

(2021) 11 KL CK 0097

In the High Court Of Kerala

Case No : Writ Pettiton (C) No. 23716 Of 2021

Tony Thomas K.

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226
Environment (Protection) Act, 1986 — Section 3(2)(v)(1), 3(3), 5(3)(d)
Environment (Protection) Rules, 1986 — Section 5(3)

Citation : (2021) 11 KL CK 0097

Hon'ble Judges : S.Manikumar, CJ;Shaji P.Chaly, J

Bench : Division Bench

Advocate : V.Harish, Rajan Vishnuraj, P.K.Suresh Kumar, P.Vijayakumar, V.Tek Chand

Final Decision : Dismissed

Judgement

S.Manikumar, C.J.

1. The petitioner has approached this court seeking the following reliefs:

"(i) Issue a writ of mandamus or any other appropriate writ directing the respondents to make all appointments to the EAC, SEIAAs, and SEACs through open advertisements (in official languages) specifying the number of posts available, the qualifications and eligibility, the schedule of the recruitment process and the procedure under which the selection is to be undertaken.

(ii) Call for the records leading to Exhibit P9 and issue a writ of certiorari or order or direction quashing the same;

(iii) Issue a writ of mandamus or any other writ directing the respondents to constitute a High Powered Selection Committee for appointments to the EAC, SEIAAs, and SEACs including chairpersons thereof, preferably headed by a retired Judge of a High Court and comprising one of Senior representative(s) of the MoEF&CC along with at least two eminent members of civil society/non-

governmental organizations with an established track record in environmental conservation;

(iv) Issue a writ of mandamus or any other writ directing the respondents to frame rules of procedure for appointment of members to the EAC, the SEIAA and the SEAC in the State of Kerala in accordance with the Recommendations in Exhibit P7 report.

(v) Issue a writ of mandamus or any other appropriate writ directing the 2nd respondent to make fresh nominations for constitution of SEIAA and SEAC in a transparent way and in accordance with the known Principles of Fair Play by giving effective publicity to the process and making it known to all eligible persons who could be considered for such nomination;

(vi) Issue a writ of mandamus or any other appropriate writ directing the 2nd respondent to issue clear and proper guidelines for identifying candidates to be considered for nomination."

2. The petitioner is highly aggrieved by the manner in which the respondents herein are making appointments to the posts of members for the State Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC), including in the State of Kerala. It is stated that despite there being several competent persons/experts qualified to apply to the SEIAA & SEAC, they are unable to do so, due to the unconstitutional, unfair, arbitrary and non-transparent manner in which the candidates are being selected bereft of any procedure whatsoever, by the whims and fancies of the respondents by a 'pick and choose approach'.

3. It is stated that Appendix VI of the EIA Notification, 2006 prescribes the eligibility criteria for members of the SEIAA and the SEAC. It requires the members of the said bodies to be experts or professionals having certain educational qualifications and relevant experience in specific fields/disciplines including, inter alia, Environment Quality and Project Management in relevant sectors. That, under Appendix VI, Experts having a relatively higher experience are to be appointed to the Expert Appraisal Committee (EAC), State Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC). However, if an adequate number of experts are not available, professionals who have relatively less expertise and experience can be appointed. It is submitted that by adopting a non-transparent and arbitrary approach of appointment without public notice or advertisement, the best available experts who would otherwise be interested are not considered for appointments, which invariably results in persons of lesser experience i.e. professionals getting appointed.

4. The petitioner contended that the lack of rigour and procedural transparency in the appointment process creates an environment for the appointment of persons who may have conflict of interest. Further, the independent nature of SEIAA/SEAC will also be lost. It is further stated that though the petitioner

preferred a detailed representation before the respondents vide Exhibit P8, the same is not being considered by the respondents.

5. We have heard learned Senior Counsel for the petitioner, Mr.P.K.Sureshkumar, assisted by Adv.Harish Vasudevan; learned Central Government Counsel Mr.Jagadeesh Lakshman for the Union of India and learned Senior Government Pleader Mr.K.P.Harish for the State and perused the pleadings and the materials on record.

6. The main contention advanced by the learned Senior Counsel for the petitioner is that EAC, SEIAA and SEAC play vital roles in the process of approval of prior environmental clearance for a given project or activity and they are involved in screening, scoping and appraisal of project proposals seeking prior environmental clearance and therefore it is of utmost importance that those selected to be part of these bodies are highly qualified technical experts and are free from any conflict of interest and the selection procedure for selecting the experts must necessarily be transparent and procedurally sound.

7. It was also the contention advanced by the learned Senior Counsel that the eligibility criteria for the post of Member/Chairperson of the aforesaid bodies are given in Appendix VI to the Notification issued by the Ministry of Environment and Forests dated 14.09.2006 produced as Exhibit P1. However, despite an extensive and diverse eligibility criteria, the Notification does not specify the procedure for appointment of the members. It is also submitted that there is no provision for public advertisement, the submission of applications or the scrutiny of applications, if any, by a high powered selection committee but at the same time it is left to the discretion of the respondents as to whether it is to adopt any procedure at all for the selection. Learned Senior Counsel has also invited our attention to Exhibit P2, an advertisement released by the State of Maharashtra inviting applications to the SEIAA and SEAC for the said State and further contended that the inaction on the part of the respondents herein to select candidates through modes of public advertisement, the submission of applications or the scrutiny of applications, if any, by a high powered selection committee, is per se unfair and illegal.

8. That apart, it was submitted that there are various persons across the State who are, though qualified as per the EIA Notification, 2006, unable to participate in the selection process due to the arbitrary modality adopted by the respondents, which, according to the learned Senior Counsel, is clear violation of Articles 14 and 16 of the Constitution of India. According to the learned Senior Counsel, the petitioner is seeking interpretation of a statutory provision and the laying down of guidelines by way of a direction to the State Government in order to carry out the selection procedure in a transparent manner adopting public advertisement inviting applications for the aforesaid bodies. To put it otherwise, the learned Senior Counsel contended that the present recruitment process is an opaque mechanism wherein the case of the EAC, Union of India selects the members on its own and publishes their names on the website of the Ministry

and in the case of SEIAA or SEAC in the State of Kerala, the names are chosen by the 2nd respondent and forwarded to the 1st respondent without any apparent form of advertisement or selection procedure. The method to be adopted by the respondents, according to the learned Senior Counsel, is a fundamental right of the public that the decisions of the aforesaid bodies are made with the environment in mind and kept free from the possibility of bias, and further that since the appointments to the said bodies continue to be made in an opaque manner, the selection, results in arbitrariness and potential conflict of interest which are violative of Articles 14 and 16 as well as prejudicial to the environment thereby violating Article 21 of the Constitution of India. Other subsidiary contentions are also raised, which we have taken note of.

9. The sole question to be decided is whether any manner of interference is required to the selection process now undertaken by the respective Governments to the aforesaid bodies. Exhibit P1 notification issued by the Ministry of Environment and Forests dated 14.09.2006, prescribes a selection procedure in order to select the members of the aforesaid bodies i.e., Expert Appraisal Committee (EAC), State Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC). The said notification is constituted by exercising the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification dated 27.01.1994, as per which the Central Government directed that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the Schedule to the notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified in the notification. Clause 3 deals with the State Level Environment Impact Assessment Authority, which reads thus:

"3. State Level Environment Impact Assessment Authority:

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

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

(3) The Chairman shall be an expert in terms of eligible criteria given in APPENDIX VI in one of the specified fields, with sufficient experience in

environmental policy or management.

(4) The other member shall be an expert fulfilling the eligibility criteria given in APPENDIX VI in one of the specified fields.

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

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

(7) All decisions of the SEIAA shall be taken in meeting and shall ordinarily be unanimous:

Provided that, in case a decision is taken by majority, the details of views, for and against it, shall be clearly recorded in the minutes and a copy thereof sent to MoEF."

10. The composition of the sector/project specific Expert Appraisal Committee (EAC) for category A projects and the State/UT Level Expert Appraisal Committees (SEACs) for category B projects is to be constituted by the Central Government as prescribed under Appendix - VI of Exhibit P1 notification dated 14.09.2006, which reads thus:

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

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

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

Age: Below 70 years. However, in the event of the non-availability of /paucity of

experts in a given field, the maximum age of a member of the Expert Appraisal Committee may be allowed up to 75 years

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

? Environment Quality: Experts in measurement, monitoring, analysis and interpretation of data in relation to environmental quality.

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

? Environmental Impact Assessment Process: Experts in conducting and carrying out Environmental Impact Assessments (EIAs) and preparation of Environmental Management Plans (EMPs) and other Management plans and who have wide expertise and knowledge of predictive techniques and tools used in the EIA process

? Risk Assessment

? Life Science (floral and faunal management)

? Forestry and Wildlife

? Environmental Economics with experience in project appraisal

? Public Administration or Management covering various developmental sectors and environmental sectors

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

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

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

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

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

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

11. It is on the basis of the procedure prescribed under the notification 2006 that

the Government of Kerala as per Exhibit P9 dated 13.09.2021, issued an order constituting a search committee comprising of the Vice Chairman, Kerala State Planning Board, Chief Secretary, Additional Chief Secretary, Environment Department, and Director, Directorate of Environment, Forest and Climate Change, for submitting a suitable panel of names possessing required qualification as prescribed in the Government of India notification dated 14.09.2006 and 19.09.2018, within 15 days for selecting the members of the SEIAA and SEAC in order to forward the names to the Government of India for notifying the reconstitution of the SEIAA and SEAC.

12. The case advanced by the petitioner is that there is no publicity for such selection carried out as per Exhibit P9 Government Order, which is apparently an order available in the Website of the State Government Environment Department. But we are of the considered opinion that merely because a committee was constituted by the State Government to submit a suitable panel of names possessing required qualifications as prescribed in the Government of India notification does not mean that the said committee would not consider the application submitted by the competent persons before the committee seeking any selection. It is not mandatory that the selection has to be conducted by issuing public advertisements to make the selection procedure a transparent one. It could be done by the search committee by receiving applications from qualified persons in accordance with the standards prescribed as per Exhibit P1 notification of the Government of India, constituted by the State Government. It is also relevant and important to note that the petitioner has no case that a suitable methodology would not be adopted by the search committee constituted by the State Government to receive applications from the qualified and competent persons to be appointed to the post of SEIAA and SEAC, by the Central Government. It is also significant to note that the duty cast upon the State Government is only to constitute a panel of candidates and forward the same to the Central Government for the purpose of appointing the members to the SEIAA and SEAC.

13. In our considered opinion, the contentions raised by the petitioner that since no advertisement is issued for selecting candidates that would not be a fair selection process, cannot be sustained for the reason that it is clear from Exhibit P9 order issued by the State Government that the search committee is constituted with eminent personalities holding high offices with the intention of considering the applications from the persons with required qualifications and prepare a panel of names so as to forward it to the Central Government. In our considered opinion, it is for the search committee to decide the manner in which the applications are to be invited and conduct a selection. One thing is clear, it will have to be done on an early basis since the SEIAA and SEAC constituted for a period of three years, has already expired and unless and until such bodies are put in place, the issuance of environment clearance would be jeopardised, which can in turn retard the activities and affect the progress of the State materially and substantially.

14. We are also of the view that except making certain apprehensions in the writ petition that the selection would not be proper without an advertisement inviting applications, the petitioner has not produced any concrete materials before us to establish that the procedure adopted by the search committee would be arbitrary and illegal. Thus to say the contentions put forth by the petitioner are all premature in nature, not supported by adequate materials so as to establish the case put forth by him, and therefore at this point of time, we would not be in a position to prejudge as to whether the selection method that would be adopted by the State Government and the search committee would interfere with the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. We are also of the clear opinion that the selection was being conducted by the Government of India as per Exhibit P1 notification issued by the Ministry of Environment and Forests dated 14.09.2006 and the petitioner could not even point out any illegality or arbitrariness in the selection procedure adopted by the Central Government and the list prepared by the State Government for the appointment to the aforesaid bodies constituted as per the notification dated 14.09.2006. Moreover petitioner has no case that the State Government has violated any of the imperative conditions contained in Exhibit P1 notification in the matter of preparing the panel of names to be forwarded to the Government of India, which is the rule in force for conducting the selection. That apart, if in any case the selection is conducted without undertaking a transparent procedure, any aggrieved person is at liberty to challenge the same appropriately and in accordance with law. Thus to say, petitioner has not made any case of arbitrariness or illegality or other legal infirmities susceptible to be interfered exercising the power of discretion conferred under Article 226 of the Constitution of India.

Bearing in mind the above aspects, we have no hesitation to hold that the writ petition filed as a public interest litigation, is worthy to be entertained at this stage of the proceedings. Needless to say, the writ petition fails. Accordingly, it is dismissed.

Pending interlocutory applications, if any, shall stand closed.