

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd JULY, 2022

IN THE MATTER OF:

+ **W.P.(C) 10461/2020**

MANOJ MISHRA

..... Petitioner

Through: Mr. Ritwick Dutta and Ms. Srishti
Agnihotri, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Mr. Kirtiman Singh, CGSC with Ms.
Srirupa Nag and Ms. Kunjala
Bhardwaj, Advocates.

CORAM:

HON'BLE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant writ petition under Article 226 of the Constitution of India, 1950, has been filed in the style of a Public Interest Litigation (*hereinafter referred to as "PIL"*) seeking quashing of the notification dated 10.07.2020 issued by Respondent No.1 as well as seeking the issuance of a writ of quo warranto against Respondents No. 2 to 5, holding their appointment to the Expert Appraisal Committee (Thermal Power and Coal Mining Projects) as illegal.

2. In 1986, the Environment (Protection) Act, 1986 (*hereinafter referred to as "the 1986 Act"*), and the Environment (Protection) Rules, 1986 (*hereinafter referred to as "the 1986 Rules"*), were promulgated with the aim to protect and improve the environment, and was meant to institute a

framework that would put in place a regulatory regime that would cover all major industrial and infrastructural activities in order to restrict the same with the view to implement sustainable development. The introduction of the Act reads as under:

“Since the sixties concern over the state of environment has grown the world over. There has been substantive decline in environment quality due to increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risks of environmental accidents and threats to life support systems. The decisions which were taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972 were based on the world community's resolve to protect and enhance the environmental quality. While participating in the said Conference Government of India strongly voiced the environmental concerns. Although several measures had been taken for environmental protection both before and after the Conference it was found necessary to enact a comprehensive law on the subject to implement the decisions of the Conference. Accordingly the Environment (Protection) Bill was introduced in the Parliament.”

3. The Ministry of Environment and Forests (*hereinafter referred to as the “MoEF”*) issued a notification, bearing no. S.O. 1533(E), dated 14.09.2006 under Sections 3(1) and 3(2)(v) of the 1986 Act read with Rule 5(3) of the 1986 Rules (*hereinafter referred to as the “EIA notification”*); it was in supersession of a 1994 notification. It stated that certain restrictions and prohibitions would be placed on new projects or activities, or on the expansion or modernization of existing projects or

activities based on their potential environmental impacts. The Schedule to the EIA notification enumerated two categories [Category A and Category B, which, as per Clause 4(i) of the EIA notification, is based on the spatial extent of potential impacts on human health, and natural and man-made resources]of projects or activities that required one to obtain prior environmental clearance that was to be accorded in consonance with the objectives of the National Environment Policy as approved by the Union Cabinet on 18.05.2006.

4. In the same Clause 4 of the EIA notification, it is stated that projects and activities included in Category A shall require prior environmental clearance from the MoEF on the basis of the recommendations of an Expert Appraisal Committee (*hereinafter referred to as the "EAC"*) that is to be constituted by the Central Government. Appendix VI of the EIA notification sets out the composition of the sector/project-specific EAC and states that the EACs shall consist only of professionals and experts fulfilling a certain eligibility. The criteria stipulated in the EIA notification has been reproduced as under:

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APPENDIX VI

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 TO BE CONSTITUTED BY THE CENTRAL GOVERNMENT

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/MSc 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 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:** 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/Operations/Facilities in the relevant sectors.

- **Environmental Impact Assessment Process Experts:** 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 Experts**

- **Life Science Experts in floral and faunal management**

- **Forestry and Wildlife Experts**

- **Environmental Economics Expert with experience in project appraisal**

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 outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector.

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.”

5. The EAC is to be reconstituted after every three years. The primary obligation of the EAC is to scrutinize the applications seeking prior environmental clearance, and determine a comprehensive Terms of Reference (TOR) addressing all relevant environmental concerns pertaining to the specified project or activity for the preparation of an Environmental Impact Assessment (*hereinafter referred to as “EIA”*) Report. The process of Public Consultation is also to be held whereby the concerns of affected persons who have a plausible stake in the environmental impact of the project or activity are taken into account, and then after a holistic evaluation of all the material that is placed before them, the EAC can convey its recommendation, or lack thereof, to regulatory authority with regard to the said project or activity.

6. The facts, in brief, leading to the instant PIL are as under:-

- i. It is stated that the Petitioner is a retired Indian Forest Services officer and founder of the “Yamuna Jiye Abhiyan”. He is also an environmental activist and has been instrumental in the matter pertaining to restoration and preservation of the Yamuna floodplains. He has further approached other forums, such as

the Hon'ble Supreme Court, for furtherance of his activism pertaining to environmental rights.

- ii. It is stated that on 10.07.2020, *vide* Order No. J-15012/01/2007-IA.II (T) (*hereinafter referred to as the "impugned Order"*), the Respondent No.1 reconstituted the EAC for the purposes of conducting environmental appraisal of Thermal Power and Coal Mining Projects in terms of the provisions of the EIA notification. *Vide* the impugned Order, the composition of the EAC was set as follows:

S.No.	Name and Organisation	Role
1.	Shri Gururaj P. Kundargi, Ex.CMD-MOIL Plot No.32, MOIL Vatika, Chicholi Road, Fetri, Nagpur-441501. E-mail: gpkundargi@gmail.com	Chairman (Non-official)
2.	Shri Suramya Dolarray Vora, Retd.IFS Executive Director - Gujarat Science City Plot No.725/B, Sector- 8C, Gandhinagar, Gujarat-382007. E-mail: suramya.vora@gmail.com	Member (Non-official)
3.	Dr. Narmada Prasad Shukla Former Chairman-Madhya	Member (Non-official)

	Pradesh Pollution Control Board, H-44-B, Apsara Complex, Indrapuri, A-Sector Bhopal- 462021. E-mail: shuklanp55@gmail.com	
4.	Dr. Santoshkumar Hampannavar Professor, School of Electrical and Electronics Engineering, REVA University, Flat No.302, Faculty Quarters, Kattigenahalli, Yelahanka, Bangalore, India. E-mail: santoshkumar777@yahoo.com	Member (Non-official)
5.	Dr. Umesh Jagannathrao Kahalekar Professor-Civil Engineering, Govt. College of Engineering-Aurangabad, 39, Mauli, Samarth Hsg. Soc., Near Jawahar Colony Aurangabad, (Maharashtra) - 431 005. E-mail: ukahalelateediffmail.com	Member (Non-official)
6.	Shri K. B. Biswas Former Chairman-Central Ground Water Board, Camellia	Member (Non-official)

	Apartment, 313, Natunpally, Sonarpur, Kolkata-700150. E-mail: biswaskiriti@grnalcom	
7.	Dr. Nandini.N Professor, Dept. of Env. Science, Bangalore University, #7, Reader Quarters, Jnanabharathi Campus, Bengaluru-560 056. E-mail: sainandinin@gmail.com	Member (Non-official)
8.	Dr. Unmesh Patnaik Associate Professor; Centre for Climate Change & Sustainability Studies, Tata Institute of Social Sciences (TISS), Deonar Farm Road, Mumbai - 400088. E-mail: unmesh.patnaik@tiss.edu	Member (Non-official)
9.	Shri Prasant Kumar Mohapatra Former Director (Technical)- NTPC Ltd. Flat No.94B, Gayan Khand-IV, Indirapuram, Ghaziabad - 201014. E-mail: pkmsipatl@gmail.com	Member (Non-official)
10.	Representative of Central	Member (Official)

	Pollution Control Board, New Delhi- Officer dealing in Thermal Power/Coal Mining.	
11.	Representative of Central Electricity Authority (CEA), Ministry of Power, Govt. of India, New Delhi.	Member (Official)
12.	Representative of Director General Indian Meteorological Department (IMD), New Delhi.	Member (Official)
13.	Representative of Indian School of Mines Dhanbad (ISM Dhanbad)	Member (Official)
14.	Dr. S. Kerketta Director in-charge of Thermal Power Sector Ministry of Environment, Forest & Climate Change Govt. of India, New Delhi- 110003.	Member Secretary (Official)
	Shri Manoj Kumar Gangeya Director in-charge of Coal Mining Sector Ministry of Environment, Forest & Climate Change Govt. of	Member Secretary (Official)

	India, New Delhi- 110003.	
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iii. Aggrieved by the appointment of Mr. Gururaj P. Kundargi (Respondent No. 2), Dr. Santosh Kumar Hampannavar (Respondent No. 3), Dr. Umesh Jagannathrao Kahalekar (Respondent No. 4) and Mr. Prashant Kumar Mohapatra (Respondent No. 5), and alleging a violation of citizens' right to a clean environment under Article 21 of the Constitution, the Petitioner has approached this Court by way of the instant PIL.

7. Mr. Ritwick Dutta, learned Counsel appearing for the Petitioner, has made submissions on the opacity in the appointment of the Chairperson of the EAC as well as three non-official members of the EAC. He has particularly underlined as to how none of these members are "experts" as defined under the EIA notification, and therefore, their appointment falls outside the purview of the statutory requirements. Mr. Dutta states that the impugned Order reveals that a total of nine "non-officials" have been appointed, along with six "officials", and his contention is that the EIA notification does not make any distinction between "officials" and "non-officials".

8. Mr. Dutta submits that the appointment of Mr. Gururaj P. Kundargi (Respondent No. 2), Dr. Santosh Kumar Hampannavar (Respondent No. 3), Dr. Umesh Jagannathrao Kahalekar (Respondent No. 4) and Mr. Prashant Kumar Mohapatra (Respondent No. 5) is against the requirements stipulated in the EIA notification. He informs this Court that Appendix VI of the EIA notification lays down that the members of the EAC must comprise of experts and professionals having possessing certain educational

qualifications and having relevant experience in the listed fields/discipline. In the event that experts are not available, professionals with sufficient experience may be considered. However, Mr. Dutta contends that these requirements and qualifications have been given a bypass and that persons who have vested interest in mining activities have been appointed.

9. Elaborate details have been provided by the learned Counsel for the Petitioner to substantiate his contention that the persons appointed, i.e. Respondents No. 2 to 5 are either currently involved with or were previously involved with companies that are indirectly or directly concerned with mining activities. Mr. Dutta submits that this demonstrates a serious conflict of interest and undermines the independence of the EAC as well as their ability to take decisions without being influenced by their own interests.

10. Mr. Dutta, learned Counsel for the Petitioner, has placed reliance on a judgement of this Court in Utkarsh Mandal v. Union of India, **2009 SCC OnLine Del 3836**, to submit that institutionally-biased appointments are an obvious and direct conflict of interest, and that the credibility of the EAC will come into question if a person who has direct interest in the promotion of the mining industry is appointed. Further reliance has been placed on a judgement of the Apex Court in T.N. Godavarman Thirumulpad v. Union of India and Ors., **(2011) 15 SCC 671**, to state that the Supreme Court, while deliberating upon the constitution of a Committee under the Forest (Conservation) Act, 1980, had noted that “experts” needed for a particular project could not simply be substituted by persons concerned with allied disciplines. On this ground, the appointment of three eminent persons instead of experts in the respective field was stayed in the case therein.

11. Mr. Dutta has also cited the judgements in Hanuman Laxman Aroskar v. Union of India (I), **(2019) 15 SCC 401**, and Hanuman Laxman Aroskar v.

Union of India (II), 2020 SCC Online SC 41, wherein the Supreme Court had noted the importance of the role played by experts in the constitution of the EAC and had underlined how crucial it was for the members of the EAC to have wide experience of environmental policy. The learned Counsel for the Petitioner refers to Notification dated 09.10.2014, bearing No. S.O. 2600 (E), by which an amendment was introduced to Appendix VI of the EIA notification pertaining to the qualifications of the Chairperson of the EAC.

12. *Per contra*, Mr. Kirtiman Singh, learned CGSC appearing for the Union of India, submits that the appointment of a “non-official” member in the EAC is not contrary to the EIA notification as the sole distinction between an “official” and “non-official” member is that an “official” member draws their salary from the government departments, unlike the “non-official” members. He states that the appointment of the members is reliant upon the need for individuals with diverse expertise in order for the EIA Report to be as comprehensive and holistic as possible. Mr. Singh submits that, accordingly, the appointments have been made in accordance with the requirements enumerated under the EIA notification as Respondents No. 2 to 5 have the requisite qualification and prior professional experience.

13. The learned CGSC further submits that the appointed members of the EAC are competent and possess vast experience in the relevant sector, and have been exposed to the best practices in India as well as abroad. He states that the allegations pertaining to the conflict of interest is unfounded as the members are mandated to declare the same prior to appraising a project. He points out that the allegation that Respondent No.2 is associated with Nava Bharat Ventures Pvt. Ltd., an entity related to Non-Coal Mining, is inconsequential as the EAC in the present case is concerned with Thermal/Coal projects.

14. Mr. Singh also iterates that the process of recommending a project or an activity is based on online filing of applications, publishing of the minutes of meeting of the EAC on the MoEF's website, holding public consultations for the feedback and recording of objections of stakeholders, etc. As per the learned CGSC, the process is comprehensive and transparent enough to instil confidence in public. Furthermore, the tenure of every member is capped at three years.

15. The learned CGSC lastly submits that the Supreme Court has observed in B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731, that the Court cannot sit in judgement over the wisdom of the Government in the choice of the person to be appointed as long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. He further states that the jurisdiction of the High Court to issue a writ of *quo warranto* is a limited one and this can only be exercised when the appointment is contrary to the statutory rules.

16. Heard Mr. Ritwick Dutta, learned Counsel for the Petitioner, Mr. Kirtiman Singh, learned CGSC, and perused the material on record.

17. The Parliament promulgated the 1986 Act and the 1986 Rules, and has, from time to time, issued notifications with the changing circumstances in the country. The Parliament, in all its wisdom, has established an elaborate system with appropriate checks and balances to prevent any projects from going through that could potentially harm the environment. Appendix VI to the EIA notification provides the requirements and qualifications that have to be satisfied by the Chairperson and the members of the EAC. It remains the prerogative of the MoEF to select the members of

this EAC and to certify that these members are chosen in accordance with Appendix VI to the EIA notification.

18. In the instant case, the Petitioner has challenged the appointments of Respondents No. 2 to 5 on the ground that their appointment has been done in a manner contrary to the requirements set out in the Appendix VI to the EIA notification, and therefore, are liable to be set aside due to their illegality. This Court does not find any weight in the contentions of the Petitioner.

19. At the outset, it is pertinent to note that while admitting PILs, the Court must strike a balance between two conflicting interests – (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others, and (ii) avoidance of public mischief and that justifiable executive actions are not assailed for oblique motives, as the same has the potential of hindering and demoralising persons who may accept appointments pertaining to discharge of public duty. In such cases, the Court must carefully deal with all the factors that govern a PIL, such as *locus standi* of the Petitioner, *prima facie* correctness of the information provided by the Petitioner, etc. The discretion that is granted to the Court for admitting such PILs is limited [Refer to Ashok Kumar Pandey vs. State of West Bengal, (2004) 3 SCC 349 and Dr. B. Singh v. Union of India and Ors., (2004) 3 SCC 363].

20. The Petitioner has provided data with regard to the academic and professional profiles of Respondents No. 2 to 5, alleging conflict of interest and lack of prior experience. On the contrary, a perusal of the Counter Affidavit filed by the Respondents indicates that the qualifications of the Respondents is in consonance with the criteria that has been laid down in Appendix VI to the EIA notification (reproduced above). This Court deems

it fit to reproduce the relevant portion of the Counter Affidavit of the Respondents:

“Competency of the Members of the Appraisal Committees:

In reference to the above allegation, it is humbly submitted that the members of the Appraisal Committee are professionals who have vast experience in the relevant sector and are exposed to best practices in India as well as abroad. For instance:

- i. **Shri G.P. Kundargi, Chairperson (Respondent no.2),** is acting as Chairman of the Expert Appraisal Committee (EAC) constituted by the Ministry for considering the projects/activities of Thermal Power Plants & Coal Mining for grant of Environmental Clearance. He has done Master of Technology (M.Tech.)/M.Sc. (Applied Science) in Mineral Processing from Karnataka University. He retired as Chairman-cum-Managing Director of MOIL Ltd. (Formerly Manganese Ore India Ltd.). He has experience in Water Management System for Zero Liquid Discharge (ZLD) and water treatment for underground mine water, mineral beneficiation plants and metallurgical plants such as Ferro alloys, installation of Solar Power Plant, installation of Wind Turbines for power generation, commissioning of Electrolytic Manganese Dioxide (EMD) Plants and Environmental Management and Waste Utilization. He has more than 35 years of working experience including Corporate Social Responsibilities (CSR), strategic management planning and ERP implementation. He has a vast experience of working at multi-national companies which includes environment related affairs. The Curriculum Vitae of Shri G.P. Kundargi is placed at Annexure R/1 of this affidavit.
- ii. **Dr. Santosh Kumar Hampannavar (Respondent No.3):** Dr. Santosh Kumar Hampannavar is a Senior

Member IEEE (conferred only to 9% IEEE members based on the merit) and advisor of IEEE Power and Energy Society (IEEE PES) student branch chapter since March 2020. His research contributions are specifically in the area of Power System, Smart Grid, Electric Vehicle (EV) and Wind Energy addressing the issues related to the green energy development and environment. It is further submitted that he is an expert in power system and this domain expertise is very much required while appraising the proposals of Thermal Power Sector for grant of Environmental Clearance. The Curriculum Vitae of Dr. Santosh Kumar Hampannavar is placed at Annexure R/2 of this affidavit.

iii. **Dr. Umesh Jagannathrao Kahalekar (Respondent No.4):** *He holds Ph.D. in Environmental Science. He has more than 30 years teaching experience. Presently, he is working as the Professor in Civil Engineering at Govt. College of Engineering, Aurangabad. During his career he has taught subjects like Environmental Engineering, Air Pollution & Control, Water Resources Engineering, Advance Water Treatment, Solid Waste Management, Construction Management etc., He has experience of working on various committees of Government, UGC, AICTE etc. and has vast knowledge of environmental concerns associated with the projects related to Industries. It is submitted that that his vast experience in environment Engineering is necessary for appraisal of Thermal Power Plants and Coal Mining projects for grant of Environmental Clearance. The Curriculum Vitae of Dr. Umesh Jagannathrao Kahalekar is placed at Annexure R/3 of this affidavit.*

iv. **Shri Prashant Kumar Mohapatra (Respondent No.5):** *He retired as Director from National Thermal Power Corporation Limited (NTPC). He has more than 30 years of work experience in different capacities in NTPC. He has both practical as well as managerial experiences for understanding the issues of thermal*

power projects. During his long association with NTPC, he was involved in implementing the environmental measures like installation of Electrostatic Precipitators (ESPs) for control of emission like Particulate Matter (PM), Zero Liquid Discharge, Effluent Treatment Plants, Sewage Treatment Plants, Ash Utilization for Cement & bricks Manufacturing, implementation of ISO 14000 Environmental Management Programme and preparing roadmap for implementation of new emission norms for power plants. His qualification and practical experience become important, while considering such projects for grant of Environmental Clearance as per the EIA Notification, 2006. The Curriculum Vitae of Shri Prashant Kumar Mohapatra is placed at Annexure R/4 of this affidavit.

From the above, it may kindly be appreciated that the Members of the EAC are experts/professionals in their own right having vast experience and are associated with premier institutions/organizations of the country. Therefore, it is incorrect and unjust to cast any doubt on their competencies.”

21. It has been held time and again that the Court cannot sit in judgement over the wisdom of the Government in the choice of person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. Additionally, the burden of establishing *mala fides* is very heavy on the person who alleges it. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees’ Assn. (supra), the Supreme Court has observed as follows.

“49. 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.

51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v. Union of India [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of quo warranto so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post.”

22. As early as the 1960s, the Supreme Court, in University of Mysore and Anr. v. C.D. Govinda Rao and Anr., (1964) 4 SCR 575, had deliberated

upon when a writ of *quo warranto* could be issued. The relevant paragraph of the said judgement is as under:

“6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

As Halsbury has observed [Halsbury's laws of England, 3rd Edn. Vol., II, p. 145] :

“An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.”

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of

the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that 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 usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.”

23. Similarly, in Central Electricity Supply Utility of Odisha v. DhobeiSahoo and Ors., (2014) 1 SCC 161, the Supreme Court had succinctly held that the jurisdiction of the High Court while issuing a writ of *quo warranto* was a limited one and can only be issued when the person holding public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. The portion of the said judgement reiterating the same has been reproduced below:

“21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.”

24. While deliberating upon the decision to fill up the post of the President of the Industrial Court under the Bombay Industrial Relations Act, 1946, the Apex Court in High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors., (2003) 4 SCC 712, observed that the High Court while exercising writ jurisdiction is required to determine at the outset whether a case has been made out for issuance of writ of *certiorari* or a writ of *quo warranto*.

“22. 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 certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact on the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , SCC para 74.)

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana [(2002) 6 SCC 269] .)”

(emphasis supplied)

25. Flowing from the judgements above as well as the educational qualifications/experience of the Respondents No. 2 to 5 as has been furnished by the learned CGSC, this Court is of the opinion that the Petitioner has failed to satisfactorily discharge the burden imposed on them that would warrant the interference of this Court by way of issuance of a writ of *quo warranto*. The appointments of Respondents No. 2 to 5 are in

consonance with procedure and requirements set out in Appendix VI to the EIA notification, and do not merit this Court's indulgence.

26. The reliance of the Petitioner on the judgement of this Court in Utkarsh Mandal v. Union of India (supra) does not come to the aid of the Petitioner for the sole reason that the said judgement was regarding the evident abuse of power exhibited by the members of the EAC. It was not a case where the qualifications of the members of the EAC were under challenge; it was a case regarding the lack of adherence on behalf of the EAC to the process leading up the issuance of an EIA Report, and the decisions taken by the EAC were under challenge. Similarly, the Petitioner's reliance on T.N. Godavarman Thirumulpad v. Union of India and Ors. (supra) is also misplaced on account of the fact that the matter therein is specifically based on the facts of the case therein with regard to the appointment of experts under the Forest (Conservation) Act, 1980, and cannot be applied to the matter herein.

27. In view of the above observations, this Court deems it fit to dismiss the instant PIL. All pending application(s), if any, stand disposed of,

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JULY 22, 2022

Rahul