

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K V ARAVIND

WRIT PETITION NO.15313 OF 2024 (GM-POL)



BETWEEN:

1 . DR. SHANTH A. THIMMAIAH
B.TECH. M. TECH.,
(INDL. POLLUTION CONTROL)
AND PHD. (SE AND EIS)
S/O. THIMMAIAH,
AGED ABOUT 52 YEARS,
CHAIRMAN,
KARNATAKA STATE POLLUTION
CONTROL BOARD,
PARISARA BHAVANA,
NO. 49, CHURCH STREET,
BANGALORE - 560 001.

... PETITIONER

(BY SRI VIVEK S. REDDY, SENIOR ADVOCATE &
SRI ANAND SANJAY M. NULI, SENIOR ADVOCATE A/W
SRI M. SHIVAPRAKASH, ADVOCATE)

AND:

1 . THE GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA,
BANGALORE - 560 001,
REPRESENTED BY ITS CHIEF SECRETARY.

- 2 . THE PRINCIPAL SECRETARY
STATE OF KARNATAKA,
DEPARTMENT OF FOREST,
ECOLOGY AND ENVIRONMENT,
NO. 708
M.S. BUILDING,
7TH FLOOR,
NEAR VIDHANA SOUDHA,
AMBEDKAR VEEDHI,
BANGALORE - 560 001.

- 3 . MR. B. P. RAVI
S/O. NOT KNOWN,
PRESENTLY PRINCIPAL SECRETARY,
GOVERNMENT OF KARNATAKA,
DEPARTMENT OF FOREST,
ECOLOGY AND ENVIRONMENT,
NO. 708
M.S. BUILDING,
7TH FLOOR,
NEAR VIDHANA SOUDHA,
AMBEDKAR VEEDHI,
BANGALORE - 560 001.

- 4 . THE UNDER SECRETARY
STATE OF KARNATAKA,
DEPARTMENT OF FOREST,
ECOLOGY AND ENVIRONMENT,
NO. 708
M.S. BUILDING,
7TH FLOOR,
NEAR VIDHANA SOUDHA,
AMBEDKAR VEEDHI,
BANGALORE - 560 001.

- 5 . THE MEMBER SECRETARY
THE KARNATAKA STATE POLLUTION
CONTROL BOARD,
PARISARA BHAVANA,

CHURCH STREET,
BANGALORE - 560 001.

... RESPONDENTS

(BY SRI K. SHASHI KIRAN SHETTY, ADVOCATE GENERAL
A/W SRI S.S. MAHENDRA, GOVERNMENT ADVOCATE
FOR R1 TO 4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE ENTIRE RECORDS IN NOTIFICATION NO.APG EPC 169/2023 AT ANNEXURE-T FROM THE OFFICE OF RESPONDENT NOS.1 AND 2 AND TO ISSUE WRIT OF CERTIORARI AND QUASH THE IMPUGNED PROCEEDINGS PASSED BY THE RESPONDENT NO.3 IN APG 169 EPC/2023, BENGALURU DATED 31/05/2024, AT ANNEXURE-S AND VIDE NOTIFICATION PASSED BY THE 4TH RESPONDENT IN NO.APG 169 EPC/2023 DATED 31/05/2024 AT ANNEXURE-T, CONSEQUENTLY TO ALLOW THE PETITIONER TO DISCHARGE LAWFUL DUTY AS CHAIRMAN AND TECHNICAL PERSON OF THE BOARD & ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N. V. ANJARIA
and
HON'BLE MR JUSTICE K V ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. V. ANJARIA)

Heard learned Senior Advocate Mr. Vivek Reddy with learned Senior Advocate Mr. M. Shivaprakash assisted by learned Advocate Mr. Anand Sanjay M Nuli, for the petitioner, learned Advocate General Mr. Shashi Kiran Shetty with learned Government Advocate Mr. S.S. Mahendra, for respondent No.4-the State and its authorities, and learned Advocate Mr. Mahesh Choudhary for respondent No.5-Karnataka State Pollution Control Board, at length.

The Challenge

2. The petitioner, by filing the present petition under Article 226 of the Constitution, has prayed to set aside Notification dated 31st May 2024 issued by the competent authority, Department of Forest and Environment, further to allow the petitioner to discharge duties as Chairman and Technical Person of respondent No.5-Karnataka State Pollution Control Board.

2.1 By the aforementioned Notification issued under Section 6(1)(g) of the Water (Prevention and Control of Pollution) Act, 1974, the petitioner, who was the Chairman of the respondent No.5-Board came to be disqualified as a Member of the Board and consequently dismissed from the position of the Chairman.

Basic Facts

3. The petitioner who possessed B.Tech degree in Mining and Mineral, M.Tech degree in Industrial Pollution Control and also Ph.D degree holder in 'Socio-economic and Environmental Impact Studies', has by filing the instant petition, complained about the arbitrary removal from the post of Chairman of the Karnataka State Pollution Control Board, in stigmatic manner.

3.1 Pursuant to Notification dated 21st May 2020, inviting applications for the post of Chairman, Karnataka State Pollution Control Board, the Search-cum-Selection Committee found the petitioner most eligible candidate out of 106 applications received. The Search-cum-Selection Committee comprised of Hon'ble the Chief Minister of State of Karnataka as its Chairman, Hon'ble Minister for Forest and Ecology as Vice-Chairman and Member of the Committee the Chief Secretary of the Government of Karnataka. The petitioner was

nominated for the post of Chairman of the State Pollution Control Board on 11th September 2021 and came to be appointed as Chairman under Notification dated 15th November 2021. His appointment under the said Notification was for three years to last upto 14th November 2024.

3.1.1 It is the case of the petitioner, in view of the elections held in the year 2023, on 15th May 2023, new Government in the State of Karnataka came to power. On 15th July 2023, a show case notice came to be issued to the petitioner. Thereafter, a Corrigendum dated 31st August 2023 was issued to provide that his tenure would complete on 4th March 2023, which was after 1 year 5 months and 27 days instead of upto 14th November 2024, as provided in the original Notification. The Principal Secretary of the Government was put in charge of the post of the Chairman.

Tenure till 14.11.2024

3.2 At this stage, writ petitions connected with the subject of appointment of the petitioner came to be filed. Amongst the several petitions, Writ Petition No.23417 of 2023 was filed by the petitioner to challenge the initiation of enquiry pursuant to show cause notice dated 15th July 2023, whereas Writ Petition

No.19569 of 2023 came to be filed by the petitioner to challenge Corrigendum dated 31st August 2023, whereby the tenure of the petitioner as Chairman of the Board was curtailed as above.

3.2.1 All the petitions were heard and disposed of together by Division Bench of this Court. Writ Petition No.23417 of 2023 whereby communication dated 26th July 2023 initiating enquiry was challenged, was not entertained by the court and the inquiry was directed to be completed in accordance with law. Writ petition No.19567 of 2023 in which the petitioner had called in question the Notification/ Corrigendum dated 31st August 2023, was allowed as per common judgment dated 29th November 2023, by setting aside the Corrigendum. It was observed that, as a consequence, the tenure of the petitioner as Chairman of the Karnataka State Pollution Control Board was secured till 14th November 2024.

SLP Dismissed Noticing the Tenure

3.3 Against the aforementioned judgment and order dated 29th November 2023, in relation to Writ Petition No.19569 of 2023, the State of Karnataka filed Special Leave Petition

No.5752 of 2024 before the Hon'ble Supreme Court, which was dismissed as per order dated 15th March 2024.

3.3.1 The order of the Supreme Court was as under,

“In the facts and circumstances of the case and considering the limited duration of the term of the first respondent which is due to expire in November 2024, we are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution, at this stage. The Special Leave Petition is dismissed.

However, we clarify that this should not be construed as an expression of opinion of this Court on the questions of law which are sought to be raised by the State of Karnataka, which are kept open to be addressed in an appropriate case.”

3.3.2 Thus, the Supreme Court refused to entertain the SLP against the Corrigendum/order curtailing the period of tenure of the petitioner, and one of the reason for not interfering with was that the tenure of the petitioner was due to expire on 14th November 2024. The petitioner continued to face the show cause notices notwithstanding.

Series of Show Cause Notices

3.4 Consecutive show cause notices were issued to the petitioner. First of the notice was 15th July 2023 which was already issued when the Corrigendum dated 31st August 2023

was issued by the authority. The said show cause notice contained allegations against the petitioner *inter alia* that the petitioner failed to discharge his duties in protecting and in formulating the plan for prevention and abatement of water, and that on account of petitioner's failure to take action, encroachments, irregularities and other violations occurred in Thippagondanhalli Reservoir Catchment area. It was alleged that the directions of the High Court of Karnataka in order dated in Writ Petition No.38218 of 2023 were also not properly attended to by the petitioner. The petitioner filed his reply dated 27th July 2023 to the said show cause notice, raising various defenses and submitting explanations.

3.4.1 The second show cause notice to the petitioner came to be issued on 20th July 2023. The allegation therein was that the petitioner had disregarded the rules and guidelines in giving charge of the post of Member Secretary and in withdrawing the charge. One Mr. Suri Payal was posted as Member Secretary who was removed and one Mr. T. Mahesh, Environment Officer was given additional charge as per the Office Memorandum dated 15th July 2023, by alleging violation of Section 4(2)(f) of the Water Act, 1974.

3.4.2 The petitioner filed reply to this show cause notice on 27th July 2023, to submit that it was a bonafide action since the vacant post was not required to be kept open till the appointment of newly qualified Officers. The additional charge was accordingly given which was a temporary charge arrangement for smooth administration of the Board and that there was no intention to violate any rule, it was stated.

3.4.3 Yet another show cause notice dated 26th December 2023 came to be issued to the petitioner in respect of alleged inaction in issuing EPR and suspension of Officers alleging that petitioner has wrongly issued EPR to the said Company and had wrongly suspended three Officers. In this regard, the petitioner has submitted that two Environmental Officers namely Sri. C.R. Manjunath and Sri. Vasudev came to be suspended on the ground of negligence in issuing Consent for Establishment, which orders had been passed behind the back of the petitioner and to which the petitioner had put up a dissent note. The writ petitions filed by the said two officers came to be allowed.

Only Last Notice Under Water Act

3.5 Noticeably, the removal of Chairman of the State Pollution Control Board resulting from his disqualification as Member has to be done in accordance with Section 6(1) read with Section 6(2) of the Water Act, 1974. Section 6 is the only provision under which the penal action of removal of Chairman could be taken.

3.5.1 While this provision is adverted to in succeeding paragraphs, it is to be stated that the first two show cause notices issued to the petitioner were never under Section 6 of the Water Act. Not only that in the first two show cause notices, the authority issuing the notices did not indicate about any penal action proposed against the petitioner. The notices just contained the allegations and the petitioner was called upon.

3.5.2 One more show cause notice dated 29th December 2023, was issued to the petitioner by respondent No.2. This was the only notice under the Water Act, 1974. What was alleged in this show cause notice that one Sri. Mahadeva, Additional Director of Karnataka State Audit and Accounts Department submitted his report and on the basis of which it

was alleged that the petitioner has committed irregularities by violating the provisions of Karnataka Public Procurement Transparency Act, 1999, in the projects undertaken to create awareness about the environmental issues and pollution control.

3.5.3 It was alleged that rules were violated and advertisements were issued without technical sanction and administrative approval. The misuse of power was alleged by violating Rule 15(e) of the Karnataka State Board for Prevention and Control of Water Pollution (Procedure for Transaction of Business) and the Water (Prevention and Control) Rules, 1976 by accepting tenders amounting to more than Rs.7 crores.

Impugned Order Passed

3.6 The case of the petitioner has been that the impugned order was a counterblast. The petitioner answered allegations against him about the so called violations, it was stated by submitting replies to the show cause notices. It was pointed that the grounds under Section 6(1)(g) of the Act was not made out against the petitioner and even otherwise without

compliance of natural justice, the order under Section 6(2) of the Act could not have been passed.

3.6.1 Reply was filed by the petitioner to the show cause notice dated 29th December 2023 to refute the allegations. It was stated that not a single paisa was disbursed in favour of the advertising agency, as alleged. It was stated that respondent No.3-Principal Secretary of the Forest Department was only interested in harassing the petitioner and for that purpose, had been acting for extraneous reasons. It was stated that the petitioner was at Mangalore for conducting inspection of an Industry, respondent No.3 called a meeting on 24th May 2024 in the absence of petitioner-Chairman and passed a resolution. This resolution is stayed by this Court as per order dated 29th May 2024 in writ petition No.14122 of 2024, which was filed by the petitioner. Immediately followed within three days the impugned order dated 31st May 2024 whereby the petitioner was dismissed from the post of Chairman invoking the grounds under Section 6(1)(g) of the Water Act to disqualify the petitioner as Member.

4. Learned advocate for the petitioner raised the following submissions,

(i) In passing the order dated 31.05.2024 disqualifying the petitioner from the membership and removing him from the post of Chairman of the Board, principles of natural justice were not followed by respondent No.1. Neither charge was framed nor any enquiry was conducted.

(ii) The petitioner was not given any opportunity of hearing before passing the order of removing him as Chairman.

(iii) Section 6(2) of the Water (Prevention and Control of Pollution) Act, 1974 under which the order is passed, contemplates giving of reasonable opportunity of showing cause.

(iv) Merely giving show cause notice does not amount to extend reasonable opportunity of showing cause. Inquiry ought to have been conducted and charges should have been made known in specific terms to the petitioners.

(v) In the first two show cause notices, the proposed action was not mentioned. Therefore, when the said notices have lead to the dismissal of the petitioner, the action stood vitiated.

(vi) Only one show cause notice dated 29.12.2023 was issued under Section 6(1)(g) of the Water Act. The other two show-cause notices dated 20.07.2023 and 26.12.2023 were also included for the purpose of passing the impugned order dated 31.05.2024.

(vii) The grounds in the impugned order goes beyond the contents of show cause notice.

4.1 Learned Senior Advocate for the petitioner relied on the decision of the Supreme Court in **UMC Technologies Pvt. Ltd. v. Food Corporation of India [(2021) 2 SCC 551]**, in support of his submissions including to substantiate that the order travelled beyond show cause notice. Decision in **S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379]** was pressed into service in which it was held that requirement of natural justice are met only if proper opportunity to represent is given in view of proposed action.

Submissions of the Respondents

4.2 Learned Advocate General on behalf of the respondent-State submitted that the petitioner had abused his position, therefore action was taken to disqualify him and to remove from the Chairmanship under Section 6(1)(g) of the Water Act, 1974. It was submitted that the Chairman is a member of the Board. It was submitted that the petitioner was a public servant in terms of Section 50 of the Water Act, but could not be treated as civil servant to apply the requirements of Article 311 of the Constitution. It was submitted that Karnataka State Pollution Control Board is a body corporate in terms of sub-Section (4) of Section 3 of the Water Act and that Article 311 would not apply to body corporates. It was submitted that the action was taken against the petitioner based on investigating material and the petitioner was aware of the investigation read out against him.

4.2.1 It was sought to be demonstrated by learned Advocate General that all the allegations mentioned in the impugned order were known made to the petitioner through show cause notice dated 29th November 2023 and the impugned order did not travel beyond the show cause notice as claimed.

4.2.2 On the allegations in the show cause notice, learned Advocate General sought to highlight the charges against the petitioner stating, petitioner has used the position of Chairman to form single source committee to award tenders contrary to provisions of Section 4, KTPP Act. Has appointed MS in contravention to Section 4(2)(f) and guidelines dated 19.06.2020, which can otherwise be appointed only by state government. In other words, petitioner has usurped the powers of State Government in the guise of him being the Chairman to appoint MS which amount to abuse of position. Petitioner failed to take action against the erring official who failed to take necessary action against M/s. Enviro Recycleclean.

4.2.3 He then submitted that Section 6(2) contemplates a reasonable opportunity and does not envisage personal hearing at all. It is submitted that, it is not open to the Court to add the concept of personal hearing in the Section. It was submitted that no prejudice is caused to the petitioner and that the petitioner replied to show cause notice. It was submitted that the show cause notices were clear in their contemplations.

4.3 On behalf of respondent No.5-Pollution Control Board, submissions on similar lines as above are canvassed.

Section 6 of the Water Act

5. Noticing the relevant provisions in the Act, State Pollution Control Board is constituted under Section 4 of the Act. Sub-Section (2) of Section 4 says that the Board shall consist of the Members as mentioned in sub-clauses (a) to (f). Sub-clause (a) is Chairman, one of the category of member in the Board, as per Section 5 which mentions about the terms and conditions of the members of the Board. A member of the Board other than the Member Secretary is provided to hold the office for a term of three years from the date of his nomination. Sub-Section (9) of Section 5 say that other terms and conditions of service of Chairman shall be such as may be prescribed.

5.1 The disqualification of the member and the removal can be acted upon only in accordance with Section 6 of the Act. This provision prescribes the ground and the manner on which a member may be disqualified and one acting as a Chairman may be removed or dismissed from the post. This provision being relevant to the controversy, is extracted hereinbelow,

“6. Disqualifications.- (1) No person shall be a member of a Board, who-

(a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the Central Government or, as the case may be, of the State Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents, or

(f) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any contract with the Board, or with the Government constituting the Board, or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of sewerage schemes or for the installation of plants for the treatment of sewage or trade effluents, or

(g) has so abused, in the opinion of the Central Government or as the case may be, of the State Government, his position as a member, as to render his continuance on the Board detrimental to the interest of the general public.

(2) No order of removal shall be made by the Central Government or the State Government, as the case may be, under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-sections (1) and (7) of section 5, a member who has been removed under this section shall not be eligible for renomination as a member.”

5.1.1 Sub-clauses (a) to (c) are the various grounds which would lead to disqualification of a Member. The Chairman is also a Member. As per sub-Section (2), in order of removal of Member shall not be passed under this Section unless the member concerned is given a reasonable opportunity of showing cause. As per sub-Section (3), it is stated that notwithstanding anything contained in sub-Sections (1) and (7) of Section 5, a member who has been removed under Section 6 shall not be eligible for re-nomination as a member, in other words, the disqualification and the consequential removal of the member would attach a stigma on him and disentitle him from re-nominated as Member.

Stigmatic Allegations

5.2 The contents of the different notices invariably demonstrate that they contain serious allegations about irregular conduct in functioning as Chairman. The allegations also relate to the alleged misappropriation. It is to be noted that for these stigmatic allegations, the formal charges is not framed. The allegations remained at the stage of show cause

notices which were answered by the petitioner by filing replies to all the show cause notices.

5.2.1 What was alleged was that the petitioner 'abused' his position as Chairman of the Board. It was alleged that the petitioner constituted a single Source Committee dated 4th January 2023 to issue tenders and that the constitution of the said Committee was bad in law as Section 4(b) of Karnataka Transparency in Public Procurement Act was wrongly invoked. The second aspect alleged was that without prior approval of the Government in terms of Rule 15(g) of the Water Rules, 1976, the petitioner appointed two Member Secretaries. The third part of allegation about abusing the position was that despite directions from the State Government and the Central Pollution Board, the petitioner failed to take action against two Officers who had issued EPR Certificates. It was alleged that the petitioner had thus abused his power as Chairman of the Board.

5.2.2 The petitioner replied to the said allegations about breach of Rule 15(c) of the Karnataka State Board for Prevention and Control of Water Pollution (Procedure for Transaction of Business) and the Water (Prevention and

Control) Rules, 1976. It was stated that thereunder it is contemplated that the Chairman shall exercise powers and functions as may be delegated by the State Board.

5.2.3 It was stated that the mandate were given legally to the organizations and ex post facto approval was given by the Board. Therefore, question of violation of Rule 15 does not arise. About constitution of the Committee contrary to Section 4(b) of the Karnataka Public Procurement Transparency Act, 1999, it was stated that Committee was constituted only in accordance of Section 4(b) and not said Committee, the Government representatives and other members were present.

Omnipresence of Natural Justice

5.3 It was sought to be contended by respondents that under Section 50 of the Water Act, the petitioner is a public servant, however he does not fall within the meaning of civil servant, therefore, Article 311 of the Constitution will not apply. Even if this aspect is kept aside as to whether Article 311 applies or not, it has to be observed that the concept of natural justice is not confined to service jurisprudence.

5.3.1 The principle of natural justice apply wherever a person is treated with allegations for penal action. Any action leading

to civil consequences has to precede with compliance of natural justice. In the present case, when the allegations are evidently stigmatic, it could hardly be argued that natural justice would not apply or that it would be applied in limited or truncated manner.

5.3.2 In **Trilochand Dev Sharma v. State of Punjab [(2001) 6 SCC 260]**, the following observations were made by the Supreme Court in the context of removal of a President of Municipal Council,

“In a democracy governed by the rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. ...Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held.”

Inevitability of Natural Justice

5.4 In **M/s. Dharmapal Satyapal Ltd. vs. Deputy Commissioner of Central Excise in Civil Appeal No.4458-4459 of 2015**, decided on 14th May 2015, the Supreme Court *inter alia* discussed the vast canvass, contours and ingredients and the concept of principles of natural justice. It was

observed that principles of natural justice have sound jurisprudential basis. It invests the application of law with fairness to secure justice and to prevent miscarriage of justice. The principle was stated tenets of natural justice also bind those who have to take administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. Principles of natural justice, it was stated, are the kind of code for the fairness of one of the aspect of procedural fairness, it was stated, is known as hearing the other side.

5.4.1 It is an admitted fact that neither charges were framed against the petitioner nor he was given hearing. In addition to above, when the show cause notice dated 29th December 2023 is read for its contents in juxtaposition with impugned order dated 31st May 2024, the submission of the petitioner could not be brushed aside lightly that the order dated 31st May 2024 travels beyond the show cause notice. This itself an aspect of breach of natural justice, in addition to other serious violations in compliance of natural justice in removing the petitioner.

5.4.2 The perusal of the order dated 31.05.2024 from paragraphs 14 ,15, 16, 21 and 22 makes it evident that the petitioner was not removed on the basis of allegations which

had not formed the part of show cause notice and that the petitioner had no opportunity to show cause in respect of the same.

5.4.3 In **UMC Technologies Pvt. Ltd. (supra)**, while stressing the need that a person against whom action is to be taken must have reasonable opportunity to meet with the charges faced by him, it was observed that the order of penalty cannot travel beyond the bounds of notice,

“At the outset, it must be noted that it is the first principle of civilized jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent.”
(para 13)

5.4.4 It was further stated,

“This Court in *Nasir Ahmad v. Custodian General, Evacuee Property* [(1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the notice to answer the case against him. If these

conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.”
(para 13)

Charges Not Framed

5.5 In the present case, the first two show cause notices were not shown to be issued under Section 6(1)(g) of the Act which was the only provision to proceed against the incumbent for his disqualification or removal, nor did it speak anything about the proposed penalty. In addition to this, despite serious allegations constituting stigma and alleging all misconducts against the petitioner, no opportunity of hearing was given to the petitioner. Even the precise charge was not framed.

5.5.1 In **S.L. Kapoor (supra)**, it was held that compliance of total natural justice is basic requirement and that the prejudice cause need not be separately established. It was held that non-observance of natural justice is by itself sufficient proof of prejudice. About the scope of natural justice to be applied, it was observed,

“The requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or

for some other purpose. This does not suggest that the opportunity need be a “double opportunity” that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met.”

(para 16)

5.5.2 It is thus trite law that fulfillment of natural justice has to be extended in its all areas and dimensions where there is a likelihood of causing a prejudice. A meaningful, and not just a projected opportunity should be extended to defend to the person concerned. Opportunity to defend to be part of fulfillment of natural justice has to be effective opportunity. Not only the person against whom the allegations are leveled, should know the preciseness of the allegation, he should also be made aware of the proposed penal consequences which may ensue. The compliance of natural justice has to be comprehensive and not inchoate.

Reasonable Opportunity

5.6 In **East India Commercial Company Ltd., Kolkata vs. Collector of Customs, Kolkata [AIR 1962 SC 1893]**, the Supreme Court held that whether a statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue

a notice to the person concerned disclosing the circumstances and case against them. In a given provision of law, operating in the set of fact situation, the Court might also have read right to personal hearing beyond just giving a notice, as integral part of natural justice. Reading down the requirement in a provision about providing herein would depend upon the context of the decision to be taken and the attendant facts and circumstances obtained in a case. The principle of *audi alteram partem* may not rest at giving notice and seek a defense in writing from the notice, but may also include, without becoming a strait-jacket, the requirement of extending personal hearing to the person who is facing charges of allegations.

5.6.1 Any action based on stigmatic allegation has to precede the show cause notice, framing of charge and atleast giving personal hearing if not full-pledged inquiry in all cases, are not the ideals of fairness to be de-limited to service jurisprudence. Any action detrimental to the person by taking away rights restored upon him in any sphere and any action against such person lasting stigma on him would require the observance of natural justice, which is a process, which would start from giving notice, including extending personal hearing.

5.6.2 A reasonable opportunity which is a concept ingrained in the tenet of natural justice has its own elasticity, length and breadth depending upon the fact situation. It is in light of the above principles that this Court has to examine the legality of the order of disqualifying the petitioner from the membership of the Board and resultantly removing or dismissing him from the post of Chairman by addressing the scope and impact of the concept of a reasonable opportunity without giving which, as per sub-Section (2) of Section 6, no action of removal against him could be taken.

Right to Hearing Integral

5.7 In **State of Orissa Vs. Dr. (Miss.) Binapani Dei (AIR 1967 SC 1269)**, the issue of passing the order of compulsory retirement is based on certain disputed date of birth. In the following observations, the Hon'ble Supreme Court stated that opportunity of being heard should have been given before taking action about the inquiry made without framing charge and without affording opportunity of hearing.

5.7.1 The Supreme Court observed thus,

We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an

administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.

5.7.2 Section 6(2) of the Water Act in terms provide that no order of removal shall be made by the Government under this provision unless the member concerned has been given a reasonable opportunity showing cause against the same. Looking to the consequence of disqualification and removal provided in Section 6, the purpose to be acted upon, the effect of operation of the provision on the member facing disqualification and looking to the gravity of ground which is contemplated to be abuse of position as a member, there is no escape from holding that the phrase and connotation 'a reasonable opportunity' could include in its ambit, giving opportunity to the member personal hearing.

5.7.3 The requirement of personal hearing has to be read in-built even if the aspect of requirement of full-fledged inquiry before passing of the order of removal may not be considered. The minimum requirement of observance of natural justice

including giving personal hearing would be necessary once the action is actuated on the ground of serious allegations casting stigma, and the consequences thereof would also be stigmatic. Even if the phrase 'reasonable opportunity of showing cause' is not to be enlarged in its ambit to mean a full-fledged inquiry, when the removal is based on stigmatic allegations, the phrase must construe to include intimation of precise charges and giving personal hearing to the person against whom adverse action is contemplated.

Connotation 'Abused'

5.8 The impugned order is passed under Section 6(1)(g) of the Water Act which makes the provision that if the Member of the Board has 'abused' his position as Member, has to render his continuance on the Board detrimental to the interest of general public, such member stands disqualified. The group of words 'abuse of powers' whenever occurs in any statute, has its own connotation, import and application. In **Trilochand Dev Sharma (supra)**, the Supreme Court discussed the concept of 'abuse of power' in the context of provisions of Punjab Municipal Act, 1911, Section 22 of which Act contemplated 'abuse of powers' to be a ground for removal of the President of the Municipal Council.

5.8.1 After referring to the phrase as defined in the Black's Law Dictionary (7th Edition 1999) and the definition of the word 'abuse' in Corpus Juris Secundum (Volume I page 402), the Supreme Court stated thus,

“The expression ‘abuse of powers’ in the context and setting in which it has been used cannot mean use of power which may appear to be simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councillor unworthy of holding the office of President.”

(para 11)

5.8.2 In the Punjab Act before the Supreme Court, the phrase ‘abuse of powers’ succeeded by group of words ‘or habitual failure to perform duties’. The Supreme Court viewed that it suggested legislative intent and that the phrase ‘abuse of powers’ must take colour from the said following expression. In Section 6(1)(g) of the Act, it is stated that a member ‘has so abused... his position as a member’, ‘as a render his continuation on the board detrimental to the interest of general public’.

5.8.3 In the case on hand, the connotation of 'abuse of powers' will have its colour from what is detrimental to interest of general public. It could be said that the allegations in the show cause notices, had no element of the kind, more particularly when the petitioner had no opportunity to effectively explain and defend. It could be reasonably concluded that the acts of irregularities in exercise of powers, as alleged would not come within the compass of 'abuse of powers' as viewed in Section 6(1)(g) of the Act.

5.8.4 The allegation of misappropriation against the petitioner would hardly stand cogent. The case of the respondent was about giving advertisement in an irregular manner, however there is nothing to indicate the monetary transaction or receiving or paying the money in the process.

5.8.5 In **Sharda Kailash Mittal v. State of Madhya Pradesh [(2010) 2 SCC 319]**, the Supreme Court held that removal of appellant as President of the Nagara Palika for the alleged violation of Section 51 of the M.P. Municipalities Act, 1961 was not well founded in law in as much as the allegations were of irregularities and that the charge of financial loss was not established.

Smacking Malafides

5.9 In **State of Punjab and another Vs. Gurdial Singh and others (AIR 1980 SC 319)**, the Apex Court in the following observations, stated as to what can be said to the *mala fide* exercise of powers,

The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions-is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal.”

(para 9)

5.9.1 It was further observed,

“The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense.”

(para 9)

5.9.2 The facts of this case manifest certain conspicuous facts, aspects, events and circumstances which go to show that the

action on the part of the respondent in removing the petitioner from the post of Chairman of the Pollution Control Board was not only stigmatic, but was actuated by malice. The malice unfolded itself both on facts and in law.

5.9.3 Following sequence and circumstances are noticeable,

(i) Initially, the petitioner was given three years term as Chairman as per Notification dated 15th November 2021.

(ii) When the new Government came into power upon election on 15th May 2023, the show cause notice, which was first in row, came to be issued to the petitioner on 15th July 2023.

(iii) Soon followed was Corrigendum dated 31st August 2023 curtailing the period of petitioner's tenure as Chairman, issued by the new Government.

(iv) In writ petition No.19569 of 2023 filed by the petitioner, this Court set aside the said Corrigendum dated 31st August 2023 whereby the petitioner's tenure was made limited, although it was upto 14th November 2024. This Court observed that the tenure upto 14th November 2024 was secured.

(v) The SLP filed before the Hon'ble Supreme Court was dismissed, in which the court noticed that the tenure of the petitioner was upto 14th November 2024.

(vi) The respondents, as if bent upon to run after the petitioner, proceeded to issue series of show cause notices. The first two notices were not under Water Act, but just leveled allegations without providing for any consequences. Third notice was issued.

(vii) The petitioner was disqualified as member and consequently removed/dismissed as Chairman under Section 6(2) of the Act, in total disregard of natural justice, without framing charge and even without giving opportunity of hearing.

6. For all the foregoing discussion and reasons, the petition succeeds. Impugned order dated 31st May 2024 passed by respondent No.4-Under Secretary to Government, Department of Forest, Ecology and Environment is hereby set aside.

7. The disqualification of the petitioner as the member of the Karnataka State Pollution Control Board is set at naught. Consequently, the petitioner's dismissal from the post of

Chairman of the Karnataka State Pollution Control Board is set aside.

8. In normal circumstances, this Court would have reserved liberty for the respondents to proceed in accordance with law. However, looking to the aspect that the petitioner's term expires on 14th November 2024 and only 1 ½ month is left, no further observation is made.

9. The petitioner shall be continuing to be the Member and the Chairman of the Board till his tenure expires as per Notification dated 15th November 2021, as if the petitioner had continued throughout, with entitlement to all consequential benefits.

10. The petition stands allowed as above.

**Sd/-
(N.V. ANJARIA)
CHIEF JUSTICE**

**Sd/-
(K V ARAVIND)
JUDGE**

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