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

+ W.P.(C)No.9269/2017

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Date of decision : 6th November, 2017

ENERGY WATCHDOG

..... Petitioner

**Through : Mr. Jayant Bhushan, Sr. Adv.
with Ms. Neha Rathi, Adv.**

versus

UNION OF INDIA & ORS

..... Respondents

**Through : Mr. Sanjay Jain, ASG with Mr.
Sanjeev Narula, CGSC along
with Ms. Adrija Thakur and
Ms. Anumita Chandra, Adv.
for UOI/R-1 & 2.
Mr. Ravinder Agarwal, Adv.
for R-3/CVC**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition, claiming to be filed in public interest, seeks to challenge the appointment of the respondent no.5 to the post of the Chairman-cum-Managing Director of the Oil & Natural Gas Corporation Ltd. (ONGC) effected by the respondent nos.1 and 2 vide the DOP&T Information Note dated 25th September, 2017. The writ

petitioner also seeks setting aside of the appointment of the respondent no.6 to the post of Non-Official Director of the Oil & Natural Gas Corporation Ltd. (ONGC) which was effected by the respondent nos.1 and 2 vide DOP&T Information Note dated 29th September, 2017.

2. The petitioner has been represented by Mr. Jayant Bhushan, Senior Counsel while Mr. Sanjay Jain, Additional Solicitor General of India has appeared on advance notice in the matter along with Mr. Sanjeev Narula, Central Government Standing Counsel on behalf of the respondent nos.1, 2 and 4. Mr. Ravinder Agarwal, Advocate has appeared for the Central Vigilance Commission, respondent no. 3.

3. During the course of preliminary hearing, both sides have handed over certain documents which have bearing on the case. The documents were taken on record by the following order passed by us on 1st November, 2017 :

“1. This writ petition seeks issuance of a writ of quo warranto so far as the appointment of respondent no.5 as the Chairman-cum-Managing Director of the ONGC and that of the respondent no.6 as an Independent Director on the Board of Directors of the ONGC.

2. During the course of hearing, the following documents have been handed over by Mr. Sanjay Jain, ld. ASG :

(i) Order dated 14th July, 2016 issued by the Ministry of Petroleum & Natural Gas (Vigilance Division), Government of India.

(ii) Note dated 17th August, 2017 regarding the meeting of the Search Committee for selection of non-official Independent Directors on the Board of CPSEs.

(iii) *Copy of the e-mail dated 14th May, 2015 of the respondent no.6 forwarding his bio-data.*

(iv) *Declaration dated 20th September, 2017 and the enclosed annexure submitted by the respondent no.6.*

(v) *Recommendations made by the Search Committee in the meeting dated 18th August, 2017.*

(vi) *Appointment letter dated 3rd of October 2017 by the Ministry of Petroleum & Natural Gas (Corporate Affairs Desk), Government of India appointing the respondent no.6 as a Non-Official Director on the Board of Oil & Natural Gas Corporation Limited.*

3. *Mr. Jayant Bhushan, ld. Senior Counsel for the petitioner has handed over a copy of the Annual Report 2016-17 of the ONGC. Copies of these documents have been exchanged between the parties and taken on record.*

4. *We have heard Mr. Jayant Bhushan, ld. Senior Counsel for the petitioner and Mr. Sanjay Jain, ld. ASG, who is appearing on behalf of the respondent nos.1 and 2. Submissions stand addressed on the above documents as well.*

5. *List this writ petition for orders on 6th November, 2017."*

4. We have accordingly heard ld. Senior Counsels on both sides at length on the petition and the above.

5. The petitioner claims to be a society, registered under the provisions of the Societies Registration Act (XXI of 1860) (*Regn.No.: S/522/2013 dated 30.07.2013 at Delhi*) working sincerely to protect the national interest and the interest of consumers in the energy sector and claims to have filed several Public Interest Litigations in the

Supreme Court of India, Appellate Tribunal for Electricity (APTEL) as well as various Electricity Regulatory Commissions across India. Some of the cases filed by the writ petitioner have been enumerated in the writ petition.

Challenge to appointment of Respondent No. 5

6. So far as the challenge in the present writ petition to the appointment of the respondent no.5 to the post of Chairman-cum-Managing Director of the ONGC is concerned, it was contended by Mr. Jayant Bhushan, Id. Senior Counsel for the petitioner that by an order passed on 23rd of February 2015 by the Vigilance Division of the Ministry of Petroleum and Natural Gas, Government of India, the respondent no. 5 had been placed under suspension by the competent authority with immediate effect in exercise of its powers conferred by sub-rule (1) of Rule 33 of the *ONGC Conduct Discipline and Appeal Rules, 1994 (Amended 2011)* read with the Code of Conduct on the ground that “*Disciplinary proceedings against Shri Shashi Shanker, Director (T&FS), ONGC is contemplated*”.

7. In the writ petition, it is contended that on 17th of July 2015, the respondent no.2 revoked the suspension of the respondent no.5 citing the Supreme Court of India’s general observation that a suspended officer should be reinstated if an agency fails to file chargesheet within 90 days.

8. The above bunch of documents exchanged with the petitioner and placed by Mr. Jain, Id. ASG also contains the following order of 17th July, 2015 showing revocation of suspension in 2015 :

*“No.C-13017/1/15-Vig.
Government of India
Ministry of Petroleum and Natural Gas
Vigilance Division*

New Delhi, the 17th July, 2015

ORDER

Whereas a Disciplinary proceeding against Shri Shashi Shankar, Director (T&FS), ONGC was contemplated and the officer placed under suspension in exercise of the powers conferred by sub Rule (1) of Rule 33 of the ONGC conduct Discipline and Appeal Rules, 1994 (Amended 2011) read with code of conduct.

Whereas the said officer preferred an appeal under Rule 45(a) of the ONGC conduct Discipline and Appeal Rules, 1994 (Amended 2011) vide his appeal dated 29-05-2015 submitted to the Competent Authority as defined in Sub Rule (5) (a) of Rule 33, of the same Rules, seeking revocation of the suspension order dated 23-02-2015.

Whereas, the competent authority considered the appeal in the light of the submissions in the appeal, read with the instructions of DOP&T dated 3rd July 2015 and provisions of Rule 51(1) of the ONGC conduct Discipline and Appeal Rules, 1994 (Amended 2011).

Whereas, the competent authority in exercise of the powers conferred by Sub Rule (5) (sa) of Rule 33 of the ONGC conduct Discipline and Appeal Rules, 1994 (Amended 2011), hereby revokes the order of suspension of the said Shri Shashi Shankar with immediate effect. Shri

Shashi Shankar shall hereby be allowed to resume his official functions, pending finalization of the disciplinary proceedings. This will not effect the disciplinary proceedings contemplated against the officer.

sd/-
(Sudhanshu Sekhar Mishra)
Under Secretary to the Government of India”

9. So far as the appointment to the post of Chairman-cum-Managing Director, ONGC is concerned, the respondent no.4 i.e. the Public Enterprises Selection Board ('PESB' hereafter) invited applications on a format which required the applicant to disclose as to whether any disciplinary proceedings have been held against him in the last 10 years. The writ petitioner submits that the respondent no.5 had applied for the same.

10. Interviews of 9 candidates for the said post were conducted on 19th of June 2017 by the respondent no.4. It is contended that the decision of the PESB to recommend the name of the respondent no.5 for the post of Chairman-cum-Managing Director, ONGC was posted on the website on 19th June, 2017. Premised on the order of suspension dated 23rd February, 2015, the petitioner claims to have lodged complaints against this recommendation on 21st July, 2017 with the respondent nos.1 and 3 as well as the Prime Minister of India contending that his appointment would be contrary to public interest as an officer with the tainted past should not be heading an organization dealing with huge financial budget and outlay. It is

noteworthy that in support of these averments, reliance has been placed only on newspaper reports.

11. On 31st of July 2017, the petitioner addressed a query under Right to Information Act, 2005 to the Central Vigilance Commission seeking copies of the complete files showing what had happened after the 28th of February 2015, when the government had suspended the respondent no.5, and also copies of the vigilances clearances that were issued by the Central Vigilance Commission to him since 23rd February, 2015.

12. The Central Vigilance Commission had responded vide communication dated 22nd of August 2017 forwarding its letter dated 7th of July 2017 which was addressed to the Joint Secretary and Chief Vigilance Officer of the Ministry of Petroleum & Natural Gas. It was submitted that the remaining information which had been sought by the petitioner was not available with it.

13. So far as the communication dated 7th of July 2017 is concerned, by this letter, the Central Vigilance Commission had thereby clearly informed the Ministry of Petroleum & Natural Gas as follows :

“2. There is nothing adverse on the records of the Commission in respect of Shri Shashi Shankar.”

14. A similar query dated 31st July, 2017 under the Right to Information Act, 2005 was addressed by the petitioner to the Ministry of Petroleum & Natural Gas, again seeking copies of the complete

files post 23rd February, 2015; copy of the chargesheet issued to the respondent no.5; if the chargesheet has not been issued, is the matter still pending; the status of investigation; and copy of the bio-data that was forwarded by the Ministry to the PESB for interview for the post of CMD, ONGC.

The Ministry responded to this query by a letter dated 23rd August, 2017 as follows :

“3. In this regard, it may be stated that as per Section 8(1)(j) of RTI Act “notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.”

4. Further, DOPT vide its O.M. No. 11/2/2013-IR(Pt.) dated 14.08.2013 has informed the decision of Supreme Court of India in the matter of Girish R. Deshpande Vs. CIC and others in which it was held that “The performance of an employee / Officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression ‘personal information’, the disclosure of which has no relationship to any public activity or interest. On the other hand, the disclosure of which could cause unwarranted invasion of the privacy of that individual”. The Supreme Court further held that such information could be disclosed only if it would serve a larger public interest.

5. *In view of Section 8(1)(j) of RTI Act, 2005 and DOPT's O.M. under reference, it is observed that information sought by you relates to personal information, the disclosure of which has no relationship to any public activity or interest and causes unwarranted invasion of privacy of the individual. Hence there is no obligation on the CPIO to furnish the information sought by you.*

6. *In case, you are not satisfied with the information furnished, you may prefer any appeal within the stipulated time to the Appellate Authority, whose details are given below:*

*Shri Vijay Sharma,
Appellate Authority & Director (Vig.)
Ministry of Petroleum & Natural Gas,
Shastri Bhawan,
New Delhi."*

(Emphasis by us)

15. It is an admitted position before us that the petitioner did not assail the letter dated 23rd August, 2017 before the appellate authority any further.

16. Thereafter, by an order dated 25th of September 2017 passed by the Appointments Committee of the Cabinet (ACC), the appointment of the respondent no.5 as the Chairman-cum-Managing Director of the ONGC was approved from the date of his assumption of the post till the date of his superannuation or until further orders, whichever was earlier.

17. Mr. Sanjay Jain, Id. ASG appearing for the respondent nos.1 to 4, has placed before this court a copy of an order dated 14th July, 2016 passed by the Ministry of Petroleum & Natural Gas (Vigilance

Division), Government of India. For expediency, we extract the order hereunder in its entirety :

“CONFIDENTIAL

***No. C-13017/1(i)/2015-Vig.
Government of India
Ministry of Petroleum & Natural Gas
(Vigilance Division)***

***Shastri Bhawan, New Delhi
Dated the 14th July, 2016.***

ORDER

Whereas disciplinary proceedings against Shri Shashi Shankar, Director (T&FS), ONGC were contemplated.

Whereas the matter after examination in the Ministry was referred to Central Vigilance Commission (CVC) vide this Ministry's letter of even number dated 03.07.2015 for its First Stage Advice in the matter.

Whereas CVC after examination of the matter, vide its O.M. No. 015/POL/010/3133098 dated 21.04.2016 has advised the matter to rest with regard to Shri Shashi Shankar, Director (T&FS), ONGC.

Whereas on the advice of CVC, the Competent Disciplinary Authority (CDA) has decided to close the matter in respect of Shri Shashi Shankar, Director (T&FS), ONGC.

This issues with the approval of Competent Authority.

sd/-
[Sudhansu Sekhar Mishra]
Under Secretary to the Government of India
Tele: 23073859”

(Emphasis by us)

18. So far as the challenge in the writ petition is concerned, the same is completely premised on the suspension of the respondent no.5 effected by the order dated 23rd of February 2015 in contemplation of disciplinary proceedings. It is noteworthy that in the entire writ petition, there is not a whisper of an allegation that the respondent no.5 was not eligible or competent to hold the post in question or that he did not have the requisite experience.

19. A reading of the above would show that the matter was examined by the Ministry and thereafter referred to the Central Vigilance Commission by the letter dated 3rd of July 2015 for the first stage advice of the Central Vigilance Commission. The matter was examined by the Central Vigilance Commission which after examination, by its letter dated 27th April, 2016 had advised the Ministry to close the matter with regard to the proposed disciplinary proceedings against the respondent no.5. As such, the competent disciplinary authority had taken the decision to close the disciplinary proceedings against the respondent no.5.

20. In view of the above, so far as the challenge to the appointment of the respondent no.5 premised on the fact that he was under suspension or was facing disciplinary proceedings, is completely

untenable and devoid of any factual or legal merit and has to be rejected.

Challenge to appointment of Respondent No. 6

21. We now come to the second challenge laid by the petitioner which is to the appointment of the respondent no.6 as a Non-Official Director or an Independent Director on the Board of the ONGC which stands effected pursuant to the Information Note dated 29th September, 2017, which was issued notifying the approval by the Appointments Committee of the Cabinet on the proposal of the Ministry of Petroleum & Natural Gas for a period of three years from the date of notification of his appointment or until further orders, whichever was earlier.

22. Before examining the grounds of challenge, we may for convenience, extract the relevant statutory provisions which govern the appointment of the independent directors to the Board of any company.

23. Our attention has been drawn by Id. Senior Counsels for both sides to the provisions of Section 149 of the Companies Act, 2013 which is concerned with the constitution of the Board of Directors of a company, the relevant extract whereof reads as follows :

“149. Company to have Board of Directors

(1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—

(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(b) a maximum of fifteen directors: Provided that a company may appoint more than fifteen directors after passing a special resolution: Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

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(4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

(5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—

(a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) who, neither himself nor any of his relatives—

(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;

(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—

(A) a firm of auditors or company secretaries in practice or cost auditors of

the company or its holding, subsidiary or associate company; or

(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;

(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or

(iv) is a Chief Executive or director, by whatever name called, of any nonprofit organization that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or

(f) who possesses such other qualifications as may be prescribed.”

24. The manner of selection of Independent Directors and maintenance of data bank of Independent Directors is stipulated in Section 150 of the statute which reads thus :

“150. Manner of selection of independent directors and maintenance of databank of independent directors

(1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the

appointment of such directors: Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

(2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

(4) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.”

25. So far as the grounds of challenge to the appointment of respondent no.6 are concerned, the Mr. Jayant Bhushan, 1d Senior Counsel for the petitioner, has pressed the challenge *inter alia* on the grounds that the same was in violation of the criterion laid down by the government for consideration as non-official director; that the prescribed process for appointment of the Non-Official Director on the Board of a Central Public Sector Enterprises was not followed; that as per the mandate of Section 149(6), an independent director could not be related to any promoter whereas in the instant case, the respondent no.6 falls in a related category; and that, appointment of an independent director on the Board of the ONGC is in the nature of

distribution of State largesse and in appointing the respondent no.6, the respondents have violated the principles on which the same could have been effected.

We consider these objections in *seriatim* hereunder.

26. The primary objection taken by the petitioner to the appointment of the respondent no.6 as a Non-Official Director is premised on a violation of the criterion prescribed by the government. In this regard, the petitioner has placed before us a notice downloaded from the website of the Department of Public Enterprises as Annexure P12. We extract hereunder the relevant extract thereof :

“Databank of Non Official Directors

Persons desirous of including their names in the data bank being maintained by DPE may send their resume in the prescribed format (Download Format) to Department of Public Enterprises at the below Mentioned Address after ensuring that they fulfill the criteria laid down by the Government in this regard.

Disclaimer

Secretary

Department of Public Enterprises

*Block No. 14, CGO Complex,
Lodhi Road, New Delhi-110003*

***Criteria laid down by the Government for consideration
as non-official Director***

A. (a) Criteria of Experience

- i. Retired Government officials with a minimum of 10 years experience at Joint Secretary level or above.*

- ii. *Persons who have retired as CMD/CEOs of CPSEs and Functional Directors of the Schedule "A" CPSEs. The ex-Chief Executives and ex-Functional Directors of the CPSEs will not be considered for appointment as non-official Director on the Board of the CPSE from which they retire. Serving Chief Executives/Directors of CPSEs will not be eligible to be considered for appointment as non-official Directors on the Boards of any CPSEs.*
- iii. *Academicians/Directors of Institutes/Heads of Department and Professors having more than 10 years teaching or research experience in the relevant domain e.g. management, finance, marketing, technology, human resources, or law.*
- iv. ***Professionals of repute having more than 15 years of relevant domain experience in fields relevant to the companys area of operation.***
- v. *Former CEOs of private companies if the company is (a) listed on the Stock Exchanges or (b) unlisted but profit making and having an annual turnover of at least Rs.250 crore.*
- vi. ***Persons of eminence with proven track record from Industry, Business or Agriculture or Management.***
- vii. *Serving CEOs and Directors of private companies listed on the Stock Exchanges may also be considered for appointment as part-time non-official Directors on the Boards of CPSEs in exceptional circumstances.*
- B. Criteria of Educational Qualification**
Minimum graduate degree from a recognized university.

xxx

xxx
 (Emphasis by us)

xxx”

27. Mr. Jayant Bhushan, Id. Senior Counsel for the petitioner has placed reliance on the Criteria A(a)(iv) extracted above submitting that it was only professionals of repute having more than 15 years of

relevant “*domain experience*” in fields relevant to the ONGC’s areas of operation would fall within the eligibility criteria of experience, who could have been considered for appointment as the Non-Official Director.

28. So far as the expression “*relevant domain*” is concerned, Mr. Jayant Bhushan, Id. Senior Counsel submits that this would draw colour from the stipulations in criteria A(a)(iii) above which has given examples of the expression “*relevant domain*” as “*management, finance, marketing, technology, human resources, or law*”.

29. The submission on behalf of the petitioner is that the respondent no.6 had passed his Masters of Surgery in the year 2002; joined as a doctor with the Bara Hindu Rao Hospital in Delhi; contested elections to the Municipal Corporation of Delhi in 2012 on a ticket of the ruling party and that, between 2002 and 2012, must have practiced as a doctor who as per Mr. Jayant Bhushan, Id. Senior Counsel, would therefore, have no experience in the relevant domain and have only 10 years or less experience as a medical professional. It is submitted that therefore, the respondent no.6 does not meet any of the criteria of experience specified for appointment as a non-official director, as specified by the Government on its official website.

30. *Per contra*, Mr. Sanjay Jain, Id. ASG appearing for the respondent nos.1 to 4 disputes the restricted meaning ascribed to the expression “*relevant domain*” by Mr. Jayant Bhushan. It is further submitted by Mr. Sanjay Jain, Id. ASG that so far as the candidature of the respondent no.6 is concerned, he has to be considered under the

criteria set out at para no. A(a)(vi) as a “*Person of eminence with a proven track record...*” and not under criteria A(a)(iv) as asserted by the petitioner as a professional of relevant domain experience.

31. Mr. Sanjay Jain, Id. ASG has placed before this court the bio-data of the respondent no.6 which was submitted as back as on the 14th of May 2015 giving his particulars. In this bio-data, the respondent no.6 has disclosed that he did his MBBS between 1992-97; qualified his Masters in Surgery in 2002; had qualified the UPSC Combined Medical Services Examination in 2000; joined the Municipal Corporation of Delhi as a Medical Officer in the year 2003 and served as a Senior Medical Officer in the Hindu Rao Hospital till 2012. The submission is that the respondent no.6 had completed his professional degree in 1997 and even qualified the UPSC examination in 2000, having experience of almost twenty years as a qualified doctor. In his bio-data, the respondent no.6 also disclosed that he has founded a “*well known NGO, Swaraj which worked constantly in Delhi for the benefit of poor downtrodden and Dalits.*”

32. Mr. Sanjay Jain would submit that the experience of the respondent no.6 as a practicing doctor from as back as the year 2000 as well as his experience in founding and managing the NGO would show that the respondent no.6 has adequate skills, experience and knowledge in the management and administration of an organization which are required for performing the duties of a non-official director on the Board of a company and therefore, qualifies as a person of eminence with a proven track record.

33. Our attention has also been drawn by Mr. Sanjay Jain, Id. ASG to the *Companies (Appointment and Qualification of Directors) Rules, 2014*. Rule 5 of these Rules provides for the qualifications of an ‘independent director’ and reads as follows :

“5. Qualifications of independent director.- An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company’s business.”

34. We are also of the view that so far as the illustrations to the expression “*relevant domain*” are concerned, the same are not exhaustive and would take into consideration other fields as may be relevant for discharging functions of an independent director in a company incorporated under the provisions of the Companies Act. The construction of this expression, as suggested by Mr. Bhushan, would put an unwarranted restriction on eligibility of experts in different fields whose presence may empower and enrich the constitution of Board of Directors of different companies.

35. Given the wide diversity in specializations, availability of knowledge, experience, areas of education as well as the multifarious concerns required to be addressed by corporations, it cannot today be contended or held that a person must necessarily possess knowledge and experience only of the business or activity which is being undertaken by the company to whose Board an appointment of an

independent director is being contemplated. On the contrary, the expertise in diverse fields and valuable experience of directors on the Board even in areas unrelated to the core businesses of the concerned company, may greatly enrich and contribute to development, diversification and improvement of a corporate entity.

36. Additionally, Rule 5 of the ***Companies (Appointment and Qualification of Directors) Rules, 2014*** includes knowledge in management and administration as a qualification. Though not relevant, it was suggested by Mr. Sanjay Jain, Id. ASG that so far as the respondent no.6 is concerned, he would bring the wealth of his training as a surgeon and the valuable experience of founding, managing and running a non-governmental organization to the Board of the ONGC.

37. The Oil and Natural Gas Corporation Ltd. (ONGC), was established as the erstwhile Oil and Natural Gas Commission under the ***Oil and Natural Gas Commission Act, 1959*** before being transferred in its present form by the provisions of the ***Oil and Natural Gas Commission (Transfer of Undertaking and Repeal) Act, 1993***. The statement of objects and reasons of the 1959 enactment would show that the commission was established for the '*development of petroleum resources and the production and sale of petroleum and petroleum products by it and for matters connected therewith*'. If the submissions advanced by the petitioner were accepted the expression "*relevant domain*" would be restricted to all specializations limited to petroleum and petroleum products alone. The given criterion of

domains such as agriculture (as appear in para A(a)(iii)), would also be rendered otiose as they may not even carry a remote association with the activities of an organisation like the ONGC.

38. It is to be remembered that under the prescription of company law, ONGC is required to discharge Corporate Social Responsibility (CSR) which directly incorporates concerns of the human rights and environment. It cannot be denied that the activities of a company would impact both. ONGC would also be concerned with the health of not only the large numbers of its employees but also would require to address health concerns of the public at large on account of the activities (including explorations for oil etc.) which are undertaken by it i.e. the large social and environmental impact of its core businesses which only a scientifically trained person could best evaluate and understand. Therefore, today it cannot be contended that knowledge and experience in healthcare would be of no relevance or consequence to the operations of the ONGC. The Board of Directors of such an organization must stay alive to the needs of health and environment and the presence of a medical expert on the Board of Directors cannot be considered to be an appointment on an irrelevant criteria.

39. It needs no elaboration that professionals as doctors, lawyers, chartered accountants would undoubtedly make value additions in any domain or field.

40. We have given our careful consideration to the submissions made before us. Given the information furnished in the bio-data, we find substance in the submission made that criteria laid down in para

A(a)(iii) and (iv) would have no application so far as the consideration of the eligibility of the respondent no.6 is concerned. The respondent no.6 could be considered under para A(a)(vi) as a “*Person of eminence*” by the competent authority.

41. We now examine the challenge to the appointment of the respondent no.6 on the ground of procedural non-compliance with the notified procedure. So far as the process of appointment is concerned, Mr. Jayant Bhushan, Id. Senior Counsel for the petitioner has placed before us the notified “*Process of appointment of the Non-Official Director*”, the relevant extract whereof reads as follows :

“Process of appointment of non-official Directors on the Boards of CPSEs

*The proposals for appointment of non-official Directors on the Boards of CPSEs are initiated by the concerned Administrative Ministries/Departments. **The selection of non-official Directors is made by the Search Committee.** The present composition of the Search Committee is as under.*

- 1. Secretary (DoPT) - Chairman*
- 2. Secretary, DPE*
- 3. Secretary of the concerned Administrative Ministry/Department*
- 4. Two non-official Members:*
 - Mrs. Pratima Dayal, IAS (Retd.), Former Principal Economist, India Residence Mission, ADB; and*
 - Prof. Ravichandran Narasimhan, Former Director, IIM, Indore Member and presently Professor, IIM Ahmedabad*

The concerned Administrative Ministry/Department appoints the non-official Directors on the basis of recommendations of Search Committee after obtaining the

approval of competent authority. The recommendation of the Department related Standing Committee of Industry to the effect that if persons from the categories of Scheduled Castes, Schedules Tribes, OBC and women categories come forward with the laid down criteria, they should be given preference, has also been communicated to all Ministries as the proposals for appointment of non-official Directors on the Boards of CPSEs are initiated by them.”

42. It has been submitted in the writ petition and pressed before us by Mr. Jayant Bhushan, Id. Senior Counsel that the appointment of the respondent no.6 was effected *de hors* the recommendation by a Search Committee.

43. Mr. Sanjay Jain, Id. ASG submits that the Search Committee has applied its mind and considered all material placed before it. In this regard, Mr. Sanjay Jain has placed before us the notice dated 17th August, 2017 issued by the Ministry of Petroleum & Natural Gas to the Department of Public Enterprises requiring it to forward panels (three names for each vacancy) along with the bio-data of recommended persons and a summary of the proposal for consideration by the Search Committee for filling up 34 vacant positions of Independent Directors on the Boards of 12 CPSEs which were under the Ministry of Petroleum and Natural Gas. In this notice, the respondent no.1 has requested constitution of a panel for two vacant posts for the ONGC which has been mentioned at Sr.No.11. The respondents appear to have forwarded the bio-data under the Companies Act, 2013 and the declaration dated 20th September, 2017 of the respondent no.6.

44. The Search Committee of the Department of Public Enterprises in its meeting dated 18th of August 2017 made the recommendations of two persons for appointment as Non-Official Director to the ONGC. The name of the respondent no.6 stands recommended by the Search Committee for appointment in the Category A(vi) (i.e. the category of “*person of eminence*” as noted above). At the same time, the Search Committee recommended the name of Ms. Ganga Murthy in the Category A(i) (i.e. the category of “*Retired Government officials with a minimum of 10 years experience at Joint Secretary level or above.*”

45. It is these recommendations which appear to have been accepted by the respondent no.1. By its letter dated 3rd of October 2017 addressed to the CMD, ONGC, the respondent no.1 informed the approval of the Competent Authority to the appointment of the respondent no.6 as the Non-Official Director on the Board of ONGC for a period of three years.

46. In view of the above, the challenge to the appointment of the respondent no.6 on account of procedural violation is also unfounded and has to be rejected.

47. It has additionally been urged by Mr. Jayant Bhushan, Id. Senior Counsel that the respondent nos.1 to 4 could have effected appointment of any Independent Director only from the data bank which was maintained in accordance with Section 150. The submission is that expression “*may*” as appears in sub-section (1) of Section 150 has to be read as “*shall*”. This submission is also to be

noted only for the sake of rejection. We find that sub-section (1) of Section 150 opens with the words “*Subject to the provisions contained in sub-section (5) of Section 149*”.

48. In addition, it is necessary to refer Rule 6 of the ***Companies (Appointment and Qualification of Directors) Rules, 2014*** which reads thus :

“6. Creation and maintenance of databank of persons offering to become independent directors. –

(1) Any body, institute or association (hereinafter to be referred as “the agency”), which has been authorised in this behalf by the Central Government shall create and maintain a data bank of persons willing and eligible to be appointed as independent director and such data bank shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be approved or notified by the Central Government.

xxx

xxx

xxx”

49. Our attention has also been drawn to the provisions of sub-section (4) of Section 150 which provides that the Central Government may prescribe the manner and procedure of selection of Independent Directors who fulfill the qualifications and requirements specified in Section 149.

50. There may be a situation where a body, institute or association has not been so far authorized by the Central Government to create or maintain a data bank of persons. Additionally, there may be competent and willing persons who may not be featuring in the data

bank who would be willing to be appointed as Independent Directors on the Board of Companies. There is nothing in the statutory scheme which prohibits or excludes persons who do not feature in the data bank from being appointed as the Independent Directors to the Board.

51. We now come to a third objection made by the petitioner which is pressed by Mr. Jayant Bhushan, Id. Senior Counsel for the petitioner to the appointment of the respondent no.6 as the Non-Official Director on the Board of the ONGC. As noted above, it has been submitted that the respondent no.6 is the official spokesperson of the ruling political party at the Centre and was active in day to day politics as such he cannot play the role of an independent director being “*related to promoters*” and that his appointment is in violation to Section 149(6) of the Companies Act, 2013.

52. More specifically, Mr. Jayant Bhushan, Id. Senior Counsel has referred to the provisions of Clauses (d) and (e) of sub-section (6) of Section 149 submitting that so far as an Independent Director is concerned, it has to be a person “*none of whose relatives has or had pecuniary relationship or transactions with the company, its holding, subsidiary or associate company, or their promoters or directors. ...*” (sub-clause (d)) or “*who, neither himself nor any of his relatives holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company. ...*” (sub-clause (e)).

53. So far as the respondent no.6 is concerned, the allegation is that he is the official spokesperson of a political party and that political

party happens to be in power at the Centre. The test is whether such person can be covered under the prohibition contemplated in Section 149(6).

54. An examination of the scheme of the statutory position would show that an Independent Director has to be a person of “*integrity and possess relevant expertise and experience*” (Section 149(6)(a)) and specifies the requirements of sub-clause (b) to (e). Sub-section (b) refers to promoters of the company or is holding the subsidiary associate company or has a relationship to these persons. Can it be held that a member of a political party, which may have formed the government, could be held to be so related to promoter of the company that he cannot take an independent stand in the interest of the company?

55. Mr. Sanjay Jain, Id. ASG has vehemently contended that membership of a political party cannot be held to be a relationship to the government. It is further submitted that the respondent no.6 may be a spokesperson for the ruling party but he is not employed nor working for the government. The submission is that the political party has no relationship that the ONGC.

56. A similar issue had arisen for consideration before a Division Bench of the Madras High Court in the judgment reported at **(1995) 2 Mad LJ 367, The Registrar, University of Madras v. Union of India**. The challenge in this case was *inter alia* to the appointments effected by the State Government under Section 10(1)(a) of the Consumer Protection Act. It was urged that the members who belong to political

parties were being appointed as non-judicial members of the forum rendering the statutory provisions to misuse and abuse. This argument was rejected by the court holding in para 18 as follows :

“18. An argument was faintly advanced that members who belong to political parties are being appointed as non-judicial members of the forum and the provisions of the section are easily susceptible to misuse and abuse, and they should, therefore, be struck down. There is no merit in this contention. If a person satisfies the requirements of the section, he cannot be disqualified merely because he is a member of a political party. It cannot be contended that honesty and sincerity to duty will be alien to a member of a political party. If in a particular case an appointment is made mala fide with ulterior motives, that can certainly be questioned by appropriate proceedings. But, the remote possibility of such an appointment cannot be a ground to invalidate the sections.”

(Emphasis supplied)

57. The submission on behalf of the petitioner before us also *ipso facto* requires a presumption to be made that the membership of the political party which may have formed the government would render such person incapable of taking an independent stand in the interest of the company or that he would for this reason not be honestly and sincerely discharge his duties and responsibilities as member of the Board of Directors of Company.

58. In this regard, we may also advert to the appointment of nominated Directors under Section 161 of the Companies Act, 2013. Under Section 161(3), the Board of Directors are empowered to appoint “any person” as a Director who stand “*nominated by any*

institution in pursuance to provisions of any law for the time being in force or by any agreement or by the Central Government or the State Government by virtue of its shareholding in a government company”. Such nominations would necessarily be of persons in which the institutions/Central Government/State Government would have confidence. The expression “*any person*” could mean any employee or outsider of the institution or the governments even.

59. We may also note that Sub-section (8) of Section 149 requires that the company as well as its independent directors shall mandatorily abide by the provisions specified in Schedule IV to the Companies Act, 2013 which is reproduced hereunder :

“SCHEDULE IV

[See Section 149(7)]

Code for Independent Directors

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of professional conduct:

An independent director shall:

- (1) uphold ethical standards of integrity and probity;*
- (2) act objectively and constructively while exercising his duties;*
- (3) exercise his responsibilities in a bona fide manner in the interest of the company;*

- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;*
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;*
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;*
- (7) refrain from any action that would lead to loss of his independence;*
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;*
- (9) assist the company in implementing the best corporate governance practices.*

II. Role and functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;*
- (2) bring an objective view in the evaluation of the performance of board and management;*
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;*
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;*

- (5) *safeguard the interests of all stakeholders, particularly the minority shareholders;*
- (6) *balance the conflicting interest of the stakeholders;*
- (7) *determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;*
- (8) *moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.*

III. Duties:

The independent directors shall—

- (1) *undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;*
- (2) *seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;*
- (3) *strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;*
- (4) *participate constructively and actively in the committees of the Board in which they are chairpersons or members;*
- (5) *strive to attend the general meetings of the company;*
- (6) *where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;*

- (7) keep themselves well informed about the company and the external environment in which it operates;*
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;*
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;*
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;*
- (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;*
- (12) ¹[act within their authority], assist in protecting the legitimate interests of the company, shareholders and its employees;*
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.*

IV. Manner of appointment:

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.*
- (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.*

- (3) *The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.*
- (4) *The appointment of independent directors shall be formalised through a letter of appointment, which shall set out:*
- (a) the term of appointment;*
 - (b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;*
 - (c) the fiduciary duties that come with such an appointment along with accompanying liabilities;*
 - (d) provision for Directors and Officers (D and O) insurance, if any;*
 - (e) the Code of Business Ethics that the company expects its directors and employees to follow;*
 - (f) the list of actions that a director should not do while functioning as such in the company; and*
 - (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.*
- (5) *The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.*
- (6) *The terms and conditions of appointment of independent directors shall also be posted on the company's website.*

V. Reappointment:

The reappointment of independent director shall be on the basis of report of performance evaluation.

VI. Resignation or removal:

- (1) The resignation or removal of an independent director shall be in the same manner as is provided in Sections 168 and 169 of the Act.*
- (2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within ²[three months] from the date of such resignation or removal, as the case may be.*
- (3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.*

VII. Separate meetings:

- (1) The independent directors of the company shall hold at least one meeting ³[in a financial year], without the attendance of non-independent directors and members of management;*
- (2) All the independent directors of the company shall strive to be present at such meeting;*
- (3) The meeting shall:*
 - (a) review the performance of non-independent directors and the Board as a whole;*
 - (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;*
 - (c) assess the quality, quantity and timeliness of flow of information between the company management and the*

Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

- (1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.*
- (2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.”*

60. We may note that the above Schedule 4 to the Companies Act, 2013 titled “*Code for Independent Directors*” is a comprehensive guide to professional conduct for Independent Directors. It is mandated that adherence to these standards by independent directors and fulfillment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of Independent Directors.

61. It is to be noted that the petitioner does not allege that either the respondent no.6 or his relatives have or had pecuniary relationship or transactions with the company, its holding, subsidiary or associate company or their promoters or their directors.

62. In this background, to doubt the independence of the respondent no.6 to discharge the duties and functions of a Non-Official Director on the Board of Directors by the respondent no.6 merely because he is a spokesperson of the ruling party or to hold that he would be unable

to keep the interest of the ONGC in mind would be highly inappropriate.

63. The last objection pressed by Mr. Jayant Bhushan, Id. Senior Counsel for the petitioner is premised on the submission that the appointment of an Independent Director to the Board of Directors of the ONGC is akin to the distribution of State largesse and therefore, in view of the objections taken by the petitioner, the appointment of the respondent no.6 has to be held to be illegal.

64. Mr. Sanjay Jain, Id. ASG has contested the position and urged that the appointment to the post of Non-Official Director does not involve payment of any regular remuneration and therefore, the appointment cannot be treated as distribution of State largesse.

65. Mr. Jayant Bhushan, Id. Senior Counsel for the petitioner has placed before us the Annual Report 2016-17 of the ONGC which would illustrate that the Directors receive sitting fees @ Rs.40,000/- for each meeting of the Board and Rs.30,000/- for each meeting of the Committee of Directors. Based on this Annual Report 2016-17 of the ONGC, it is submitted that the total remuneration received by some of the Independent Directors for the year 2016-17 is to the tune of Rs.23.3 lakhs. As per the Annual Report 2016-17, this remuneration was paid to the Independent Directors in terms of Section 197 of the Companies Act read with Article 123 of the Articles of Association and other applicable provisions. No Independent Director has been singled out for any special favour.

66. In view of the above, the mere fact that an Independent Director would be entitled to remuneration for the sitting of the Board would be no reason to set aside the appointment of the respondent no.6.

67. The challenge of the petitioner to the appointment of respondent no.6 primarily rests on the contention that he was not qualified. In this regard, we may usefully advert to the pronouncement of the Supreme Court reported at (1993) 4 SCC 119, *R.K. Jain v. Union of India* wherein a challenge to the appointment of Shri Harish Chandra, who was a Senior Vice President, to the post of President of the CEGAT was made on the ground that his track record was poor and he was hardly fit to hold the post. We may extract hereunder the reasons penned by *Ahmadi, J.* for himself and *Punchhi, J.* while concurring with the judgment which was authored by *Ramaswamy, J.* observing as follows :

“6. ... Assuming for the sake of argument that these allegations are factually accurate, this Court cannot sit in judgment over the choice of the person made by the Central Government for appointment as a President if the person chosen is qualified and eligible for appointment under the Rules. We, therefore, agree with our learned Brother that this Court cannot sit in judgment over the wisdom of the Central Government in the choice of the person to be appointed as a President so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. We, therefore, cannot interfere with the appointment of respondent 3 on the ground that his track record was poor or because of adverse reports on which account his appointment as a High Court Judge had not materialised.”

(Emphasis by us)

68. We have found above that the respondents have followed the procedure which was prescribed; that the respondent no.6 has been appointed on the recommendation of the Search Committee which would have considered his qualifications and eligibility. It is not open to this court to re-examine this issue and sit in judgment over the view taken.

Jurisdiction to issue writ of quo warranto

69. Before parting with this case, it is necessary to refer to the parameters of consideration of such a writ petition. The scope of the power to issue a writ of *quo warranto* was extensively discussed in the pronouncement of a Constitution Bench of the Supreme Court reported at *AIR 1965 SC 491 : (1964) 4 SCR 575 University of Mysore v. C.D. Govinda Rao*, when *Gajendragadkar, J.* speaking for the bench held thus:

*"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."

(Emphasis by us)

70. So far as the scope of judicial review is concerned, it was held in **R.K. Jain** authored by Ramaswamy, J. as follows :

"73. Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. Exercise of judicial review is to protect the citizen from the

*abuse of the power etc. by an appropriate Government or department etc. In our considered view granting the compliance of the above power of appointment was conferred on the executive and confided to be exercised wisely. **When a candidate was found qualified and eligible and was accordingly appointed by the executive to hold an office as a Member or Vice-President or President of a Tribunal, we cannot sit over the choice of the selection, but it be left to the executive to select the personnel as per law or procedure in this behalf.** In Shrikumar Prasad case [(1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239] K.N. Srivastava, M.J.S., Legal Remembrancer, Secretary of Law and Justice, Government of Mizoram did not possess the requisite qualifications for appointment as a Judge of the High Court prescribed under Article 217 of the Constitution, namely, that he was not a District Judge for 10 years in State Higher Judicial Service, which is a mandatory requirement for a valid appointment. Therefore, this Court declared that he was not qualified to be appointed as a Judge of the High Court and quashed his appointment accordingly. The facts therein are clearly glaring and so the ratio is distinguishable.”*

(Emphasis by us)

71. The contours of exercise of extraordinary jurisdiction to issue a writ of *quo warranto* are thus well settled.

72. In this regard, we may also usefully refer to the pronouncement of the Supreme Court reported at **(2010) 9 SCC 655 Hari Bansh Lal v. Sahodar Prasad Mahto & Ors.**, wherein the parameters of issuance of a writ of *quo-warranto* were discussed and held as follows:

"16. *A writ of quo warranto lies only when appointment is contrary to a statutory provision. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [(2003) 4 SCC 712 : 2003 SCC (L&S) 565] (three-Judge Bench)*

Hon'ble S.B. Sinha, J. concurring with the majority view held: (SCC pp. 730-31, paras 22-23)

*“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 of 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. Govt. of Haryana* [(2002) 6 SCC 269] .)”*

*17. In *Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana* [(2002) 6 SCC 269] the following conclusion in para 11 is relevant: (SCC p. 275)*

“11. ... The High Court did not exercise its writ jurisdiction in the absence of any averment to the effect that the aforesaid officers had misused their authority and acted in a manner prejudicial to the interest of the appellants. In our view the High Court should have considered the challenge to the appointment of the officials concerned as members of the Regional Transport Authority on the ground of breach of statutory provisions. The mere fact that they had not acted in a manner prejudicial to the interest of the appellant could not lend validity to their appointment, if otherwise, the appointment was in breach of statutory provisions of a mandatory

nature. It has, therefore, become necessary for us to consider the validity of the impugned notification said to have been issued in breach of statutory provision.”

18. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. [(2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] *this Court held: (SCC p. 754, para 49)*

“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.”

19. It is clear from the above decisions that even for issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules. In the latter part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and whether he satisfied the relevant statutory provisions.”

(Emphasis by us)

73. We may also usefully refer to the pronouncement of the Supreme Court of India reported at **(2014) 1 SCC 161, Central Electricity Supply Utility of Odisha v. Dhobei Sahoo & Ors.** wherein speaking for the Bench, *Dipak Misra, J.* has carefully delineated the exposition of law with regard to challenges to appointments seeking issuance of writs of *quo warranto*. In this regard, reference to judicial authorities in paras 19 to 21 is apposite which reads thus :

“19. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [(2003) 4 SCC 712 : 2003 SCC (L&S) 565] S.B. Sinha, J., in his concurring opinion, while advertng to the concept of exercise of jurisdiction by the High Court in relation to a writ of quo warranto, has expressed thus: (SCC pp. 730-31, paras 22-23)

“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 [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. State of Haryana [(2002) 6 SCC 269] .)”

(emphasis supplied)

20. In Centre for PIL v. Union of India [(2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609] a three-Judge Bench, after referring to the decision in R.K. Jain [R.K. Jain v. Union of India, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , has ruled thus: (Centre for PIL case [(2011) 4 SCC 1 : (2011) 1 SCC (L&S) 609] , SCC p. 29, para 64)

“64. Even in R.K. Jain case [R.K. Jain v. Union of India, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the

Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction.”

(emphasis in original)

21. From the aforesaid exposition of law it is clear as noontday 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.”

(Emphasis by us)

74. In the present case, we have neither found any procedural violation nor contravention of any statutory provision on the part of the respondents. No writ is therefore, warranted.

75. It is also noteworthy that as a matter of fact, the petitioner has accepted the responses to the queries made by him under the Right to Information Act, 2005 and has not challenged the same by any statutory remedy. Clearly, the challenge made by the petitioner is not tenable and has to be rejected.

Pleadings in a public interest litigation

76. The writ petitioner has placed nothing on record to support the bald pleas taken by it. Would such a challenge be tenable? Light is thrown on this issue by the pronouncement of the Supreme Court

reported at (2011) 7 SCC 639, *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.* and connected writ petitions wherein the court had held thus :

“12. It cannot be said that the rules of procedural law do not apply in PIL. The caution is always added that every technicality in the procedural law is not available as a defence in such proceedings when a matter of grave public importance is for consideration before the court. (Vide Rural Litigation and Entitlement Kendra v. State of U.P. [1989 Supp (1) SCC 504 : AIR 1988 SC 2187])

13. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which the court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. The information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice. Even in PIL, the litigant cannot approach the court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks the standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide A. Hamsaveni v. State of T.N. [(1994) 6 SCC 51 : 1994 SCC (L&S) 1277 : (1994) 28 ATC 240] , Ashok Kumar Pandey v. State of W.B. [(2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865 : AIR 2004 SC 280], Prabir Kumar Das v. State of Orissa [(2005) 13 SCC 452] and A. Abdul Farook v. Municipal Council, Perambalur [(2009) 15 SCC 351] .)”

(Emphasis by us)

77. So far as the standard of responsibility which a litigant in a public interest litigation is required to discharge is concerned, in *Narmada Bachao Andolan*, the observations of the court in paras 159 and 160 are apposite and read thus :

“159. The standard of expectation of civic responsibility required of a petitioner in a PIL is higher than that of an applicant who strives to realise personal ends. The courts expect a public interest litigant to discharge high standards of responsibility. Negligent use or use for oblique motives is extraneous to the PIL process for were the litigant to act for other oblique considerations, the application will be rejected at the threshold. Measuring the “seriousness” of the PIL petitioner and to see whether she/he is actually a “champion” of the cause of the individual or the group being represented, is the responsibility of the court, to ensure that the party's procedural behaviour remains that of an adequate “champion” of the public cause. [Vide Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305:1993 SCC (Cri) 36 : AIR 1993 SC 892], Kapila Hingorani (1) v. State of Bihar [(2003) 6 SCC 1] and Kushum Lata v. Union of India [(2006) 6 SCC 180].]

160. The constitutional courts have time and again reiterated that abuse of the noble concept of PIL is increasing day by day and to curb this abuse there should be explicit and broad guidelines for entertaining the petitions as PILs. This Court in State of Uttaranchal v. Balwant Singh Chaufal [(2010) 3 SCC 402 : (2010) 1 SCC (L&S) 807 : (2010) 2 SCC (Cri) 81] has given a set of illustrative guidelines, inter alia:

(i) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(ii) The court should also ensure that there is no oblique motive behind filing the public interest litigation, etc. etc.

Therefore, while dealing with PIL, the Court has to be vigilant and it must ensure that the forum of the Court be neither abused nor used to achieve an oblique purpose."

(Emphasis by us)

78. The above narration would show that the petitioner has filed unsubstantiated pleas and also has not made out a *prima facie* case in support of the challenge. On the same aspect, Mr. Sanjay Jain, Id. ASG refers to a decision dated 26th October, 2017 in ***W.P.(Crl.)No.1938/2017, Subramanian Swamy & Ors. v. Delhi Police & Ors.***, relevant extract whereof is reproduced hereunder:

*"17. The credibility of the judicial process hinges upon the Petitioners in a PIL, including Dr. Swamy who likes to be thought of as a veteran PIL Petitioner, to act responsibly when they make averments in their petitions. **The PIL-petitioner must, as should for that matter every writ petitioner, state on affidavit which part of the averments (with reference to para numbers or parts thereof) made (including those in the synopsis and list of dates and not just the petition itself) is true to the Petitioner's personal knowledge derived from records or based on some other source and what part is based on legal advice which the Petitioner believes to be true. This is a basic requirement of any writ petition that is supported by an affidavit.**"*

(Emphasis supplied)

79. The writ petitioner before us has not made such a deposition on affidavit regarding the averments in the writ petition, as has been pointed out in para 17 above.

80. Be that as it may, we have examined the challenge by the petitioner and found it without merit.

81. Another facet of public interest litigations deserves to be noted. In ***Central Electricity Supply Utility of Odisha***, the Supreme Court was concerned with the challenge to an order passed by a Division Bench of the High Court of Orissa, Cuttack whereby the appointment of respondent no.5 therein stood quashed. Deprecating the practice of public interest litigations, misutilized to vindicate vested interests, the Supreme Court has in para 31, after noting several pronouncements on the issue, held as follows :

“31. Thus, from the aforesaid authorities it is quite vivid that the public interest litigation was initially evolved as a tool to take care of the fundamental rights under Article 21 of the Constitution of the marginalised sections of the society who because of their poverty and illiteracy could not approach the court. In quintessence it was initially evolved to benefit the have-nots and the handicapped for protection of their basic human rights and to see that the authorities carry out their constitutional obligations towards the marginalised sections of people who cannot stand up on their own and come to court to put forth their grievances. Thereafter, there have been various phases as has been stated in Balwant Singh Chauhan [State of Uttaranchal v. Balwant Singh Chauhan, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807]. It is also perceptible that the Court has taken note of the fact how the public interest litigations have been misutilised to vindicate vested interests for the propagated public interest. In fact, as has been seen, even the people who are in service for their seniority and promotion have preferred public interest litigations. It has also come to the notice of this Court that some persons, who describe themselves

as pro bono publico, have approached the Court challenging grant of promotion, fixation of seniority, etc. in respect of third parties.”

82. For all these reasons, no interference upon the petitioner's challenge is warranted. This writ petition is dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 06, 2017

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