IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.113 OF 2024

Pravin P. Wategaonkar ….. Petitioner

Vs.

The Additional Chief Secretary & Anr. ….. Respondents

Shri Pravin P. Wategaonkar, petitioner-in-person

Dr. Birendra B. Saraf, Advocate General with Shri P. P. Kakade, Government Pleader with Shri O. A. Chandurkar, Additional Government Pleader with Shri Jay Sanklecha, "B" Panel Counsel with Mrs. G. R. Raghuwanshi, AGP for respondent No.1

Shri Aspi Chinoy, Senior Advocate with Shri Navroz Seervai, Senior Advocate with Shri Cherag Balsara, Shri Karan Bhosale, Shri Kartikeya G. Desai, Ms. Rashi Shah, Ms. Amita Band i/b. M/s. Kartikeya & Associates for respondent No.2.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & AMIT BORKAR, J.

DATE : SEPTEMBER 23, 2024

ORAL JUDGMENT (PER : CHIEF JUSTICE)

1. Heard Shri Pravin P. Wategaonkar, petitioner-in-person, and Dr.Birendra B. Saraf, Advocate General representing the Additional Chief Secretary, Housing Department, Government of Maharashtra.

(A) Challenge:

2. By instituting the proceedings of this petition, jurisdiction of this Court has been invoked under Article 226 of the Constitution of India, with a prayer that respondent No.2 be removed from the office of Chairperson, Maharashtra Real Estate Regulatory Authority (hereinafter referred to as the "**Authority**") by the issue of writ of *quo-warranto*. Prayer clause (18) of the PIL petition runs as under.

> *"18. In the light of the above, Petitioner therefore prays ;*
>
> *A) That this Hon'ble Court may be pleased to issue writ of quo-warranto against / inquire into the legality of the claim of Resp. No. 2, Shri. Manoj Saunik to hold the Office of The Chairman of Maharashtra Real Estate Regulatory Authority; and/ or,*
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> *B) That this Hon'ble Court may be pleased to issue appropriate writ, order and/ or direction to Respondent No. 1/ ACS, Housing dept., Maharashtra to produce all documents-records and examine the procedure adopted and the material considered, based on which Resp. no. 2 has been appointed vide GR dt. 16.07.2024/ **'Annex. A'**, and/or,*
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> *C) That this Hon'ble Court may be pleased to issue appropriate writ, order and/ or direction to inquire into legality, validity and propriety of the procedure adopted in issuance of the GR dt. 16.07.2024/ **'Annex. A'**; and/or,*
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> *D) That this Hon'ble Court may be pleased to issue appropriate writ, order and/ or direction to inquire into the legality, validity and propriety of the procedure adopted in issuance of the GR dt. 16.07.2024/`**Annex. A'** and declare the same to be contrary to public interest, illegal and ultra vires of the Constitution of India; and/or,*
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> *E) Pending the final hearing and disposal of this Petition, this Hon'ble Court may be pleased to stay the operation and effect of the said GR dt. 16.07.2024/ **'Annex. A'** - stay the appointment of Shri. Manoj Saunik as Chairman of Maharashtra Real Estate Regulatory Authority; and/or,*

F) Pending the final hearing and disposal of this petition, this Hon'ble Court may be pleased to grant Ex-parte interim/ ad interim relief in terms of prayer clause (E) in public interest and interest of Justice; and/or,

G) For such further orders and / or directions as this Hon'ble Court may deem fit and proper considering the nature, facts and circumstances of the case as may be required."

(B) Relevant statutory provisions:

3. Before we delve into the respective submissions made on behalf of the rival parties, it is necessary to advert to certain provisions of the Real Estate (Regulation and Development), Act 2016 (hereinafter referred to as the "**Act, 2016")** and the Maharashtra Real Estate, Chairperson, Members, Officers and other Employees (Appointment and Service Conditions) Rules, 2017 (hereinafter referred to as the "**Rules, 2017**").

4. "The Authority" has been established and incorporated under section 20 of the Act, 2016 which is quoted hereinbelow:

S.20 Establishment and incorporation of Real Estate Regulatory Authority -

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that the appropriate Government may, if it

deems fit, establish more than one Authority in a State or Union territory, as the case may be:

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

5. Section 21 of the Act, 2016 provides for composition of the Authority according to which the Authority shall consist of a Chairperson and whole-time Members who shall not be less than two, to be appointed by the appropriate Government. Section 21 of the Act, 2016 is quoted hereinbelow:

S.21 ***Composition of Authority.***

The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

6. Qualification of Chairperson and Members of the Authority has been provided for in section 22 of the Act, 2016 according to which the Chairperson and other members are to be appointed by the appropriate Government on the recommendation of a Selection Committee which comprises of Chief Justice of the High

Court or his nominee, Secretary of the Department dealing with the Housing and the Law Secretary. The appointment of Chairperson and Members of the Authority as per Section 22 is to be made from amongst the persons having adequate knowledge and professional experience of at least twenty years and fifteen years in the case of Chairperson and Members, respectively. The provision further provides that the professional experience required to be possessed for appointment of Chairperson and Members of the authority should be in the areas of Urban Development, Housing, Real Estate Development, Infrastructure, Economics, adequate experience from relevant fields of Planning, Law, Commerce, Accountancy, Industry, Management, Social Service, Public Affairs or Administration.

7. The first proviso appended to Section 22 prescribes that a "person who is, or has been in the service of State Government" will qualify to be appointed as Chairperson only if such a person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government. The second proviso appended to Section 22 prescribes that a person who is, or has been in the service of State Government shall qualify to be appointed as a Member

only if such person has held the post of Secretary of the State Government or any equivalent post in the Central Government or State Government. Section 22 of the Act, 2016 is quoted hereunder:

> ***S.22 Qualifications of Chairperson and Members of Authority.***
>
> *The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:*
>
> *Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:*
>
> *Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.*

8. Section 23 of the Act, 2016 provides for the term of office of Chairperson and Members according to which Chairperson and Members shall hold office for a term of maximum 5 years from the date they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier. The provision further provides that Chairperson or Members appointed to the Authority

shall not be eligible for re-appointment. Section 23 of the Act, 2016 is as under:

> *S.23* ***Term of office of Chairperson and Members.***
>
> *(1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.*
>
> *(2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.*

9. Certain provisions of the Rules, 2017 are also relevant to be extracted here. Rule 2(1)(f) of Rules, 2017 defines "Selection Committee" to mean the Committee as prescribed in Section 22 of the Act, 2016. Rule 2(1)(f) of the Rules, 2017 is as under:

> *2.* ***Definitions***
> *(1) In these rules, unless the context otherwise requires, -*
> *(a) to (e) …….*
> *(f) "Selection Committee" means the committee specified in section 22*

10. The provision for selection of Chairperson and other Members of the Authority can be found in Rule 4 of the Rules, 2017 according to which on occurrence of a vacancy in the office of Chairperson or Member or if such a vacancy is likely to arise, the State Government shall make a reference to the Selection Committee for appointment of Chairperson or Members. Rule 4(2) mandates the Selection Committee to follow such procedure

as it may deem fit for the purpose of selection of Chairperson or Member of the Authority. Rule 4(3) provides that the Selection Committee shall make recommendation to the State Government for its consideration in the form of a panel of not more than three members, in order of preference, separately to fill the vacancy or vacancies which are referred to it by the State Government. Sub Rule (4) of Rule 4 of Rules, 2017 mandates that the Selection Committee shall make recommendations to the State Government, within a period not exceeding sixty days from the date of reference. As per sub Rule (7) of Rule 4 of the Rules, 2017 the Secretary-in-charge of the Housing Department is the convener of the Selection Committee. Rule 4 of Rules, 2017 is extracted hereinbelow:

> ***"4. Selection of Chairperson and other Members of Authority.***
>
> *(1) The State Government shall make a reference to the Selection Committee for appointment of the Chairperson and Members of the Authority or when any vacancy in the office of the Chairperson or Member arises or likely to arise in the Authority.*
>
> *(2) The Selection Committee may, for the purpose of selection of the Chairperson or Member of the Authority, follow such procedure as it may as deem fit.*
>
> *(3) The Selection Committee shall make a recommendation to the State Government for the consideration in the form of a panel of not more than three persons, in order of preference, separately to fill the vacancy or vacancies referred to by the State Government.*
>
> *(4) The Selection Committee shall make its recommendations to the State Government, within, a period not exceeding sixty days from the date of reference made under sub-rule (1).*

(5) The Selection Committee shall normally hold its meeting at Mumbai or at such places in the State, as may be decided by the Chairperson.

(6) The Notice/Agenda, as the case may be, for the meeting of the Selection Committee shall be issued by the Convener after fixing the date and venue for such meeting in consultation with the Chairperson of the Selection Committee.

(7) The Secretary-in-Charge of the Housing Department shall be the convener of the Selection Committee."

11. Rule 5 of Rules, 2017 prescribes that the recommendation of the Selection Committee for appointment of Chairperson and Members shall be considered by the State Government in order of preference as may recommended by the Selection Committee. It further provides that in case the State Government makes appointment not according to the order of preference indicated by the Selection Committee in its recommendation, the Government shall record the reasons therefor in writing. Rule 5 of Rules, 2017 is quoted hereunder:

"5. Appointment of Chairperson and Members.—

The State Government shall consider the recommendations of the Selection Committee for the appointment of the Chairperson and Members or to fill the vacancy in order of preference as recommended by the Selection Committee. If the State Government appoints person not according to the order of preference, the Government shall record the reasons in writing therefor."

12. As per Rule 8 of the Rules, 2017 the term of office of Chairperson and Members shall be in accordance with the provisions of sub-section (1) of Section 23. Sub Rule (2) of Rule

8 provides that in a situation where the Chairperson is not capable to discharge his functions on account of his death, resignation, absence, illness or any other cause, it is the senior-most Member of the Authority who shall discharge the functions of the Chairperson until the Chairperson resumes the charge or till vacancy is filled by nomination of a suitable person under Section 24. Rule 8 of the Rules, 2017 is extracted hereinbelow:

> ***8. Tenure of office.—***
>
> *(1) The term of office of the Chairperson and Members shall be in accordance with the provisions of sub-section (1) of Section 23.*
>
> *(2) When the Chairperson is unable to discharge his functions owing to death, resignation, absence, illness or any other cause, the senior-most Member of the Authority (in the order of appointment) holding office for the time being shall discharge the functions of the Chairperson until the day on which the Chairperson resumes the charge of his functions or till the vacancy is filled by nomination of a suitable person, under section 24.*

13. Having noticed various statutory provisions contained in Act, 2016, and the Rules, 2017 which are relevant for appropriate adjudication of the issues involved in this petition, we have summarized below the submissions made on behalf of the respective parties.

(C) Submissions of the petitioner:

14. The petitioner, as observed above, has addressed the Court in-person. He has made the following submissions in respect of the prayers made in the PIL petition.

15. The main plank of argument of the petitioner is that the phrase "who is, or has been, in the service of the State Government" occurring in the first proviso appended to Section 22 of the Act, 2016 has to be given a purposive interpretation and therefore, it has to be construed to mean "who is or has been, in service without any blemish whatsoever" and thus, the eligibility criteria in terms of Section 22 of the Act, 2016 has to be read to mean that only such person "who is or has been in the service of the State Government without any blemish whatsoever" shall be eligible for appointment to the Authority.

16. The petitioner, thus, has submitted that since respondent No. 2, while he has been in the service of the State Government, did not have an un-blemished career; rather there are material which indicate a clear case of misconduct and misdemeanour on his part, as such he does not fulfill the eligibility for appointment to the office of Chairperson of the Authority, however, his selection and appointment has been made ignoring such misconduct and misdemeanour on his part.

17. Petitioner's further submission is that the phrase "is or has been in service" has to be construed to mean "is or has been in

service without any blemish" and that respondent No. 2 does not fulfill the requisite eligibility condition and accordingly, therefore, he is an usurper of the office of Chairperson of the Authority and hence, in the present case, the Court may issue a writ of *quo-warranto* for his removal from the said office.

18. In support of his submission, reliance has been placed by the petitioner on the judgment of the Hon'ble Supreme Court in ***N. Kannadasan Vs. Ajoy Khose & Ors.***[1]. To bring home the ground that respondent No.2 does not have unblemished service career while he was serving the State of Maharashtra, it has been stated by the petitioner that a request from Anti Corruption Bureau is pending with the State Government to enquire into the misconduct of respondent No.2 in relation to a tender procedure which was undertaken for construction of Mumbai-Pune Expressway and accordingly, on account of pendency of the said request made by the Anti Corruption Bureau, the conduct of respondent No.2 cannot be said to be unblemished which makes him ineligible to be appointed to the office of Chairperson of the Authority.

19. Our attention in this regard has been drawn to a letter

[1] **(2009) 7 SCC 1**

dated 26th November 2020 written by the Additional Director General, Anti Corruption Department to the Additional Chief Secretary, Public Works Department of the Government of Maharashra, whereby a request has been made to authorize the Anti Corruption Department to investigate the complaint, made by the petitioner and one Mr.Sanjay Shirodkar, under section 17(A) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the **Act, 1988**).

20. The petitioner has pleaded another instance of alleged misconduct of respondent No.2 in respect of the proceedings in Contempt Petition (L) No.9 of 2022 in re Commercial Execution Application No.310 of 2019 wherein respondent No.2, along with certain other individuals, are said to have allegedly attempted to create false record in the name of the Court to facilitate certain settlement claim amounting to ₹358.79 crores of a firm, M/s. Manaj Tollways. Our attention in this regard has been drawn to certain observations made by this Court in the said matter in its order dated 24th February 2020. The affidavit on the basis of which order dated 24th February 2020 was passed, was filed of respondent No.2. The petitioner submits that noticing paragraph 5 of the affidavit filed by respondent No.2 in the proceedings of

Commercial Execution Application No.310 of 2019, the Court, in its order dated 24th February 2020 observed, *inter alia,* "that averments made in the affidavit are totally contrary to record and there is an impression when such averments are made and placed on record that these parties are actually indulging in creating false record which has to be taken to its logical conclusion, more so considering that these are all public servants in the service of Government of Maharashtra". Our attention has specifically been invited to paragraph 5 of the said order dated 24th February 2020 passed by this Court. The Court's attention has also been drawn to the observations made in paragraph 9 of the order dated 24th February 2020, where it has been stated by the Court that, "it is with deep anguish and pain that the averments as made in the affidavits are noted by the Court and further that if these averments were to go unnoticed, it would have not only amounted to maintaining and permitting false record to be created, but also in this situation it would be amounting to putting a premium on dishonesty".

21. The petitioner has also argued that the aforesaid facts were brought by him to the notice of the authorities concerned, including the Principal Secretary, Housing Department of the

State of Maharashtra, who in terms of Rule 4(7) of the Rules, 2017, is the Convener of the Selection Committee, by means of a notice sent by the petitioner, dated 19th August 2024, however ignoring the said material, though already brought to the notice of the Selection Committee, the appointment of respondent No.2 has not been recalled which was made by means of the Government Resolution dated 16th July 2024.

22. Lastly; citing the judgement of Hon'ble Supreme Court in the case of ***Centre for PIL and Anr. Vs. Union of India[2],*** it has been argued by the petitioner that institutional competence of the Authority shall be compromised in case respondent No.2 is permitted to be continued in the office of Chairperson of the authority and since the institution is more important than the individual, the Selection Committee ought to have taken into consideration the adverse material against respondent No.2 which have been pointed out by the petitioner, as discussed above, before making any recommendation for his appointment. It has, thus, been argued by the petitioner that on account of pendency of the prayer of the Anti Corruption Department for initiating inquiry against respondent No.2 under section 17(A) of

[2] ***(2011) 4 SCC 1***

the Act, 1988 and also on account of misconduct as reflected in the order dated 24th February 2020 passed by this Court, respondent No.2 cannot be said to be a person of unblemished record and accordingly, he lacks the essential eligibility criteria for being appointed as Chairperson and therefore, he is liable to be removed from the office of the Chairperson of the Authority by issuing a writ of *quo-warranto*.

(D) Submissions made by the learned Advocate General on behalf of the State:

23. Shri Birendra Saraf, learned Advocate General has vehemently opposed the PIL petition and has argued that the grounds urged by the petitioner seeking a writ of *quo-warranto* in the facts of the present case, are not tenable.

24. Shri Saraf has argued that on the basis of the material available on this petition, the petitioner has utterly failed to point out violation of any statutory prescription available either in the Act, 2016 or the Rules, 2017. He further argued that there is no procedural or otherwise illegality in the recommendation made by the Selection Committee; nor is there any illegality in the appointment of respondent No.2 as Chairperson of the Authority

in absence of violation of any statutory prescriptions and hence, the prayers made in the petition ought not to be granted.

25. On behalf of the State, further argument is that for issuance of writ of *quo-warranto*, the Court has to satisfy itself that the appointment to the public office is contrary to the statutory rules and in absence of any material pointing to violation of any statutory provisions in the recommendation of the Selection Committee and appointment of respondent No.2, this Court may not grant the prayers made in the PIL petition. He has further argued that the Selection Committee, having satisfied itself completely not only as to the eligibility but as to the suitability as well of respondent No.2, had made its recommendation, basis which the State Government has issued the Government Resolution dated 16th July 2024 appointing respondent No.2 as Chairperson of the authority.

26. As regards the alleged material pointing to the misconduct of respondent No.2, it has been argued by the learned Advocate General that mere pendency of a prayer made by the Anti Corruption Department to the State Government seeking its sanction to conduct an inquiry under section 17(A) of the Act,

1988 would not amount to any blemish on respondent No.2. It is his further submission that unless the State Government accords its previous approval under section 17(A) of the Act, 1988, no enquiry or investigation into any alleged offence can be conducted by the police officer or the investigating agency. He has further stated that as a matter of fact, section 17(A) of the Act, 1988 is an umbrella provided to the public servants which provides that if the alleged offence is relatable to any decision taken by such public servant in discharge of his official functions or duties, no enquiry may be conducted without the previous approval of the Government.

27. Shri Saraf has, thus, argued that merely because of pendency of the request of the Anti Corruption Department to accord previous approval under section 17(A) of the Act, 1988, it cannot be said that respondent No.2 had misconducted himself in relation to the matter relating to tender pertaining to construction of Mumbai Pune expressway.

28. As regards the observations made by this Court in its order dated 24th February 2020 in Commercial Execution Application No.310 of 2019, Shri Saraf has referred to a subsequent order

passed by the Court on 28th February 2020 on a praecipe moved for clarifying the averments made in the affidavit on the basis of which the order dated 24th February 2020 was passed. He stated that the affidavit was not happily worded and that it was inadvertently not pointed out to the Court when the matter was heard on 24th February 2020 that a note dated 25th November 2019 was prepared by the Public Works Department and as such the said note also needs to be referred to in the order dated 24 February 2020. Accordingly, the Court recorded reference to the note dated 25th November 2019. The order dated 28th February 2020 is extracted hereinbelow:

> *"Not on board. Taken on board on a praecipe being moved on behalf of respondent No.3 by Mr. Navroz Seervai, Senior Advocate appearing for him.*
>
> *1. Mr. Seervai, learned Counsel for respondent No.3 states that in the affidavit dated 12 February 2020 filed by respondent No.3 in paragraph 27 a reference is made to a note dated 25 November 2019 prepared by the PWD. This was inadvertently not pointed out to the Court when the matter was heard on 24 February 2020 and which also needs to be referred in the said order. I have noted the contents of paragraph 27 of the affidavit dated 12 February 2020 of respondent No.3 Mr. Manoj Saunik, Additional Chief Secretary, Public Works Department, which also annexes the note dated 25 November 2019 at Exhibit-G. Though the version in the said paragraph is not identical as worded by Mr. Deshpande, however as Mr.Seervai would contend for the purpose of record of the said order, the reference to this note be also recorded. It is accordingly recorded.*
>
> *2. The praecipe is disposed of accordingly."*

29. Shri Saraf has also drawn our attention to the order dated 5th March 2021 passed by this Court in a review petition viz.

Review Petition (L) No.4505 of 2020, whereby review of the consent order passed by this Court on 12th December 2019 in the Commercial Execution Application No.310 of 2019 was sought by the State. His submission is that the consent order dated 12th December 2019 passed by the Court was upheld in the review petition. Shri Saraf, specifically, has drawn our attention to the observations made by this Court in paragraph 55 of the order dated 5th March 2021 while dismissing the review petition and has submitted that the Court has clearly returned a finding that it cannot be said that such senior officers who were involved in the decision making process, have either acted illegally or played fraud on the Government to make such payment, merely because the decision to settle the dispute was taken prior to formation of democratically elected Government which was formed on 28th November 2019, so as to come to a conclusion that the consent terms stand vitiated by fraud or that in any manner fraud is played on the Court. Paragraph 55 of the order dated 5th March 2021 dismissing the review petition is extracted hereunder:

> *"55. In so far as Mr. Anturkar's contention that the prayer as made in note dated 18 November 2019, in terms of the marked portion "X" (क्ष), was not granted by the Governor, also cannot be accepted. This for the reason that not only the Additional Chief Secretary but also the Chief Secretary and thereafter the Governor have made similar*

endorsements/approval by putting their signature on the said note without any specific qualification or condition. There is no material placed on record, from any of such signatories to the note dated 18 November 2019, that there was never an intention on their part to bring about settlement and make payment of the amount on which the dispute was settled between the State and Manaj. On the contrary, as noted above there is ample material to show that the order/decision of the Governor was acted upon which is required to be given sanctity as very Senior Officers of the State Government within the framework of law, alongwith the Governor had approved such settlement proposal to be entered by the State Government with Manaj. It cannot be said that such Senior Officers who were involved in the decision making process have either acted illegally or have played fraud on the Government to make such payment, merely because the decision to settle the dispute was take prior to the formation of democratically elected Government which was formed on 28 November 2019, so as to come to a conclusion that the consent terms stand vitiated by fraud or that in any manner fraud is played on the Court."

30. On the basis of the aforesaid observations made by this Court in its order dated 5th March 2021, learned Advocate General has argued that the reliance placed by the petitioner on the order dated 24th February 2020 for attributing misconduct to respondent No.2 that amounts to blemish, is highly misplaced. In his submission, he states that the Court, in its order dated 5th March 2021, has specifically found that the officers who were involved in taking decision for entering into settlement by the State of Maharashtra with M/s. Manaj Tollway, did not either act illegally or played any fraud on the Government.

31. On the aforesaid counts, learned Advocate General has opposed the petition vehemently and has contended that no case

for issuance of writ of *quo-warranto* is made out in the facts and circumstances of the present case, hence, the petition is liable to be dismissed at its threshold.

(E) Scope of writ of *quo-warranto* and that of writ of *certiorari* and the difference between the two:

32. Ahead of discussing and analysing the competing submissions made by the parties for and against grant of prayers made in this petition, it would be appropriate to reflect upon the scope of writ of *quo-warranto* and that of writ of *certiorari* and the difference between the two.

33. Writ of *quo-warranto* and writ of *certiorari*, both are high prerogative writs and a judicial tool available to the constitutional Courts in the scheme of Constitution of India for exercising the power of judicial review. Writ of *quo-warranto* is not the same as writ of *certiorari*. In our jurisprudence, there are two primary features which distinguish writ of *quo-warranto* from writ of *certiorari*. The first such feature is that for seeking writ of *quo-warranto*, the petitioner or the applicant need not establish that he is personally prejudiced or affected by any wrongful act of public nature or that his fundamental right is

infringed or that he has been denied any legal right or any legal duty owed to him, whereas for seeking writ of *certiorari*, the petitioner or the applicant has to first establish as to how by the impugned act on the part of the public authority, he is personally prejudicially affected or as to how his fundamental right is infringed or as to how any of his legal right has been denied to him or how any duty owed by the public authority to the petitioner / applicant has not been performed to his detriment.

The second feature which distinguishes a writ of *quo-warranto* from writ of *certiorari* is that the scope of proceedings for writ of *quo-warranto* is limited only to determine as to whether the appointment of the respondent is (i) by the competent authority, and (ii) as per the statutory prescription, that is to say, the appointment to the public office is in accordance with law; whereas for seeking a writ of *certiorari*, the applicant / petitioner has to plead and prove certain grounds such as illegality, irrationality, arbitrariness, defect of jurisdiction or irregular exercise of jurisdiction, error of law and impropriety etc. in actions and decisions of a public authority or an inferior tribunal or court.

34. Though both the writs are discretionary in nature, however, scope of inquiry in a petition seeking writ of *quo-warranto* is much limited as compared to the scope of inquiry in a petition seeking writ of *certiorari*. The inquiry is limited, where a writ of *quo-warranto* is sought, to determination of the issue as to whether the appointment to the public office has been made by the competent authority empowered to make such appointment under law and as to whether the appointment has been made following the procedure as prescribed by the statutory prescription applicable to appointment to such public office.

35. In ***N. Kannadasan (supra)***, Hon'ble Supreme Court, while dealing with recommendation of the Chief Justice of Madras High Court for appointment as President of the State Consumer Dispute Redressal Commission under the Consumer Protection Act,1986, has held that judicial review for the purpose of issuance of a writ of *quo-warranto* would lie in the event the holder of public office was not eligible for appointment and processual machinery relating to consultation as prescribed in section 16 of Act, 1986 was not fully complied. Quoting from "*Corpus Juris Secundum"* and various other judgements, the Hon'ble Supreme Court, in ***N. Kannadasan (supra)*** has held

that a writ of quo-warranto can be issued when the appointment is contrary to the statutory rules and further that it is not for the Court to embark upon an investigation of its own to ascertain the qualifications of the person concerned. The Hon'ble Supreme Court has also reflected upon the distinction between the ambit of inquiry for issuance of a writ of *quo-warranto* and the ambit of inquiry for issuance of a writ of *certiorari*. Paragraph 131 to 135 of the report are relevant to be quoted, which are extracted hereunder:

> ***"131.*** *Concededly, judicial review for the purpose of issuance of writ of quo warranto in a case of this nature would lie:*
>
> *(A) in the event the holder of a public office was not eligible for appointment;*
>
> *(B) processual machinery relating to consultation was not fully complied.*
>
> *The writ of quo warranto proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title he would be directed to be removed from the said office by a judicial order. The proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to protect the public from being deprived of public office to which it has a right. It is indisputably a high prerogative writ which was reserved for the use of the Crown. The width and ambit of the writ, however, in the course of practice, have widened and it is permissible to pray for issuance of a writ in the nature of quo warranto.*
>
> ***132.*** *In Corpus Juris Secundum [74 C.J.S. Quo warranto § 14], "Quo warranto" is defined as under:*
>
> *"Quo warranto, or a proceeding in the nature thereof, is a proper and appropriate remedy to test the right or title to an office, and to remove or oust an incumbent.*

It is prosecuted by the State against a person who unlawfully usurps, intrudes, or holds a public office. The relator must establish that the office is being unlawfully held and exercised by the respondent, and that relator is entitled to the office."

133. *In Law Lexicon by J.J.S. Wharton, Esq., 1987, "Quo warranto" has been defined as under:*

"QUO WARRANTO, a writ issuable out of the Queen's Bench, in the nature of a writ of right, for the Crown, against him who claims or usurps any office, franchise, or liberty, to enquire by what authority he supports his claim, in order to determine the right. It lies also in case of non-user, or long neglect of a franchise, or misuser or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise having never had any grant of it, or having forfeited it by neglect or abuse."

134. *Indisputably, a writ of quo warranto can be issued inter alia when the appointment is contrary to the statutory rules as has been held by this Court in High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat (2003) 4 SCC 712 and R.K. Jain v. Union of India (1993) 4 SCC 119. (See also Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana (2002) 6 SCC 269. In Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra (1998) 7 SCC 273, this Court has stated that it is not for the court to embark upon an investigation of its own to ascertain the qualifications of the person concerned. (See also Arun Singh v. State of Bihar (2006) 9 SCC 375.) We may furthermore notice that while examining if a person holds a public office under valid authority or not, the court is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. [See Kashinath G. Jalmi (Dr.) v. Speaker [(1993) 2 SCC 703] .]*

135. *Issuance of a writ of quo warranto is a discretionary remedy. Authority of a person to hold a high public office can be questioned inter alia in the event an appointment is violative of any statutory provisions. There concededly exists a distinction in regard to issuance of a writ of quo warranto and issuance of a writ of certiorari. The scope and ambit of these two writs are different and distinct. Whereas a writ of quo warranto can be issued on a limited ground, the considerations for issuance of a writ of certiorari are wholly different."*

36. In ***Hari Bansh Lal Vs. Sahodar Prasad Mahto & Ors.***[3]

Hon'ble Supreme Court has held that for issuance of a writ of

[3] ***(2010) 9 SCC 655***

quo-warranto the High Court has to satisfy itself that the appointment was made contrary to the statutory rules and that suitability or otherwise of the candidate for appointment to a post is a function of appointing authority and not that of the Court unless the appointment is contrary to the statutory provisions/rules. Paragraph 34 of the judgment in ***Hari Bansh Lal (supra)*** is quoted hereunder:

> ***"34.*** *From the discussion and analysis, the following principles emerge:*
>
> *(a) Except for a writ of quo warranto, PIL is not maintainable in service matters.*
>
> *(b) For issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.*
>
> *(c) Suitability or otherwise of a candidate for appointment to a post in government service is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules."*

37. In **Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo & Ors.[4],** the apex Court has observed that jurisdiction of the High Court for issuing a writ of *quo-warranto* is limited and it can only be issued when the person holding the public office lacks the eligibility criteria. The Court further holds that the basic purpose of writ of *quo-warranto* is to confer jurisdiction on the constitutional Courts to see that a public office

[4] **(2014) 1 SCC 161**

is not held by an usurper. Paragraphs 18, 19, 20 and 21 of the judgment in ***Central Electricity Supply Utility of Odisha (supra)*** are also relevant to be referred, which are as under:

> ***"18.*** *In University of Mysore v. C.D. Govinda Rao [AIR 1965 SC 491] Gajendragadkar, J. (as His Lordship then was) speaking for the Constitution Bench, has stated thus: (AIR p. 494, para 7)*
>
> > *"7. ... 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 supplied)*
>
> ***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 adverting 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 noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality*

or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."

38. The apex court in ***Central Electricity Supply Utility of Odisha (supra)*** has noticed the observations made in ***R.K.Jain Vs. Union of India***[5], which is to the effect that the Government is not accountable to the Court 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. We may also note that in ***Central Electricity Supply Utility of Odisha (supra),*** Hon'ble Supreme Court has also noticed its judgement in ***High Court of Gujarat Vs. Gujarat Kishan mazdoor Panchayat***[6]***,*** wherein it has been held that jurisdiction of the High Court to issue a writ of *quo-warranto* is a limited one and that 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*.

(Emphasis supplied)

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[5] ***(1993) 4 SCC 119***

[6] ***(2003) 4 SCC 712***

39. Noticing ***Gujarat Kishan mazdoor Panchayat (supra)*** again in ***Bharati Reddy Vs. State of Karnataka & Ors.[7],*** Hon'ble Supreme Court has held that the only question which needs to be considered for issuance of a writ of *quo-warranto* is as to whether the incumbent concerned fulfills the qualifications laid down under the statutory provisions or not and that this is the limited scope of inquiry. Paragraph 36 in ***Bharati Reddy (supra)*** runs as under:

> ***"36.*** *In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712 in a concurring judgment S.B. Sinha, J. (as his Lordship then was) noted that the High Court [Gujarat Mazdoor Panchayat v. State of Gujarat, 2001 SCC OnLine Guj 76 : (2001) 4 LLN 319] 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. However, 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. The Court went on to observe that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules as held in Mor Modern Coop. Transport Society Ltd. v. State of Haryana [Mor Modern Coop. Transport Society Ltd. v. State of Haryana, (2002) 6 SCC 269] . The Court also took notice of the exposition in R.K. Jain v. Union of India [R.K. Jain v. Union of India, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128] . The Court noted that with a view to find out as to whether a case has been made out for issuance of quo warranto, the only question which was required to be considered was as to whether the incumbent fulfilled the qualifications laid down under the statutory provisions or not. This is the limited scope of inquiry. Applying the underlying principle, the Court ought not to enquire into the merits of the claim or the defence or explanation offered by the appellant regarding the manner of issuance of income and caste certificate by the jurisdictional authority or any matter related thereto which may be matter in issue for scrutiny concerning the validity of the caste certificate issued by the jurisdictional statutory authority constituted under the State Act of*

[7] ***(2018) 6 SCC 162***

1990 and the Rules framed thereunder. That inquiry may require examination of all factual aspects threadbare including the legality of the stand taken by the appellant herein."

40. The Hon'ble Supreme Court in ***State of West Bengal Vs. Anindya Sundar Das & Ors.***[8] has reviewed the line of cases where the terms on which a writ of *quo-warranto* can be issued. Referring to ***Gujarat Kishan mazdoor Panchayat (supra)***, ***Central Electricity Supply Utility of Odisha (supra), Bharati Reddy (supra)*** and other judgments, the apex Court in ***Anindya Sundar Das (supra),*** has concluded that the Court has settled the position that a writ of *quo-warranto* can be issued wherein an appointment has not been made in accordance with law. Paragraph 29 to 34 of the report in ***Anindya Sundar Das (supra)*** are as under:

> ***"29.*** *Through a line of cases, this Court has laid out the terms on which the writ of quo warranto may be exercised. In University of Mysore v. C.D. Govinda Rao [University of Mysore v. C.D. Govinda Rao, 1963 SCC OnLine SC 15 : (1964) 4 SCR 575] , a Constitution Bench of this Court, speaking through Gajendragadkar, J. (as he then was), held that : (SCC OnLine SC para 6)*
>
> > *6. … 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*

[8] ***(2022) 16 SCC 318***

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 supplied)

30. *In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712 : 2003 SCC (L&S) 565] , in his concurring opinion in a three-Judge Bench, S.B. Sinha, J. held that : (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] , 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 [Mor Modern Coop. Transport Society Ltd. v. State of Haryana, (2002) 6 SCC 269] .)"

31. *In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. [B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn., (2006) 11 SCC 731 (2) : (2007) 1 SCC (L&S) 548 (2)] , the limitations of the writ of quo warranto were elaborated upon by a two-Judge Bench of this Court. The Court observed : (SCC pp. 754-55, paras 49 & 51)*

> *"49. … The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.*
>
> *51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in R.K. Jain v. Union of India [R.K. Jain v. Union of India, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128] was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into in a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no locus standi to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner."*
>
> *(emphasis supplied)*

32. *In Central Electricity Supply Utility, Odisha v. Dhobei Sahoo [Central Electricity Supply Utility, Odisha v. Dhobei Sahoo, (2014) 1 SCC 161 : (2014) 1 SCC (L&S) 1] , another two-Judge Bench of this Court reiterated that : (SCC p. 174, para 21)*

> *"21. … 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 supplied)*

33. *More recently, in Bharati Reddy v. State of Karnataka [Bharati Reddy v. State of Karnataka, (2018) 6 SCC 162] , a three-Judge Bench of this Court, of which one of us (D.Y. Chandrachud, J.) was a part, noted the line of precedent clarifying the remit of the writ of quo warranto.*

34. *Through these decisions, the Court has settled the position that the writ of quo warranto can be issued where an appointment has not*

been made in accordance with the law. Accordingly, the rival contentions must be analysed by dealing with the scheme of the statutory provisions governing the appointment and reappointment of the VC."

41. From a closer analysis of the afore-quoted judgments, it is, thus, clear that while exercising the jurisdiction under Article 226 of the Constitution of India, where a prayer is made for issuance of a writ of *quo-warranto*, this Court has to bear in mind the distinction between the terms on which a writ of *quo-warranto* can be issued and the terms on which a writ of *certiorari* can be issued. The scope of enquiry for issuing a writ of *quo-warranto* is limited only to determination of the issue as to whether the appointment of the public office concerned has been made by the competent authority and as to whether while making appointment to such public office, the statutory prescriptions have been followed or not. In an inquiry for issuing a writ of *quo-warranto*, the Court will, thus, not be concerned as to the choice made by the public authority for making appointment to public office and the Court will not consider the respective impact on the candidates or other factors which need to be taken into account while considering a prayer for issuance of a writ of *certiorari.* Broadly speaking, it is the eligibility and not the merit of the candidate which needs to be enquired into by this Court

while examining a prayer for issuance of a writ of *quo-warranto*.

(F) Discussion:

42. In the light of the settled position of law relating to issuance of writ of *quo-warranto,* we now proceed to discuss and analyze the submissions made on behalf of the respective parties for and against the prayer made in the petition.

43. Based on the judgment in ***N. Kannadasan (supra),*** the petitioner has submitted that the phrase "who is or has been, in service" occurring in the first proviso appended to Section 22 of the Act, 2016 would mean "who is or has been, in service without blemish". There cannot be any quarrel so far as the legal principle laid down in ***N. Kannadasan (supra)*** is concerned. We, thus, need to examine as to whether on the basis of material pleaded by the petitioner in this petition it can be said or concluded that respondent No.2 carried any blemish in his service career while he was serving the State Government. The petitioner has relied upon two materials, viz. (i) the request made by the Anti Corruption Bureau with the State Government to inquiry into the alleged misconduct of respondent No.2 in relation to a tender procedure undertaken for construction of

Mumbai-Pune Expressway, under Section 17(A) of the Act, 1988. It is true that the Additional Director General, Anti Corruption Department had written a letter on 26th November 2020 to the State Government seeking permission to conduct an inquiry as per the requirement of Section 17(A) of the Act, 1988, however, the State Government has not given any such permission. Section 17(A) of the Act, 1988 injuncts a Police Officer not to conduct any inquiry or investigation into any offence alleged to have been committed by public servant under the said Act where alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without previous approval of the Government. It is not in dispute that the alleged misconduct in respect of which the letter date 26th November 2020 was written by the Anti Corruption Department to the State Government related to a decision of which respondent No.2 was a part which was taken while he discharged his official duties and functions. Thus, without previous approval of the State Government as per requirement of Section 17(A) of the Act, Section 17(A) of the Act, 1988 no inquiry or investigation could be conducted by the Anti Corruption Bureau.

44. Section 17(A) of the Act, 1988 was inserted by Act 16 of 2018 w.e.f. 26th July 2018 that provides an umbrella for protecting the Government servants in relation to the decisions taken by them in discharge of their official functions and duties and unless the State Government forms an opinion for giving its previous approval for making inquiry or investigation by the Police Officer, such alleged offence or misconduct cannot be inquired into. In the instant case, admittedly, no such previous approval has been accorded by the State Government and as such we are of the considered opinion that merely on account of the request made by the Anti Corruption Department to the State Government for according previous approval as per the requirement of Section 17(A) of the Act, Section 17(A) of the Act, 1988, it cannot be said that respondent No.2 has any blemish in respect of the functions and duties discharged by him which led to the decision of the State Government regarding the tender procedure adopted for the construction of Mumbai-Pune Expressway.

45. The only other material relied upon by the petitioner for submitting that respondent No.2 carried a blemish is the order

dated 24th February 2020 passed by this Court in Commercial Execution Application No.310 of 2019. In this regard we may note that in a subsequent order dated 28th February 2020, on a praecipe moved, this Court noted the submissions made in respect of clarifying the averments made in the affidavit filed by respondent No.2 on the basis of which the order dated 24th February 2020 was passed and further, the Court recorded reference to the note dated 25th November 2019 which was, inadvertently not pointed out to the Court when the matter was heard and order was passed on 24th February 2020.

46. Further, the review petition filed by the State Government against the consent order passed on 12th December 2019 in the same Commercial Execution Application No.310/2019 was rejected by the Court vide order dated 5th March 2021. It is also to be noted that while dismissing the review petition against the consent order dated 12th December 2019, the Court has clearly observed that it cannot be said that such senior officers who were involved in the decision making process, had either acted illegally or played fraud on the Government to make such payment, merely because the decision to settle the dispute was taken prior to formation of democratically elected Government.

The Court also noted that it cannot be concluded that the consent terms stood vitiated by fraud or that in any manner fraud was played on the Court, which is apparent from a perusal of paragraph 55 of the order dated 5th March 2021. In view of the order dated 28th February 2020 passed by the court noticing the clarification given in relation to the affidavit filed by respondent No.2 in Commercial Execution Application No.310/2019 and also taking into account the order dated 5th March 2021 whereby review petition of the State Government against the consent order passed in the said Commercial Execution Application No.310/2019 was dismissed recording a finding that the Officers (which included the respondent No.2 as well) involved in the decision making process have either acted illegally or played fraud on the Government to make such payment, we are of the opinion that merely on the basis of certain observations made by the Court in its earlier order dated 24th February 2020, can it be concluded that respondent No.2 carries any blemish.

47. The law relating to the parameters on which a writ of *quo-warranto* can be issued by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India has

been discussed above. Now what needs to be seen by the Court is as to whether the appointment of respondent No.2 was made following the statutory prescription available in the Act, 2016 and Rules, 2017. Qualification of Chairperson is prescribed in Section 22. Respondent No.2 has been associated with public administration while serving the State Government in his capacity as a Member of Indian Administrative Service and has held the requisite post while serving the State Government as per the prescription available in the first proviso appended to Section 22. Thus, it cannot be said that respondent No.2, in any manner, lacks the requisite qualification prescribed under Section 22 of the Act, 2016.

48. The procedure for selection of Chairperson is provided in Rule 4 of the Rules, 2017. There is no averment in the PIL petition that the Selection Committee, in terms of Rule 4 of the Rules, 2017 was not properly constituted. It is also not disputed by the petitioner that the Selection Committee had recommended the name of respondent No.2 for appointment as Chairperson. No other flaw in the process adopted by the Selection Committee and the State Government while making recommendation of respondent No.2 and his appointment as

Chairperson of the Authority has been pointed out which can be said, in any manner, to have contravened the provisions contained in Section 22 of the Act, 2016 or Rule 4 of Rules, 2017. In absence of any other material to establish contravention of any statutory prescription available either in the Act, 2016 or Rules, 2017, we have no hesitation to arrive at a conclusion that the petitioner has utterly failed to make out a case for grant of the prayer for issuance of a writ of *quo-warranto* whereby respondent No.2 can be removed from the office of Chairperson of the Authority.

49. It is not a case where a writ of *certiorari* has been sought for quashing the appointment of respondent No.2 as Chairperson of the Authority on the ground available for grant of prayer for a writ of *certiorari.*

50. As already noticed above, the scope of inquiry for issuing a writ of *quo-warranto* is limited to determining as to whether the appointment of a public servant has been made to a public office in contravention of any statutory provision.

51. Hon'ble Supreme Court has already held what while issuing a writ of *quo-warranto,* the Court merely makes a public

declaration that while making the appointment in question certain statutory provisions were contravened. The Court may not go into the impact on the candidate of other factors which may be relevant for issuance of a writ of *certiorari.* The scope of inquiry for considering the prayer for issuance of *quo-warranto* is confined to examine as to whether the appointee concerned fulfills the qualification laid down in the statutory provision or not.

52. As laid down in ***R.K.Jain (supra)*** and reiterated in **Central Electricity Supply Utility of Odisha (supra),** the Government is not accountable to the Court for the choice made by it for appointment to a public office but the Government is only accountable to the Court in respect of lawfulness/legality of its decision when challenged before the superior Courts on the touchstone of as to whether the statutory provisions relating to appointment to the public office concerned have been followed or not.

53. So far as the reliance placed by the petitioner on the judgment in the case of ***Centre for PIL and Anr. (supra)*** is concerned, it is to be noticed that in the said case the matter

pertained to recommendation made by the High Powered Committee recommending the name of an individual for being appointed as Chief Vigilance Commissioner under the proviso to Section 4(1) of the Central Vigilance Commission Act, 2003. An FIR was registered under Section 3(2) read with Section 13(1)(d) of the Act, 1988 and Section 120B of the Indian Penal Code and further, after completion of investigation, the State had sought sanction from the Department of Personnel and Training of the Government of India to prosecute the persons concerned. The candidate in respect of whom the recommendation was made was added as an accused in the case filed in the criminal Court. The Hon'ble Supreme Court in this situation opined that if the selection adversely affects the institutional competence and functioning it shall be duty of the High Powered Committee not to recommend such a candidate and thus finding fault with the decision making process relating to the recommendations, declared the recommendation of the High Powered Committee to be *non-est* in law. The Hon'ble Supreme Court, while arriving at the said conclusion also noticed that apart from the pending criminal proceedings, under Section 13(1)(d) of the Act, 1988 and Section 122-B of the Indian Penal Code, there were various

notings of the Department of Personnel and Training recommending disciplinary proceedings against the individual who was recommended for being appointed as Chief Vigilance Commissioner. The Court also found that the said notings were not considered by the High Powered Committee. The Supreme Court, in the facts of the said case, found that even on personal integrity the High Powered Committee had not considered the relevant material.

54. In the instant case as noticed above, the petitioner has relied upon two materials for emphasizing that respondent No.2 does not have unblemished record. In respect of both such materials, viz. (i) request of the Anti Corruption Department to the State Government for conducting inquiry as per the requirement of Section 17(A) of the Act, 1988, and (ii) the order dated 24th February 2020, a detailed discussion has already been made above in the preceding paragraphs of this judgment. In our opinion, the judgment of the Hon'ble Supreme Court in ***Centre for PIL (supra)*** does not help the case of the petitioner in any manner.

(G) Conclusion:

55. On the basis of material placed before us, it cannot be said that appointment of respondent No.2 to the office of Chairperson of the Authority or the recommendation made by the Selection Committee for the said purpose suffer from violation of any statutory prescription available either in the Act, 2016 or the Rules, 2017 and therefore, it cannot be said that respondent No.2 holds his office without any authority. For these reasons we conclude that respondent No.2 cannot be said to be an usurper of the office of the Chairperson of the Authority.

56. For the discussion made and the reasons given above, we are of the considered opinion that the PIL petition lacks merit which is accordingly dismissed.

57. However, in the facts of the case, there will be no order as to costs.

58. Interim application(s), if any, stands disposed of.

(AMIT BORKAR,J.) **(CHIEF JUSTICE)**