associated with the modern techniques in the field of textiles; he had associated himself with the khadi movement, and had worked for the upliftment of the weaver community; he had also encouraged villagers to establish rural industries like rice mills, brick units, manufacturing hand bags with cotton etc; and his services had been recognized by the artisans of the said area. The 6th respondent contends that he has 15 acres of land; he has been consistently producing cotton in his fields; as the Chairman of Single Window he had sanctioned loans to agriculturists cultivating cotton; as a Director of the DCCB Bank he was instrumental in disbursing loans to agriculturists, especially farmers cultivating cotton; he had taken active part in various programmes relating to the growth of cotton; he was also instrumental in granting loans to weavers associations for the promotion of khadi and handlooms; he was actively involved

in, and had sanctioned loans for, dairy farming; and he has rendered yeomen service in the field of cotton, agriculture and cottage industries, weavers association and dairy farming.

49. The Khadder (Protection of Name) Act, 1950 is an Act to regulate the use of the words "khaddar" and "khadi" when applied as a trade description of woven material. u/s 2 thereof the words "khaddar" and "khadi", whether in Hindi or in any other Indian language or in English, when applied to any woven material, shall be deemed to be a trade description within the meaning of the Indian Merchandise Marks Act, 1889 indicating that such material is cloth woven on handlooms in India from cotton, silk or woollen yarn, hand spun in India or from a mixture of any two or all such yarns. The requirement of Section 3(2)(i) of the State Act is that the person should have shown active interest in the production and development of khadi as defined in Section 2(v) of the State Act, and not any other textile. No material has been placed by respondents 3 to 6, even before this Court in support of their plea that they fulfil the conditions stipulated u/s 3(2)(i) of the State Act. It is not mere interest but active interest which is the statutory requirement. The active interest required to be shown is in relation to production and development of khadi as defined u/s 2(v) of the State Act or development of village industries as defined in Section 2(x) of the State Act. As "khadi" is defined in Section 2(v) of the State Act as a cloth woven on handlooms in India from cotton, mere growing of cotton crops would not qualify as active interest in the production and development of India.

50. This Court would not sit in judgment over the wisdom of the Government in the choice of the person to be appointed as long as the person chosen possesses the prescribed qualifications, and is otherwise eligible for appointment. (R.K. Jain Vs. Union of India and Others, B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees" Association and Others, The "suitability" of a candidate, for appointment to a post, is to be judged by the appointing authority and not by the court unless the appointment is contrary to statutory provisions/rules. Hari Bansh Lal Vs. Sahodar Prasad Mahto and Others, Centre for PIL and Another Vs. Union of India (UOI) and Another, The Government is not accountable to the Courts for the choice made, but is accountable in respect of the legality of its decision. Judicial review is concerned with whether the incumbent possesses the requisite qualification for appointment, the manner in which the appointment came to be made, and whether the procedure adopted was fair, just and reasonable. When a person is found qualified and eligible, and is accordingly appointed by the executive to hold an office, the Court, in judicial review proceedings, cannot sit in judgment over the choice of selection. It is for the executive to select the person as per law or procedure. The difference between judicial review and merit review must be kept in mind. Judicial determination is confined to the integrity of the decision making process, Centre for PIL and Another Vs. Union of India (UOI) and Another, ; R.K. Jain Vs. Union of India and Others, , and the Court can set aside a selection made in breach of the statute or the rules. Ashok Kumar Yadav and Others Vs.

State of Haryana and Others, Centre for PIL and Another Vs. Union of India (UOI) and Another, The power conferred, u/s 3(2)(i) of the State Act, is on the Government and this Court would not be justified in taking upon itself the task of examining, on the basis of the self-serving, vague and bald assertions in their counter-affidavits, whether or not respondents 3 to 6 satisfy the requirements of Section 3(2)(i) of the Act. It is only if the counter-affidavits had disclosed that there was information available with the Government, to show that respondents 3 to 6 had evinced active interest in the production and development of khadi and village industries, can this Court be called upon to exercise restraint.

b. CAN APPOINTMENT AS CHAIRMAN AND MEMBERS OF THE BOARD BE MADE ONLY ON POLITICAL CONSIDERATIONS?

51. Placing reliance on *Durga Chand v. Administrator* it is contended, on behalf of respondents 3 to 6, that, in a Parliamentary System, the business of the Government is run by the political party having support of the majority of members in the Legislature; and, in making appointments to public offices, the politics of a candidate is often considered for preferment. While nomination of persons, belonging to the party in power, to the office of Chairman and members of the Board cannot, by itself, be said to be an abuse of statutory power, or to have been exercised for a collateral purpose, such appointments must be made only in accordance with statutory provisions and not contrary thereto. The first respondent may not have acted amiss, in appointing persons on the basis of their political affiliation, if they had fulfilled the conditions stipulated in Section 3(2)(i) of the Act. While the political affiliation of respondents 3 to 6 is not per-se a disqualification for their being appointed as the Chairman and members of the Board, it is not the sole qualification either. The party interests of a Government are, in the long run, much better promoted by the honest exercise of patronage than by the preservation of it for the purpose of satisfying individual supporters. (*Durga Chand*. It is not because of their political affiliation, but as there is no material on record before the 1st respondent to show that respondents 3 to 6 have evinced active interest in the production and development of khadi and village industries, are respondents 3 to 6 now being ousted from their office by way of a writ of quo-warranto.

VIII. EXERCISE OF DISCRETION BY THE GOVERNMENT, u/s 3(2)(i) OF THE ACT, MUST BE FAIR AND REASONABLE:

52. There is considerable force in the submission of Sri M. Ravindranath Reddy, Learned Counsel for the petitioners, that the 1st respondent, in appointing respondents 3 to 6 as Chairman and Members of the Board, did not adopt a fair and transparent procedure to identify persons who have shown active interest in the production and development of khadi and village industries. Even though the provisions of the State Act, and the Rules made thereunder, do not prescribe a specific mode for appointment of the Chairman and members of the Board, the State Government ought to have adopted a fair and transparent process of selection, more so as the very object of establishing the Board is to further the

State's endeavour, under Article 43 of the Constitution of India, to promote cottage industries. The discretion conferred on the Government u/s 3(2)(i) of the Act, to nominate persons to the office of Chairman and members of the Board, must be exercised reasonably, and on relevant considerations. Discretio est discernere per legem, quid sit justum, is to discern by the right line of law, and not by the crooked cord of private opinion. Discretion must be bound with the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretence, and not to do according to their will and private affection for as one saith, talis discretio discretionem confundit. A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so - he must in the exercise of his discretion do not what he likes but what he ought. In other words he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably. The word "unreasonable" is frequently used as a general description of the things that must not be done. A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. The rule of reason has thus become a generalized rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category of errors commonly described as "irrelevant considerations", and mistakes and misunderstandings which can be classed as self-misdirection. (Administrative Law: HWR Wade & C.F.

Forsyth - Tenth Edition). The first respondent has acted unreasonably, in appointing respondents 3 to 6 as the Chairman and members of the Board, as the records disclose that it has not called its attention to the conditions stipulated in Section 3(2)(i) of the State Act while making these appointments.

IX. CONCLUSION:

53. That Khadi - the "livery of freedom" - should, along with village industries, be reduced to complete irrelevance, despite Legislation under Articles 41 and 43 of the Constitution of India, is a matter of shame and regret. Khadi and village industries were visualised as instruments for upliftment of the village economy, and appointment of those who have shown active interest in the production and development of khadi and village industries, as Chairman and members of the Board, would have gone a long way in upholding the values dear to Mahatma Gandhi - the Father of the Nation - who dreamt that, in the not too distant future, each village in the country would become an independent and self-sufficient economic entity propagating the khadi spirit. In the inimitable words of

the Mahatma:--

If we have the "khadi spirit" in us, we would surround ourselves with simplicity in every walk of life. The "khadi spirit" means illimitable patience. For those who know anything about the production of khadi know how patiently the spinners and the weavers have to toil at their trade, and even so must we have patience while we are spinning "the thread of Swaraj". The "khadi spirit" means also an equally illimitable faith. Even as the spinner toiling away at the yarn he spins by itself small enough, put in the aggregate, would be enough to clothe every human being in India, so must we have illimitable faith in truth and nonviolence ultimately conquering every obstacle in our way. The "khadi spirit" means fellow-feeling with every human being on earth. It means a complete renunciation of everything that is likely to harm our fellow creatures, and if we but cultivate that spirit amongst the millions of our countrymen, what a land this India of ours would be And the more I move about the country and the more I see the things for myself, the richer, the stronger is my faith growing in the capacity of the spinning wheel.....

(emphasis supplied)

54. As the 1st respondent appointed respondents 3 to 6, as the Chairman and members of the Board, without satisfying itself that the conditions prescribed in Section 3(2)(i) of the Act, of having shown active interest in the production and development of khadi and village industries, has been complied with, their appointment must be, and is accordingly, set aside. The Writ Petition is allowed. However, in the circumstances, without costs. The miscellaneous petitions pending, if any, shall also stand allowed.