

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 23268 of 2022**

MANORAMA KUMARI D/O. UMA SHANKAR PRASAD
Versus
UNION OF INDIA

Appearance:

MR PERCY KAVINA, SR. ADVOCATE with MR.VISHAL J DAVE(6515)
for the Petitioner(s) No. 1
NIPUN SINGHVI(9653) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 29/11/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

By filing this Special Civil Application invoking the writ jurisdiction of this Court, the petitioner has prayed for issuance of writ of mandamus or certiorari or any other writ to direct the respondent Ministry of Corporate Affairs, Union of India, to complete the process of reappointment of the petitioner within time period.

1.1 The second limb of the prayer is to direct the respondent to frame rational and transparent policy giving emphasis to the legislative mandate in Section 413 of the Companies Act, 2013 in order to maintain independence of the judicial officers.

2. Looking at the nature of prayers, the first

prayer is "to complete the process of re-appointment of the Petitioner". For this, the petitioner has referred to the order dated 31.05.2021 of the Hon'ble Supreme Court. The second part of the prayer is to frame the policy.

3. The petitioner herein was appointed as judicial member of the National Company Law Tribunal on 01.06.2016 in terms of section 413 of the Companies Act. The petitioner held office for 5 years as contemplated. It appears that the petitioner sent her willingness on 02.02.2021 to continue as Member(Judicial), National Company Law Tribunal (NCLT) for another term of 5 years. The petitioner has already served for a term of five years and stands retired.

3.1 The respondent issued Circular dated 12.07.2022 regarding filling up of 8 posts of Judicial Member and 11 Posts of Technical Members in the National Company Law Tribunal by inviting online applications for the purpose as reflected in para 7 of the said Circular.

3.2 As provided in para 7 of the Circular "Every Member shall hold office for a period of five years from the date on which he/she enters upon his/her office, but shall be eligible for re-appointment for another term of 5 years. The term of appointment is, however, subject to the maximum age limit of sixty-five years."

4. Learned senior advocate for the petitioner pressing the prayers to complete the process of reappointment of the petitioner, harped on the above conditions that the Member eligible to be reappointed after consumption of term of 5 years subject to maximum age limit of 65 years.

4.1 It was submitted that expeditious appointments stand as bedrock for independence of judicial institutions. The learned senior advocate further invited attention of the Court to the communication dated 05.11.2022, which reflected certain appointments in NCLT.

4.2 Furthering the grievance about non-completion of the re-appointment process of the petitioner for which the petitioner has opted, observations of the Hon'ble Supreme Court in **National Company Law Tribunal and Appellate Tribunal Bar Association vs. Ministry of Corporate Affairs & Ors., Writ Petition (C) No. 510/2021**, in which the Supreme Court addressed its concern about the avoidable delay in filling up the vacancies of the Members in the NCLT. It was a writ petition filed by the Bar Association of the NCLT seeking in general directions for expeditious process of appointments.

4.3 The Hon'ble Supreme Court in that case, observed,

"As the Government has already initiated the process of reappointment by writing to the

Hon'ble Chief Justice, we trust and hope that the reappointment process should be completed expeditiously, as there is no necessity of issuance of any advertisement for participation of other eligible candidates. Reappointment of members can be considered separately without waiting for the process of fresh appointments to commence. As the strength of the members of the NCLT and NCLAT is depleting which would be detrimental to the smooth functioning of the Tribunals, we direct the Government to complete the process at the earliest and not later than two months"

4.3 Another order dated 01.08.2022 of the Apex court in **National Company Law Tribunal Bar Association vs. Union of India, Writ petition (Civil) No. 180 of 2022**, was also sought to be pressed before the Court, in which the Supreme Court observed that selection process, which has already been initiated should be completed at earlier date, which would sub-serve the interest of the Bar Association and would further ensure that the work of the Tribunal does not suffer and functioning is not hampered. It was observed also that the Bar Association cannot have a choice in regard to who should be Member of the Tribunal.

5. The communication-cum-Circular dated 05.11.2022 referred to by learned senior advocate for the petitioner and mentioned in para 4.1 above show that appointments of Judicial Members and Technical Members in the National Company Law Tribunal have been made. The petitioner herein wants to get completed the process of her reappointment within

time period. Reappointment is not a vested right for the petitioner. It may be true that the petitioner has shown her willingness for reappointment and her case may be liable to be considered in accordance with law and that reappointment is contemplated in clause 7 of the circular referred to above.

5.1 Merely because the petitioner has shown her willingness to be considered, merely because she is liable to be considered and merely because she has opted for reappointment, could not be ground to seek writ from the Court that her appointment process may be completed. The petitioner's case could be at the best considered along with other aspiring candidates in accordance with law and on its own merits. Upon being queried, learned senior advocate for the petitioner stated that five persons have been seeking appointment as Members of the Tribunal. Any direction or observation in respect of the petitioner in particular to complete the process cannot be granted.

5.2 While therefore, the first prayer cannot be considered, the second prayer is regarding formation of policy that the appointment shall be rational and with transparency. It has to be only stated in this regard that the authorities cannot be presumed to be not alive to sub-serve the interests of NCLT and act in accordance with the directions of the Supreme Court as above. No further direction is necessary.

6. If at all vacancies are available to be filled up, the authorities shall act in accordance with law. It is respectfully observed that the directions of the Supreme Court in the aforementioned orders shall be complied with in their letter and spirit.

7. In view of the above, the prayers in the petition are not liable to be granted. The petition is not entertained for its prayers made. It accordingly stands disposed of.

(N.V.ANJARIA, J)

(SANDEEP N. BHATT, J)

BIJOY B. PILLAI

