

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6522 of 2014

Virendra Pandey, aged about 64 years, S/o Late Braj Bihari Pandey, R/o 31/666, New Shanti Nagar, Raipur (C.G.)
---- Petitioner

Versus

1. State of Chhattisgarh, Through the Principal Secretary, Department of Energy, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
 2. Narayan Singh, aged about 60 years, S/o Late Khetra Mohan Singh, Chairman, Chhattisgarh State Regulatory Commission, Raipur (C.G.)
- Respondents

For Petitioner: Mr. Jitendra Pali, Advocate.

For State of Chhattisgarh/respondent No.1: -

Mr. Prasun Bhaduri, Government Advocate.

For respondent No.2: Dr. N.K. Shukla, Senior Advocate, with Mr. Rakesh Kumar Jha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

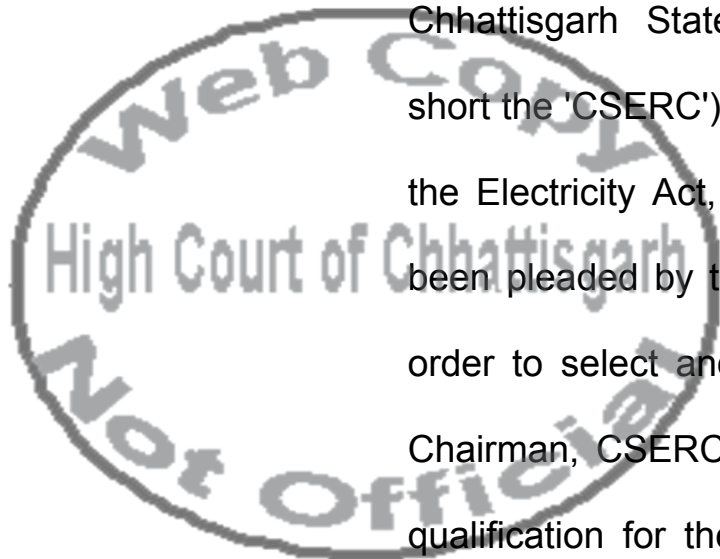
CAV Order

05/02/2016

1. Invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, petitioner herein Shri Virendra Pandey seeks issuance of a writ in the nature of quo warranto against respondent No.2 Shri Narayan Singh questioning his appointment and for his consequent removal from the post of Chairman, Chhattisgarh State Electricity Regulatory Commission.

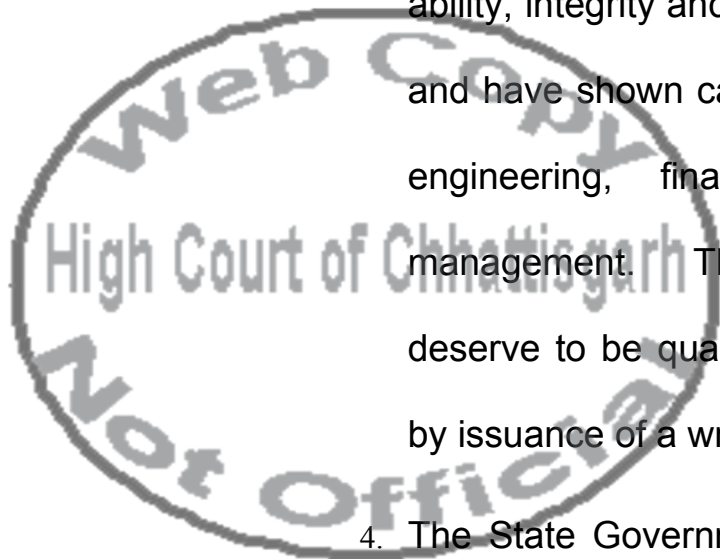
Brief factual background: -

2. The above-stated challenge has been made by the petitioner in the following factual matrix of the case: -
3. The petitioner claiming to be a social worker of substantial repute and crusader against political and administrative corruption in every walk of life, has filed this writ petition seeking a writ of quo warranto stating inter alia that selection and appointment of respondent No.2 on the post of Chairman, Chhattisgarh State Electricity Regulatory Commission (for short the 'CSERC') is in violation of the provisions contained in the Electricity Act, 2003 (for short the 'Act of 2003'). It has been pleaded by the petitioner that the State Government in order to select and appoint respondent No.2 on the post of Chairman, CSERC, altered the prescribed statutory eligibility qualification for the post of Chairperson of the CSERC and surreptitiously excluded the qualification relating to Engineering and Management provided in Section 84 (1) of the Act of 2003 and clandestinely inserted Administration and Accountancy as qualification and also the required graduate degree for the said post which excluded many eligible candidates having eligibility qualification in the field of Engineering and Management and which gave way to the selection committee to appoint respondent No.2 who is a person belonging to Administration and thereby, the appointment of respondent No.2 on the said post is in violation

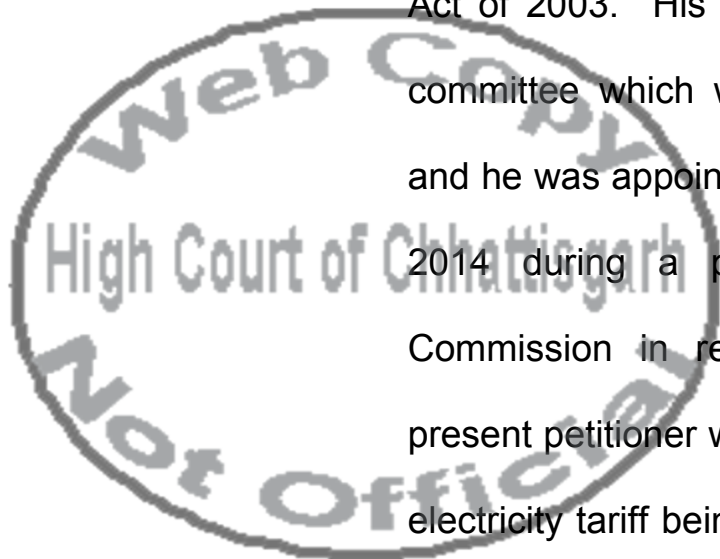


of sub-section (1) of Section 84 of the Act of 2003. It has further been pleaded that criminal case was registered and was pending against respondent No.2 and he is a person of doubtful integrity and therefore, he ought not to have been appointed on the said post and appointment of respondent No.2 on the post of Chairman of CSERC is legally unsustainable and is in violation of statutory provisions. It has also been pleaded that respondent No.2 is not a person of ability, integrity and standing who has adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management. Therefore, his selection and appointment deserve to be quashed being contrary to statutory provisions by issuance of a writ in the nature of quo warranto.

4. The State Government has filed return stating inter alia that the appointment of respondent No.2 has been made by the selection committee duly constituted in accordance with sub-section (1) of Section 85 of the Act of 2003 and the selection committee under sub-section (4) of Section 85 of the Act of 2003 recommended a panel of two names for the post of Chairperson of the CSERC and from the said panel, the name of respondent No.2 was also included and the State Government considered the names of two persons and appointed respondent No.2 in accordance with the provisions contained in sub-section (5) of Section 82 of the Act of 2003.



It has further been pleaded that respondent No.2 has held various posts in administrative capacity up to the rank of Additional Chief Secretary, a non-cadre post which was equivalent to the post of Chief Secretary in pay-scale and status, and has the requisite qualification and is a man of ability and integrity and also has adequate knowledge and has shown capacity in dealing with problems relating to all branches as envisaged in sub-section (1) of Section 84 of the Act of 2003. His name was recommended by the selection committee which was considered by the State Government and he was appointed. It has also been pleaded that on 21-5-2014 during a public hearing at Raipur by the State Commission in regard to revision in electricity tariff, the present petitioner warned respondent No.2 that in the event of electricity tariff being revised upwards, he would file a petition in the court challenging the illegality in the appointment of respondent No.2. Not only this, averments of the writ petition would show that the petitioner has also pleaded therein that respondent No.2 was never appointed on the post of Energy Secretary by the State Government, as he was never considered fit for that post and case of respondent No.2 for appointment on the post of Chief Secretary of the State was rejected by the State/respondent No.1 on the ground of his unsuitability even by ignoring his seniority which goes to show that the petitioner is not a person of unbiased mind and the



proceeding of quo warranto being in the nature of public interest litigation is not maintainable under the law. The petitioner is a biased person rather impostor having grudge against respondent No.2. Thus, the present writ petition as framed and filed making wild and bald allegations against the selection committee which was chaired by a former Judge of the High Court, for issuance of a writ of quo warranto even without impleading the selection committee as a party respondent, is not maintainable in law and deserves to be dismissed with cost.

5. The petitioner has chosen not to file rejoinder despite there being adverse statements / averments made against him by respondent No.2 and the State/respondent No.1 in their respective return/additional reply filed on 20-11-2015 and 14-1-2016, respectively, and only an additional affidavit was filed by the petitioner on 25-1-2016 stating that the newspaper report is inadmissible in law.

Submissions of parties: -

6. Mr. Jitendra Pali, learned counsel appearing for the petitioner, while making scathing attack on selection and appointment of respondent No.2 as Chairman of the CSERC would vehemently submit as under: -

- That, deletion, addition and substitution of the postulates of requisite qualification as statutorily provided in sub-

section (1) of Section 84 of the Act of 2003 by respondent No.1 were occasioned to create favourable condition, rather it was a tailor-made qualification to select respondent No.2 as Chairperson of the State Commission and thereby the appointment of respondent No.2 on the post of Chairman of the CSERC is in violation of statutory provisions contained in sub-section (1) of Section 84 of the Act of 2003 and respondent No.2 is not a person of ability, integrity and standing, who has adequate knowledge of and has shown capacity in dealing with problems relating to engineering, finance, commerce, economics, law or management.

- That, respondent No.2 is not a person of absolute integrity as several charges of criminal nature were pending at the time of consideration by the selection committee and prima facie established against him, yet he was appointed on the post of Chairman of the CSERC in violation of sub-section (1) of Section 84 of the Act of 2003. Integrity of respondent No.2 is doubtful also for the reason that he was not found suitable for the post of Chief Secretary on the ground of unsuitability even ignoring his seniority and he was also not considered fit to be posted as Secretary of the Energy Department of the State Government.



- That, the selection committee has miserably failed to consider the comparative rightful statutory qualification and expertise of several other candidates and selected respondent No.2 presumably at the behest of respondent No.1.
- That, the provision contained in sub-section (5) of Section 85 of the Act of 2003 was not complied with as the selection committee did not satisfy itself that respondent No.2 does not have any financial or other interest, likely to affect prejudicially his function as Chairperson of the State Commission.
- That, a writ in the nature of quo warranto be issued, removing respondent No.2 from the post of Chairperson of the State Commission.

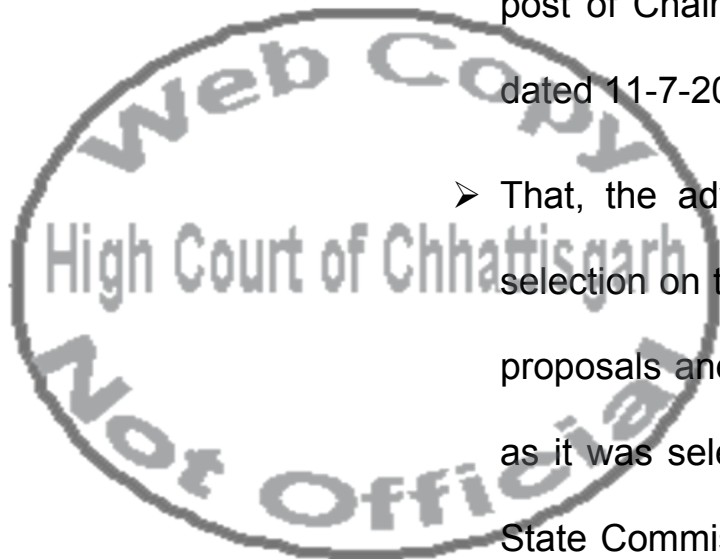
7. Opposing and countering the submission made on behalf of the petitioner, Mr. Prasun Bhaduri, learned Government Advocate appearing on behalf of the State/respondent No.1, would submit as under: -

- That, the appointment of respondent No.2 was made by respondent No.1 on the recommendation of a duly constituted selection committee in accordance with sub-section (1) of Section 85 of the Act of 2003, consisting of a former Judge of the High Court, Chief Secretary of the State of Chhattisgarh and Chairman of the Central



Electricity Commission, which assembled on 10-7-2013 and considered all the applications of eligible candidates received as on that date and recommended the names of respondent No.2 and one Shri M.S. Puri, Secretary, Electricity Authority, finding them to be eligible for the said post, and the State Government in accordance with the provisions contained in sub-section (5) of Section 82 of the Act of 2003, appointed respondent No.2 on the post of Chairman of the State Commission by its order dated 11-7-2013.

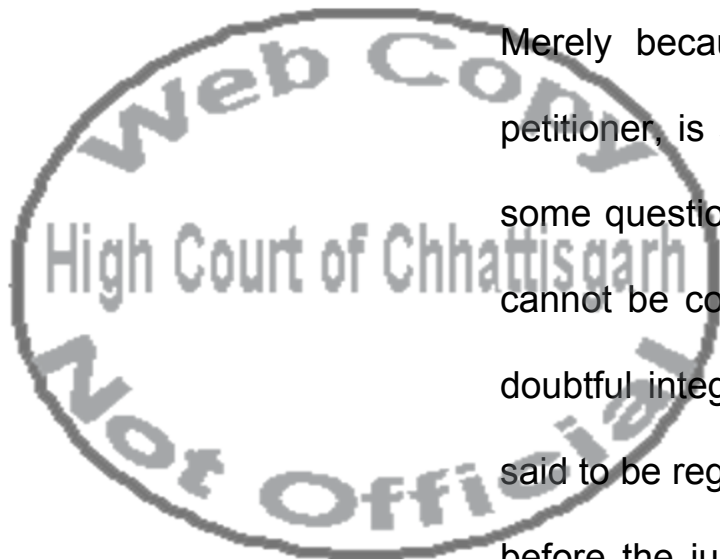
- That, the advertisement was issued on 23-2-2013 for selection on the post of Chairman of the CSERC inviting proposals and nominations, but it was not required at all as it was selection and appointment of Chairman of the State Commission, however, as an abundant precaution it was invited. Such an invitation is not in vogue. The selection committee made recommendations strictly in terms of qualifications prescribed in sub-section (1) of Section 84 of the Act of 2003 and the selection committee also acted in accordance with the provisions of the Act of 2003 in making recommendation. No non-appointee out of the 27 candidates or any other person claiming to be eligible in terms of sub-section (1) of Section 84 of the Act of 2003 has questioned the appointment of respondent No.2 made by respondent



No.1. Therefore, the petitioner not being a non-appointee cannot question and raise such a ground in a writ petition and as such, the said ground is beyond the scope of a quo warranto proceeding.

- That, respondent No.2 is a man of ability, integrity and standing and fulfills the qualification prescribed in sub-section (1) of Section 84 of the Act of 2003.
- That, respondent No.2 is a man of absolute integrity.

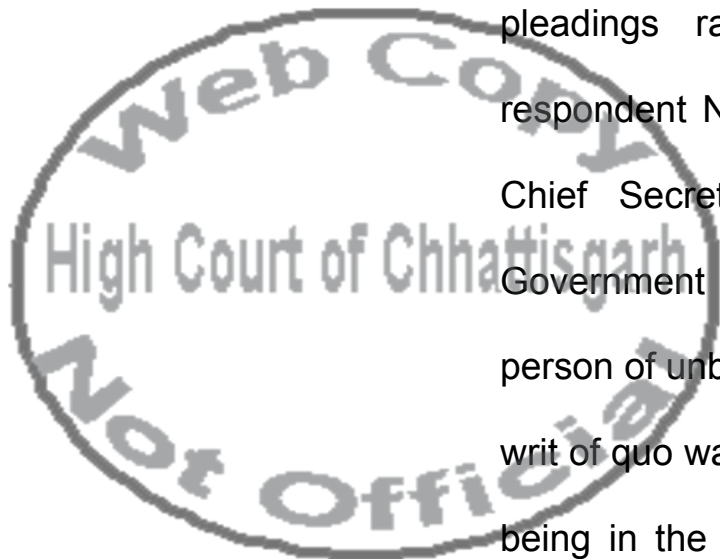
Merely because one criminal case, according to the petitioner, is said to have been allegedly registered and some question was raised before the State Assembly, it cannot be concluded that respondent No.2 is a man of doubtful integrity. It is well settled that criminal case is said to be registered only when charge-sheet is preferred before the jurisdictional criminal court. Offences under Section 120B of the IPC and Sections 13 (1) (c) & 13 (1) (d) of the Prevention of Corruption Act, 1988 was registered against respondent No.2, but no documents demonstrating filing of charge-sheet on the date of making selection and appointment of respondent No.2 on the post of Chairman of the State Commission have been filed by the petitioner, whereas documents brought on record by respondent No.2 would show that such an offence registered has been investigated and the case



has been closed against respondent No.2 finding no material to prosecute him.

- That, institution of writ petition by the petitioner is nothing but the consequence of threat being given by the petitioner to respondent No.2 in office to challenge the appointment on 21-5-2014 and such a fact has been raised in the return, but no rejoinder has been filed by the petitioner controverting the said fact. Nature of pleadings raised in the writ petition stating that respondent No.2 was not found suitable for the post of Chief Secretary and the Energy Secretary of the Government would show that the petitioner is not a person of unbiased mind who has brought proceeding for writ of quo warranto and the proceeding for quo warranto being in the nature of public interest litigation, the writ petition as framed and filed by the petitioner is not maintainable in law.

- That, the petitioner has levelled several allegations against the members of the selection committee that selection of respondent No.2 is actuated by mala fide and favouritism. The selection committee is a high level statutory selection committee headed by a former Judge of the High Court but yet, the petitioner has chosen not to implead the selection committee as a party



respondent which makes the writ petition not maintainable apart from the fact that the plea of malice has not been substantiated by the writ petitioner.

➤ That, the writ petition deserves to be dismissed with cost.

8. Dr. N.K. Shukla, learned Senior Advocate appearing for respondent No.2, has made submission in line with the submission made by learned Government Advocate for the State/respondent No.1 and opposed the submissions made on behalf of the petitioner.

9. I have heard learned counsel for the parties, given thoughtful consideration to the submissions raised therein and gone through the record with utmost circumspection.

Meaning of Quo Warranto: -

10. According to the Stroud's Judicial Dictionary, 4th Edition,

“Quo Warranto is a writ that lies against a person who usurps any franchise, liberty or office.”

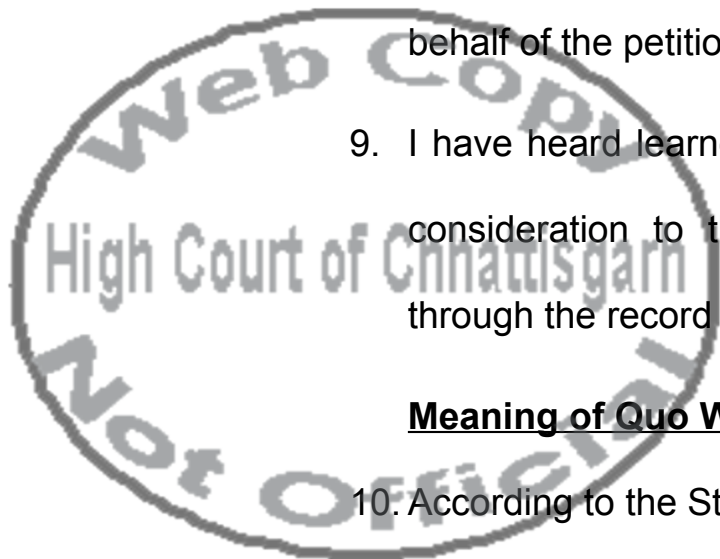
11. Corpus Juris Secundem defines quo warranto as follows: -

“Quo Warranto is a proceeding to determine the right to the exercise of franchise or office and to oust the holder if his claim is not well-founded or if he has forfeited his right.”

12. In Halsbury's Laws of England Fourth Edition Reissue

Volume-I, para 265, this writ has been defined as follows: -

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



that the right to the office or franchise might be determined.”

13. In **B.R. Kapur v. State of T.N.**¹, the Supreme Court after referring to the Halsbury's Laws of England, Words and Phrases and leading decisions on the point has observed that a writ of quo warranto is a writ which lies against the person who is entitled to an office of public nature and is only a usurper in office, that it directed to such person to show by what authority he was entitled to hold the office. It is pointed out that challenges can be made on various grounds, including the ground that the possession of the office does not fulfill the required qualifications or suffers from a disqualification, which debars him from holding the office. It has been further stated that if such person fails to do so, a writ of quo warranto shall be directed against him.

Principles governing issuance of writ of quo warranto: -

14. It is well settled that issuance of writ of quo warranto is a discretionary remedy, authority of a person to hold a public office can be questioned inter alia in the event the appointment is violative of statutory provision and unquestionably a writ of quo warranto can be issued inter alia when the appointment is contrary to statutory rules and holder of the office lacks eligibility.

15. Way back in the year 1963, the Constitution Bench of the Supreme Court in the matter of **The University of Mysore**

¹ AIR 2001 SC 3435

and another v. C.D. Govinda Rao and another² while dealing with the nature of writ of quo warranto has held in no uncertain terms that before a citizen can claim a writ of quo warranto, he must satisfy the Court that the office in question is a public office and is held by usurper without legal authority by observing as under: -

“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 enquiry 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.”

2 AIR 1965 SC 491 : (1964) 4 SCR 575

16. Similarly, in the matters of **High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others**³ and **R.K. Jain v. Union of India**⁴ similar proposition of law has been propounded with regard to writ of quo warranto.
17. In the matter of **Centre for PIL and another v. Union of India and another**⁵, Their Lordships of the Supreme Court have laid down the requisites and object of issuance of writ of quo warranto. Paragraph 51 of the report states as under:-

“51. 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. 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 it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority.”

18. Similarly, in the matter of **Rajesh Awasthi v. Nand Lal Jaiswal and others**⁶, it has been held that writ of *quo warranto* lies when appointment is made contrary to statutory provisions and laid down the test to issue a writ of *quo warranto* to see whether person holding the office is authorised to hold the same as per law. Thus, the petitioner seeking issuance of writ of quo warranto has to satisfy that the appointment of respondent No.2 Narayan Singh is contrary to

3 (2003) 4 SCC 712

4 (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464

5 (2011) 4 SCC 1

6 (2013) 1 SCC 501

statutory rules and he lacks eligibility.

19. In the matter of **Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others**⁷, Their Lordships of the Supreme Court have held in no uncertain terms that writ of quo warranto can be issued only when person holding public office lacks eligibility or when appointment is contrary to statutory rules and held as under in paragraph 21: -

“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.”

20. In a decision in the matter of **Mahesh Chandra Gupta v. Union of India and others**⁸, Their Lordships of the Supreme Court have pointed out the distinction between “eligibility” and “suitability” and held that “eligibility” is based on objective factor and it is therefore liable to judicial review, but “suitability” pertains to realm of opinion and is therefore, not amenable to any judicial review, and held as under in paragraphs 39, 43 and 44: -

⁷ (2014) 1 SCC 161

⁸ (2009) 8 SCC 273

“39. At this stage, we may state that, there is a basic difference between "eligibility" and "suitability". The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of "suitability". Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under [Article 217\(2\)\(b\)](#). This dichotomy between suitability and eligibility finds place in [Article 217\(1\)](#) in juxtaposition to [Article 217\(2\)](#). The word "consultation" finds place in [Article 217\(1\)](#) whereas the word "qualify" finds place in [Article 217\(2\)](#).

43. One more aspect needs to be highlighted. "Eligibility" is an objective factor. Who could be elevated is specifically answered by [Article 217\(2\)](#). When "eligibility" is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of "suitability", stands excluded from the purview of judicial review.

44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under [Article 217\(1\)](#). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in the case of Supreme Court Advocates-on-Record Assn. v. Union of India⁹ and Special Reference No. 1 of 1998, Re¹⁰.”

Their Lordships further concluded that in case involving lack of eligibility, writ of quo warranto would certainly lie and observed in paragraphs 71 and 74 as under: -

“71. "The overarching constitutional justification for judicial review, the vindication of the rule of law, remains constant, but mechanisms for giving effect

9 (1993) 4 SCC 441

10 (1998) 7 SCC 739

to that justification vary".

Mark Elliott

"Judicial review must ultimately be justified by constitutional principle."

Jowett

In the present case, we are concerned with the mechanism for giving effect to the constitutional justification for judicial review. As stated above, "eligibility" is a matter of fact whereas "suitability" is a matter of opinion. In cases involving lack of "eligibility" writ of quo warranto would certainly lie. One reason being that "eligibility" is not a matter of subjectivity. However, "suitability" or "fitness" of a person to be appointed a High Court Judge: his character, his integrity, his competence and the like are matters of opinion.

74. It is important to note that each constitutional functionary involved in the participatory consultative process is given the task of discharging a participatory constitutional function; there is no question of hierarchy between these constitutional functionaries. Ultimately, the object of reading such participatory consultative process into the constitutional scheme is to limit judicial review restricting it to specified areas by introducing a judicial process in making of appointment(s) to the higher judiciary. These are the norms, apart from modalities, laid down in Supreme Court Advocates-on-Record Assn. (supra) and also in the judgment in Special Reference No. 1 of 1998, Re. (supra). Consequently, judicial review lies only in two cases, namely, "lack of eligibility" and "lack of effective consultation". It will not lie on the content of consultation."

21. In the matter of **N. Kannadasan v. Ajoy Khose and others**¹¹

the Supreme Court has clearly held that it is not for the court to embark upon an investigation of its own to ascertain the qualifications of the person concerned and observed in paragraphs 134 and 139 as under: -

"134. Indisputably, a writ of quo warranto can be

11 (2009) 7 SCC 1

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](#)¹² and [R.K. Jain v. Union of India](#)¹³. (See also [Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana](#)¹⁴.) In [Duryodhan Sahu \(Dr.\) v. Jitendra Kumar Mishra](#)¹⁵, 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](#)¹⁶.) 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](#)¹⁷.]

139. In [R.K. Jain \(supra\)](#), consultation by the executive which the Chief Justice having found to be not necessary, it was held that no case for issuance of writ of quo warranto has been made out, stating: (SCC p. 173, para 73)

"73. Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment came to be made or the procedure adopted whether fair, just and reasonable. Exercise of judicial review is to protect the citizen from the abuse of the power, etc. by an appropriate Government or department, etc. In our considered view granting the compliance with the above power of appointment was conferred on the executive and confided to be exercised wisely. When a candidate was found qualified and eligible and was accordingly appointed by the executive to hold an office as a Member or Vice-President or President of a Tribunal, we cannot sit over the choice of the selection, but it be left to

12 (2003) 4 SCC 712 : 2003 SCC (L&S) 565

13 (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464

14 (2002) 6 SCC 269

15 (1998) 7 SCC 273 : 1998 SCC (L&S) 1802

16 (2006) 9 SCC 375

17 (1993) 2 SCC 703

the executive to select the personnel as per law or procedure in this behalf."

In that case, it was held that no case for issuance of a writ of certiorari had been made out as a third party had no locus standi to canvass the legality or correctness of the action seeking for issuance of a writ of certiorari. Only public law declaration would be made at the behest of the appellant who was a public-spirited person."

22. Judgment rendered by the Supreme Court in **Mahesh Chandra Gupta** (supra) has been followed with approval by Their Lordships of the Supreme Court in the matter of **M. Manohar Reddy and another v. Union of India and others**¹⁸.

23. In the matter of **Valsala Kumari Devi M. v. Director, Higher Secondary Education and others**¹⁹, the Supreme Court has defined the word "suitability" as under: -

"The expression "suitability" means that a person to be appointed shall be legally eligible and "eligible" should be taken to mean "fit to be chosen"."

24. Very recently, in the matter of **Registrar General, High Court of Madras v. R. Gandhi and others**²⁰, the Supreme Court has reiterated the principle of law laid down in **Mahesh Chandra Gupta** (supra) and held that judicial review is permissible only on assessment of eligibility and not on suitability of an appointee.

25. In the matter of **Renu and others v. District and Sessions**

¹⁸ (2013) 3 SCC 99

¹⁹ (2007) 8 SCC 533

²⁰ (2014) 11 SCC 547

Judge, Tis Hazari Courts, Delhi and another²¹, Their Lordships of the Supreme Court have reiterated that for issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it, and observed as under: -

“15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds 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, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide [University of Mysore v. C.D. Govinda Rao](#)¹, [Kumar Padma Prasad v. Union of India](#)²², [B.R. Kapur v. State of T.N.](#)²³, [Mor](#)

21 (2014) 14 SCC 50

22 (1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239 : AIR 1992 SC 1213

23 (2001) 7 SCC 231 : AIR 2001 SC 3435

Modern Coop. Transport Society Ltd. v. State of Haryana²⁴, Arun Singh v. State of Bihar²⁵, Hari Bansh Lal v. Sahodar Prasad Mahto²⁶, and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo²⁷.)

Statutory provisions governing appointment of Chairman of the State Commission

26. Section 84 of the Act of 2003 provides Qualifications for appointment of Chairperson and Members of State Commission. Sub-section (1) of Section 84 of the Act of 2003 states as under: -

“The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management.”

27. By virtue of sub-section (1) of Section 85 of the Act of 2003, the State Government has to constitute a selection committee to select Members of the State Commission and recommendation should be made by the selection committee.

Section 85 of the Act of 2003 states as follows: -

“85. Constitution of Selection Committee to select Members of State Commission.—(1)

The State Government shall, for the purposes of selecting the Members of the State Commission, constitute a Selection Committee consisting of—

- (a) a person who has been a Judge of the High Court Chairperson;
- (b) the Chief Secretary of the concerned State Member;
- (c) the Chairperson of the Authority or the

24 (2002) 6 SCC 269

25 (2006) 9 SCC 375

26 (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771

27 (2014) 1 SCC 161 : (2014) 1 SCC (L&S) 1

Chairperson of the Central Commission
.... Member:

Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court.

(2) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the Chairperson and Members within three months from the date on which the reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) Before recommending any person for appointment as the Chairperson or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairperson or Member, as the case may be.

(6) No appointment of Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.”

28. Functions of State Commission are enumerated in Section 86

of the Act of 2003 which read as under: -

“86. Functions of State Commission.—(1) The State Commission shall discharge the following functions, namely: -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and



surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-state transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licence;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of subsection (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

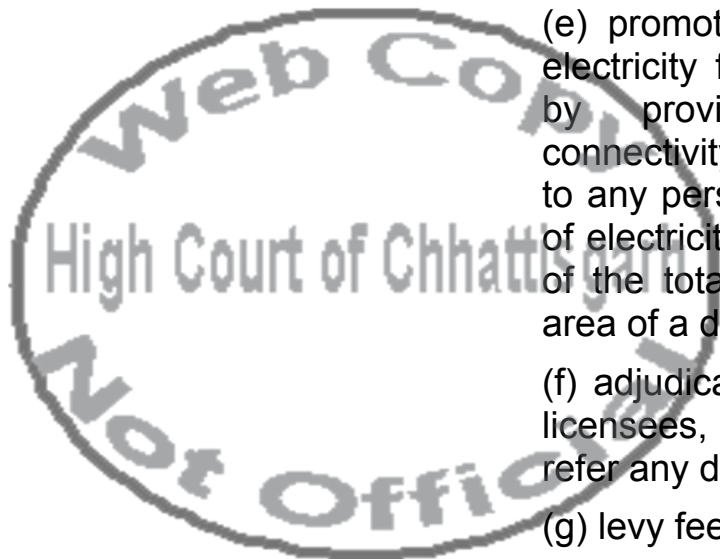
(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;

(k) discharge such other functions as may be assigned to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely :-

(i) promotion of competition, efficiency and economy in activities of the electricity industry;

(ii) promotion of investment in electricity industry;



(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3.”

29. Appointment of State Commission has to be made by virtue of sub-section (5) of Section 82 of the Act of 2003 which states as under: -

“82. (5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85.”

30. After having noticed the statutory provisions regarding qualification for appointment of Chairperson of the State Commission and constitution of Selection Committee, it would be appropriate to notice the procedure followed by the State Government in selecting and appointing respondent No.2.

Selection and appointment of respondent No.2

31. The erstwhile Chairman of the State Commission relinquished his office with effect from 12-7-2013. The State Government in order to appoint Chairman of the State Commission issued advertisement on 23-2-2013 inviting proposals and nominations for the post of Chairman of the State Commission. Relevant portion of the memo dated 23-2-2013

(Annexure P-2) reads as follows: -

“I am directed to invite proposals and nominations of suitable persons for consideration of the Selection Committee for the post of Chairman of the Chhattisgarh State Electricity Regulatory Commission. The nominees should be persons of ability, integrity and standing with adequate knowledge or experience of, or should have shown capacity in dealing with problems relating to Economics, Commerce, Finance, Accountancy, Law or Administration. The appointment would be made in accordance with the following: -

(1) The Chairman shall have Graduate qualification with specialisation and adequate experience in any of the disciplines like Law, Economics, Commerce, Finance, Accountancy or Administration.

(2) The minimum age limit for appointment is 55 years. Maximum age of the eligible candidates is 65 years. The tenure of the Chairman appointed will be Maximum of 5 years or till he attains the age of 65 years, whichever is earlier.

(3) The person appointed would have to resign or opt for voluntary retirement from the service to which he or she belongs.”

32. In pursuance of the advertisement, 27 applications were received for the said post. The said applications were consolidated with their qualification and experience, and thereafter, the State Government by order dated 29-6-2013 (Annexure P-5) constituted a committee to make recommendation as envisaged under sub-section (1) of Section 85 of the Act of 2003 which states as under: -

रायपुर, दिनांक 29.06.2013

क्रमांक एफ 1-7/चयन समिति/ऊ.वि./2007/13/1::
विद्यत अधिनियम, 2003 (क्रमांक 36, 2003) की धारा 85 की
उपधारा-1 में प्रदत्त शक्तियों को प्रयोग में लाते हुए, राज्य

शासन एतदद्वारा छत्तीसगढ राज्य विद्युत नियामक आयोग के अध्यक्ष के चयन हेतु निम्नानुसेसार चयन समिति का गठन करती है:-

1. श्री सुभाष चन्द्र व्यास, – चयन समिति के अध्यक्ष
मान. न्यायमूर्ति से(वानिवृत)
सभापति, राज्य पुलिस जवाबदेही प्राधिकार,
रायपुर छ.ग.
2. मुख्य सचिव, – चयन समिति के सदस्य
छत्तीसगढ शासन
3. अध्यक्ष, – चयन समिति के सदस्य
केन्द्रीय विद्युत प्राधिकरण,
नई दिल्ली।

यह आदेश तत्काल प्रभावशील होगा।

छत्तीसगढ के राज्यपाल के नाम से
तथा आदेशानुसार

33. Meeting of the statutory selection committee was convened on 10-7-2013. The selection committee so constituted and so convened on 10-7-2013 considered the cases of all the eligible candidates in its meeting and found respondent No.2 and one Mr. M.S. Puri fit to be recommended for the post of the Chairman, State Commission. Proceeding of the said committee's meeting recorded on 10-7-2013 states as under: -

छत्तीसगढ राज्य विद्युत निवारक आयोग के अध्यक्ष के चयन हेतु गठित चयन समिति की बैठक दिनांक 10.07.2013 का कार्यवाही विवरण

—000—

विद्युत अधिनियम 2003 की धारा 82 के अंतर्गत गठित छत्तीसगढ राज्य विद्युत नियामक आयोग के अध्यक्ष श्री मनोज डे 65 वर्ष की आयु पूर्ण करने के कारण दिनांक 12 सेवानिवृत्त हो रहे है। अतः सेवानिवृत्त होने से रिक्त होने वाले अध्यक्ष के पद पर विद्युत अधिनियम 2003 की धारा 85 के तहत राज्य शासन द्वारा आदेश क्रमांक एफ समिति/उ0वि0/2007/13/1 दिनांक 29.06.2013 द्वारा चयन समिति

का गठन कि

2/ चयन समिति की बैठक दिनांक 10.07.2013 को प्रातः 11:00 बजे मुख्य सचिव कार्यालय (निवास) बी-5/9, शंकर नगर, रायपुर में, सेवानिवृत्त न्यायमूर्ति श्री सुभाष चन्द्र व्यास की अध्यक्षता में संपन्न हुई। चयन समिति के सदस्य मुख्य सचिव, छत्तीसगढ़ शासन एवं अध्यक्ष, केन्द्रीय विधुत प्राधिकरण, नई दिल्ली उपस्थित रहे।

3/ राज्य शासन द्वारा पत्र क्रमांक एफ 1-7/2007/13/1 दिनांक 23.02.2013 जारी कर योग्य उम्मीदवारों से दिनांक 30.05.2013 तक आवेदन आमंत्रित किये गये एवं चयन समिति के समक्ष प्रस्तुत किया गया। आवेदनों पर विचारोपरांत विधुत अधिनियम, 2003 की धारा-84 में वर्णित योग्यता के परिप्रेक्ष्य में अध्यक्ष पद के लिये चयन समिति निम्नलिखित दो व्यक्तियों की अनुशंसा करती है:-

(1). श्री नारायण सिंह, आई.ए.एस, महानिदेशक, छत्तीसगढ़ प्रशासन अकादमी, रायपुर।

(2). श्री एम.एस. पुरी, सचिव, केन्द्रीय विधुत प्राधिकरण नई दिल्ली।

4/ चयन समिति ने यथासंभव यह संतुष्टि कर ली है कि समिति द्वारा अनुशंसित व्यक्ति द्वारा विधुत अधिनियम, 2003 की धारा-85 (5) की अपेक्षा अनुसार ऐसा कोई वित्तीय या अन्य हित नहीं रखा गया है, जिससे अध्यक्ष के रूप में कृत्य करते हुए प्रतिकूल रूप से प्रभावित होना संभावित हो। फिर भी चयन समिति की राय में यह उचित होगा कि शासन जिस व्यक्ति को अध्यक्ष के पद के लिये चयन करता है, उनसे तत्संबंधी शपथ-पत्र ले लिया जाए कि यथास्थिति वह व्यक्ति ऐसा कोई वित्तीय या अन्य हित नहीं रखता है, जिससे अध्यक्ष के रूप में कृत्य करते हुए प्रतिकूल रूप से प्रभावित होना संभावित हो।

5/ अन्य किसी विषय पर चर्चा नहीं हुई और चयन समिति के अध्यक्ष को धन्यवाद के साथ बैठक समाप्त हुई।

(सुभाष चन्द्र व्यास)
सेवानिवृत्त न्यायमूर्ति
सभापति, राज्य पुलिस जवाबदेही
प्राधिकार एवं अध्यक्ष
चयन समिति

(सुनिल कुमार)
मुख्य सचिव एवं सदस्य
चयन समिति

(ए0एस0 बक्शी)
अध्यक्ष, केन्द्रीय विधुत
प्राधिकरण एवं सदस्य
चयन समिति

34. Thereafter, on 10-7-2013, the State Government directed respondent No.2 to submit in affidavit as to whether he has any financial interest or any other interest in the State Commission by stating as under: -

विषय:- छत्तीसगढ़ राज्य विद्युत नियामक आयोग के अध्यक्ष पद पर चयन।

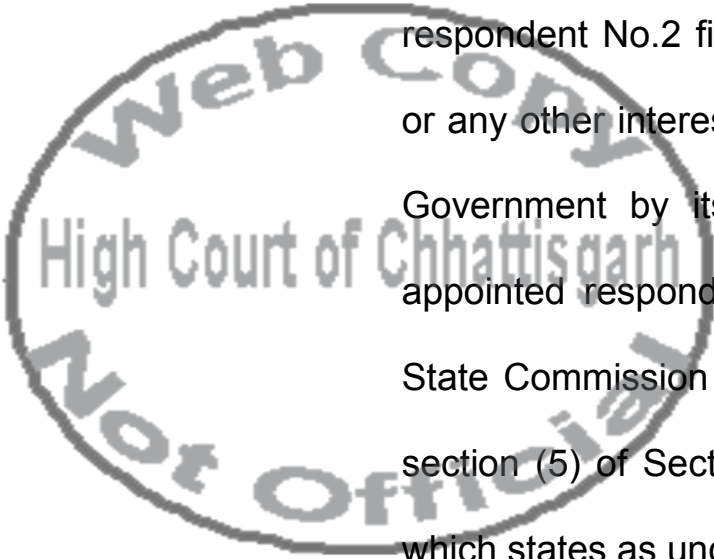
छत्तीसगढ़ राज्य विद्युत नियामक आयोग के अध्यक्ष पद के लिए आपके द्वारा प्रस्तुत आवेदन के संबंध में अनुरोध है कि कृपया इस आशय का एक शपथ पत्र देने का कष्ट करे कि, विद्युत अधिनियम, 2003 की धारा-85 (5) की अपेक्षा अनुसार यथास्थिति आप ऐसा कोई वित्तीय या अन्य हित नहीं रखते हैं, जिससे अध्यक्ष के रूप में कृत्य करते हुए प्रतिकूल रूप से प्रभावित होना संभावित है।

35. In compliance of the memo dated 10-7-2013 (Annexure P-8), respondent No.2 filed his affidavit having no financial interest or any other interest in the Commission. Ultimately, the State Government by its order dated 11-7-2013 (Annexure P-1) appointed respondent No.2 on the post of Chairman of the State Commission in exercise of power conferred under sub-section (5) of Section 82 of the Act of 2003 by a notification which states as under: -

क्रमांक एफ 1-7/2007/13/1 :: विद्युत अधिनियम 2003 की धारा 85(1) के तहत राज्य शासन के समसंख्यक आदेश दिनांक 29.06.2013 द्वारा छत्तीसगढ़ राज्य विद्युत नियामक आयोग के अध्यक्ष के चयनार्थ चयन समिति का गठन किया गया है,

चयन समिति द्वारा विद्युत अधिनियम 2003 (क्रमांक 36, सन् 2003) की धारा 85 की उपधारा (4) के प्रावधानों के अनुसार अध्यक्ष की नियुक्ति हेतु अपनी अनुशंसा राज्य शासन को प्रस्तुत की गई है,

अतः चयन समिति की अनुशंसा पर विचारोपरांत राज्य शासन एतद्द्वारा विद्युत अधिनियम, 2003 (क्रमांक 36, सन्



2003) की धारा 82 की उपधारा (5) में प्रदत्त शक्तियों का प्रयोग करते हुए श्री नारायण सिंह (भा.प्र.से.) को छत्तीसगढ़ राज्य विधुत नियामक आयोग का अध्यक्ष नियुक्त करता है। यह नियुक्ति कार्यभार ग्रहण दिनांक से प्रभावशाली मानी जावेगी।

छत्तीसगढ़ के राज्यपाल के नाम से
तथा आदेशानुसार

(उमेश कुमार अग्रवाल)

उप सचिव

छत्तीसगढ़ शासन, उर्जा विभाग

36. This appointment of respondent No.2 has now been challenged by way of a writ petition filed by the petitioner on 9-12-2014.

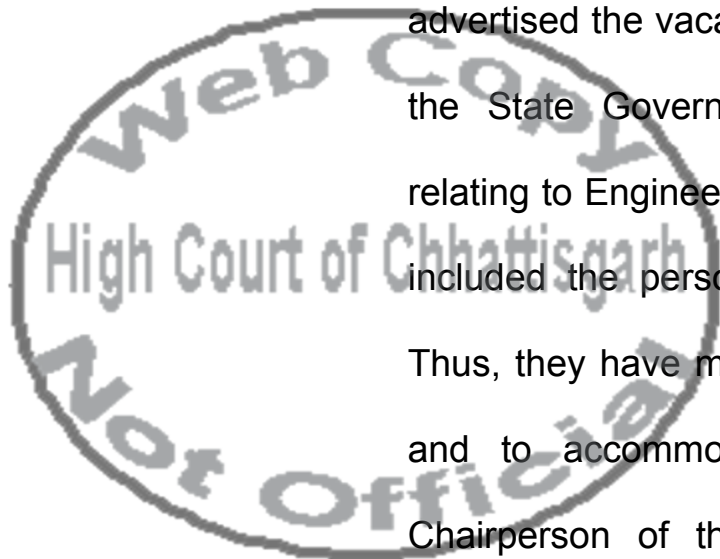
Consideration and discussion

37. First and foremost submission raised by learned counsel for the petitioner is that respondent No.2 did not possess the qualification as prescribed in sub-section (1) of Section 84 of the Act of 2003, as respondent No.2 is not a person of ability, integrity and standing who have adequate knowledge of and have shown capacity in dealing with the problems relating to engineering, finance, commerce, economics, law or management.

38. Undoubtedly, the Chhattisgarh State Electricity Regulatory Commission is an expert body. Considering the functions to be performed by the State Commission, selection and appointment of the Chairman of the State Commission has to be absolutely in accordance with the mandatory provisions

contained in Section 85 of the Act of 2003. The Supreme Court in the matter of **Rajesh Awasthi** (supra) has categorically held that selection of Chairman or Member is extremely important when there is a statutory prescription about the manner in which the selection committee is required to act.

39. It is the case of the petitioner that the State Government while publicising the post of Chairperson of the State Commission, advertised the vacancy by its memo dated 23-2-2013 in which the State Government deliberately excluded the persons relating to Engineering & Management from consideration and included the persons with Administration and Accountancy. Thus, they have made a tailor-made qualification to give way and to accommodate respondent No.2 on the post of Chairperson of the State Commission and as such, the persons involved in the field of Engineering and Management were deprived of the opportunity to apply for the post of Chairperson of the State Commission and thereby, appropriate persons with expertise in the field of Engineering and Management were excluded. The State Government has interfered with the qualification prescribed under sub-section (1) of Section 84 of the Act of 2003 and once the initial process of selection and appointment is contrary to the provisions contained in sub-section (1) of Section 84 of the Act of 2003, the subsequent proceeding stands automatically



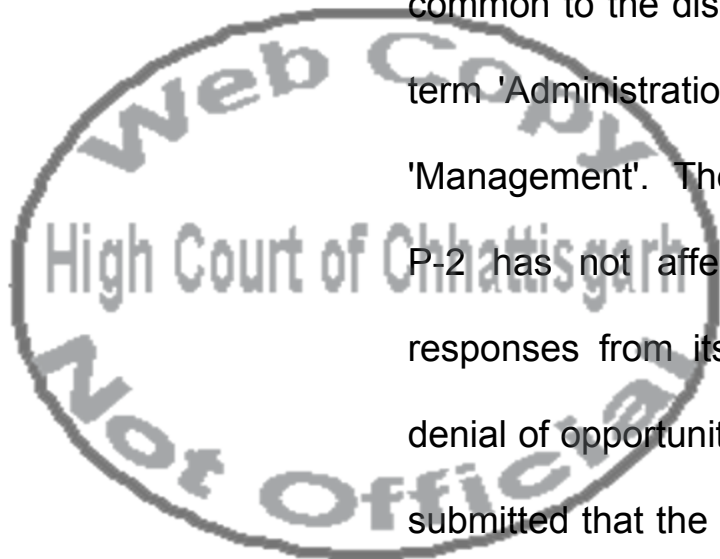
vitiated.

40. It is the stand of the State Government that no procedure is laid down for selection process in the Act of 2003. The memo inviting applications was initiated by the State Government in order to make available a pool of names for the Committee's consideration, even though the selection committee was not bound by such names, as the Act of 2003 does not prescribe any particular procedure for selection. In the instant selection, proposal and nominations for the post of Chairperson of the State Commission were invited by circulation to the Chief Secretaries of all the State Governments, Electricity Distribution Companies of States and Public Undertakings in power sector to draw the attention of interested persons to apply in turn. Annexure P-2, the said letter, makes unambiguous reference to the provisions of the Act of 2003 and the alleged allegation and omission has not resulted in either of the large number of persons with background of accountancy or administration applying for the post of Chairperson or such an omission has resulted in persons with background in Engineering or Management becoming unable to apply for being considered for the post of Chairperson. It is also the submission that out of 27 candidates applied for the post of Chairperson of the State Commission, only one candidate with background of Accountancy figuring at serial No.7 (Annexure P-3) can be said to have possessed the

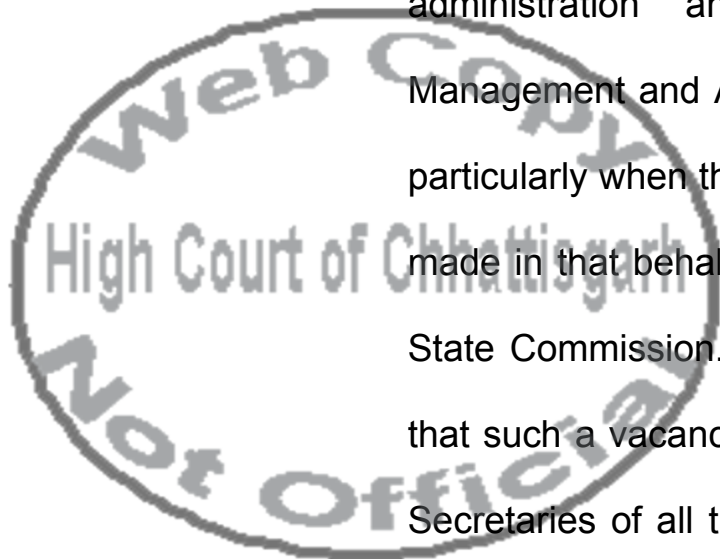


background in Commerce, only two candidates including respondent No.2 figuring at serial Nos.15 & 17 are found to have possessed the background in Administration. As many as 23 of the applicants with Engineering or Management background have applied as compared to only three candidates with background in administration and Accountancy have applied for the said post. It has also been submitted on behalf of the respondent that Accountancy is common to the disciplines of Finance and Commerce and the term 'Administration' is also an aspect of broader concept of 'Management'. Therefore, the wordings of the letter Annexure P-2 has not affected the final outcome in terms of the responses from its addresses, and has not resulted in any denial of opportunity to similarly placed candidates. Lastly it is submitted that the wording of the letter is not a willful violation of the provisions of the Act of 2003 and all eligible candidates have been considered for the post of Chairperson of the State Commission. Insertion of graduate degree which was the minimum qualification required was only to screen applications so that non-degree holders may not apply.

41. It is not in dispute that the provisions contained in the Act of 2003 does not require the vacancy of the Chairperson of the State Commission to be advertised. It appears that the State Government in order to make available the suitable candidates for the post of Chairperson of the Commission invited



applications by circulation to the Chief Secretaries of all the States, Power Distribution Companies of the States, and public sector undertakings in the power sector to draw their attention so that interested and competent persons can apply for the post of Chairperson of the State Commission pursuant to which 27 candidates applied for the said post out of which 23 applicants were of Engineering or Management background, two applicants were with background in administration and one person with background in Management and Accountancy. Therefore, it cannot be held, particularly when there is no statutory requirement of any rules made in that behalf, to publish vacancy of Chairperson of the State Commission. It is only by way of abundant precaution that such a vacancy was published that too through the Chief Secretaries of all the States, power distribution companies of the States and public undertakings in the power sector which is apparent from the copy of letter dated 23-2-2013 (Annexure R-1/6) filed by the State/respondent No.1. Apart from this, it is not the case of the petitioner that the candidates having Engineering or Management background, though were eligible and competent for the post of Chairperson of the State Commission, could not apply for the said post on account of their exclusion in the letter dated 23-2-2013. On the other hand, list of 27 candidates, who applied for the post of Chairperson of the Commission, would show that 23 persons



with engineering background have applied for the post of Chairperson of the State Commission and out of that, one Mr. M.S. Puri having engineering background was also recommended for the post of Chairperson of the State Commission by the selection committee in its recommendation made on 10-7-2013. Therefore, it cannot be held that on account of non-mentioning of 'engineering' and 'management' in the letter dated 23-2-2013, selection and appointment of Chairperson of the State Commission was not made in terms of sub-section (1) of Section 84 of the Act of 2003. There is one additional reason for saying so as the petitioner has not brought to the notice of the Court that in the Act of 2003 or the Rules made thereunder, there is any requirement of law to publicise the vacancy of Chairperson of the State Commission before the appointment. If there is a provision for publicising vacancy and if that is not followed, the position could be different. It is not in dispute that the post of Chairman of the State Commission is an high office carrying multidimensional responsibility and the appointee has to discharge the functions envisaged under Section 86 of the Act of 2003.

42. Mr. Prasun Bhaduri, learned Government Advocate appearing for the State/respondent No.1, has placed reliance in the matter of **Arun Kumar Agrawal v. Union of India and others**²⁸ to buttress his submission that higher level posts are

28 (2014) 2 SCC 609

generally not advertised. But, the State Government, in this case, by way of abundant precaution, in all fairness, has circulated its letter to all the Chief Secretaries of the States, power distribution companies and public undertakings of power sector only to draw their attention and to seek candidature of suitable, eligible and competent persons. In paragraph 67, Their Lordships of the Supreme Court have held as under: -

“67. We are also of the opinion that there is nothing so outlandish or far-fetched in the statement made by Respondent No.4 that "such higher level posts are generally not advertised". It is a matter of record that previously Shri M. Damodaran, an IAS Officer of the rank of Additional Secretary, the post was not advertised. Subsequently also, the appointment of Mr. S.B. Mathur and Administrator Mr. K.N. Tripathi Raj was made without any advertisement. In fact, both the appointments were made without even resorting to the Search-cum-Selection Process. The erstwhile Chairman of SEBI was also appointed without any advertisement. It is also a matter of common knowledge that the posts such as the Governor of Reserve Bank of India are hardly ever advertised. Similarly, the post of Chairman, SEBI was advertised for the first time in 2008. Prior to that, it was not advertised. The statement made by Respondent No.4 that such higher posts are generally not advertised, cannot be said to be a misleading or a false statement. It is a statement setting out general practice of appointments in the commercial world on such posts.”

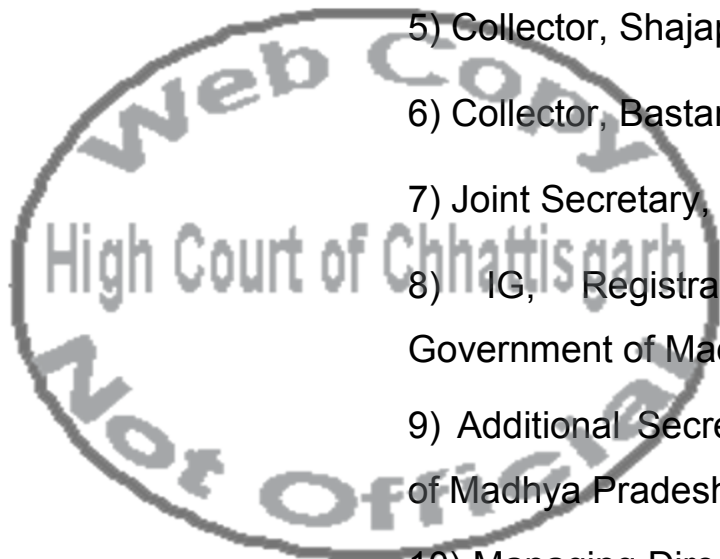
43. Apart from this, there is one more reason to reject the submission of learned counsel for the petitioner as none of the non-appointees in the selection have assailed the selection and appointment of respondent No.2 on the ground that the statutory qualification prescribed under sub-section (1) of

Section 84 of the Act of 2003 was tailor-made qualification made to accommodate respondent No.2. Likewise, there is no challenge by any of the prospective candidates that on account of the qualification which was tailor-made by excluding persons of Engineering and Management background and including persons of Accountancy and Administration background in the qualification, they could not apply for the said post which resulted in deprivation of their right to make candidature for the post of Chairperson of the State Commission. Thus, the submission raised by learned counsel for the petitioner that tailor-made qualification was laid down by the State Government to accommodate respondent No.2, deserves to be rejected. Thus, rejection of the petitioner's plea that tailor-made qualification was made to accommodate respondent No.2 bring me to advert to the selection of respondent No.2 on the said post.

44. Curriculum Vitae of respondent No.2 would show that respondent No.2 was a member of Indian Administrative Service till his selection and on the date of appointment on the post of Chairperson of the State Commission, he was holding substantive post of Additional Chief Secretary which was equivalent to pay-scale and status of the rank of Chief Secretary and he was so appointed by the order of the State Government dated 27-11-2010. Thereafter, he was appointed as Director General of Chhattisgarh Academy of

Administration on 12-3-2012. He has held following posts before his appointment on the post of Chairperson of the State Commission: -

- 1) Assistant Collector, Bastar (under training) – 1978 to 1979.
- 2) SDO (C), Jaora, Distt. Ratlam (MP) – 1979 to January, 1981.
- 3) Project Officer, ITDP, Dharamjaigarh, Distt. Raigarh and Additional Charge of CEO, DRDA, Raigarh – 1981 to 1983.
- 4) Collector, Khandwa (MP) – July, 1983 to June, 1986.
- 5) Collector, Shajapur (MP) – June, 1986 to June, 1988.
- 6) Collector, Bastar (MP) – June, 1988 to April, 1989.
- 7) Joint Secretary, Revenue, Government of Madhya Pradesh.
- 8) IG, Registration and Superintendent of Stamps, Government of Madhya Pradesh – 1989 to 1991.
- 9) Additional Secretary, Agriculture Department, Government of Madhya Pradesh – 1991 to 1993.
- 10) Managing Director, Madhya Pradesh State Agro Industries Corporation, Government of Madhya Pradesh – 1993 to 1994.
- 11) Commissioner, Bastar Division – 1994 to March, 1996.
- 12) Commissioner, Scheduled Caste Development, Government of Madhya Pradesh – 1996 to 2000.
- 13) Managing Director, Minority and OBC Financial Development Corporation, Government of Madhya Pradesh till October, 2000.
- 14) Secretary, Tribal and Scheduled Caste Development OBCs and Minorities, Government of Chhattisgarh – 2-11-2000 to 1-1-2001.
- 15) Secretary, Commerce and Industries, Rural Industries and PSUs, Government of Chhattisgarh – January, 2001 to June,



2001.

16) Commissioner, Bilaspur Division, Government of Chhattisgarh – July, 2001 to November, 2002.

17) Member, Board of Revenue, Bilaspur – December, 2002 to June, 2006.

18) Secretary, Public Health Engineering and Labour Department, Government of Chhattisgarh – June, 2006 to May, 2007.

19) Secretary, Co-operative Department, Government of Chhattisgarh – May, 2007 to March, 2009.

20) Secretary, Technical Education, Man Power and Planning and Rural Industries, Government of Chhattisgarh – March, 2009 to August, 2010.

21) Principal Secretary, Forest and Technical Education, Man Power and Planning.

22) Additional Chief Secretary, Forest Department and Man Power Planning.

23) Director General, State Administrative Academy – From 12-3-2012.

45. It is the stand of the State Government that respondent No.2 in the capacity as Collector, Secretary to the Government, Commissioner of Division, Secretary of different Departments, Member of the Board of Revenue, Additional Chief Secretary and Director General of Chhattisgarh Academy of Administration, had adequate knowledge and experience in dealing with problems relating to administration, management, field of law, and has also knowledge in finance and commerce matters. Respondent No.2 had served as Managing Director,

Madhya Pradesh State Agro Industries Corporation from 1993 to 1993 and as Secretary, Commerce, Industries and PSUs from January, 2001 to June, 2001. He had also the experience of law dealing with Law Subject as Collector and Commissioner of various Districts and Divisions and has discharged quasi judicial functions under various State and Central legislations such as the Land Revenue Code, the Panchayat Raj Adhiniyam, the Public Premises Act, the Essential Commodities Act, the Arms Act, etc.. It has been stated that he has substantive knowledge and experience in the field of management, finance and economics, and he has also discharged judicial functions as a Member of the Board of Revenue from December, 2002 to June, 2006. Therefore, the selection committee in all its wisdom, considering his service profile and experience which he has, found respondent No.2 eligible for the said post in accordance with Section 84 (1) of the Act of 2003.

46. Their Lordships of the Supreme Court in the Constitution Bench decision of The University of Mysore (supra), have held in no uncertain terms that the courts would be slow in interfering with the recommendations and appointment made by experts, and observed in paragraph 13 as under: -

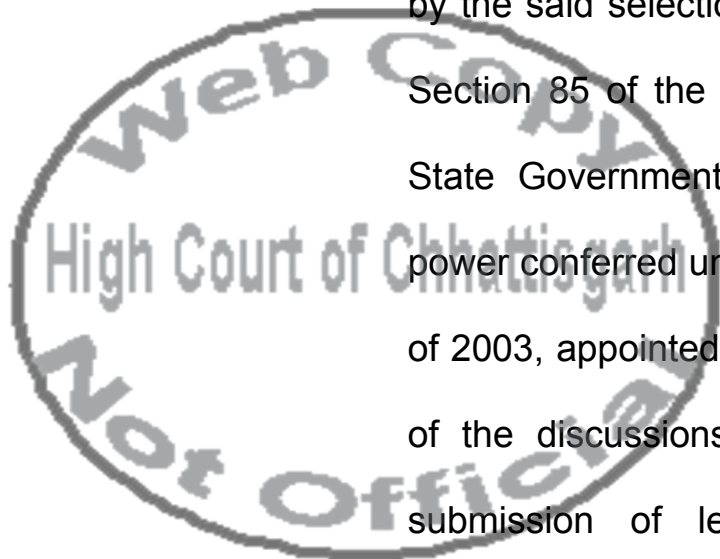
“... Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the

opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writs of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that appellant No. 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.”

47. In the case in hand, recommendation was made by the

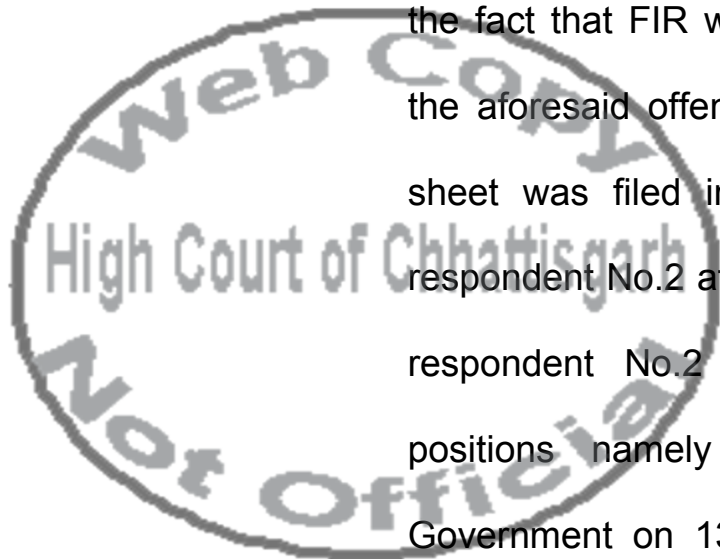
selection committee duly constituted in accordance with sub-section (1) of Section 85 of the Act of 2003 which included a person who has been a Judge of the High Court as Chairperson, the Chief Secretary of the concerned State as Member and also the Chairperson of the Central Commission as another Member. It is a high level selection committee statutorily constituted by the State Government and which has made the said recommendations. Recommendations made by the said selection committee in terms of sub-section (4) of Section 85 of the Act of 2003 have been considered by the State Government and the State Government in terms of power conferred under sub-section (5) of Section 82 of the Act of 2003, appointed respondent No.2 on the said post. In view of the discussions made herein-above, while rejecting the submission of learned counsel for the petitioner that qualifications were made to suit the requirement of the qualification of respondent No.2 and to accommodate him such an advertisement was issued, I hold that the procedure adopted by the selection committee was just and fair.

48. The next limb of argument of learned counsel for the petitioner is that the Chairperson of the State Commission should be a person of high integrity and unless he satisfies the statutory requirement of a person of high integrity, his appointment is assailable before the court of law. Mr. Pali would submit that an FIR under Crime No.1/2004 was registered against



respondent No.2 and other officers on 3-7-2004 for commission of offence under Sections 120B of the IPC, 13 (1) (c) (d) and 13 (2) of the Prevention of Corruption Act, 1988, and therefore, respondent No.2 is a person with doubtful integrity, which was not brought to the notice of the selection committee and as such, appointment of respondent No.2 came to be made, which is ex facie illegal and bad in law.

49. The State Government in its reply has categorically admitted the fact that FIR was registered against respondent No.2 for the aforesaid offences, but it has submitted that no charge-sheet was filed in the jurisdictional criminal court against respondent No.2 at the time of selection and appointment and respondent No.2 was found fit for promotion to senior positions namely as Principal Secretary to the State Government on 13-8-2010, for the post of Additional Chief Secretary on 22-11-2010 and appointed as Director General of Chhattisgarh Academy of Administration in rank and pay of Chief Secretary on 27-11-2010. It is also the stand of the State / respondent No.1 that respondent No.2 was cleared from vigilance angle in regard to integrity in each of the appointments for which respondent No.2 was appointed and mentioned herein-above. It is no doubt true that as per the requirement of sub-section (1) of Section 84 of the Act of 2003, a person to be appointed on the post of Chairperson of the State Commission must be of high integrity and should not



be a person of doubtful integrity, as it is one of the statutory requirements of Section 84 (1) of the Act of 2003.

50. According to the Black's Law Dictionary (Sixth Edition), "Integrity" means, as used in statutes prescribing the qualifications of public officers, trustees, etc., this term means soundness or moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts; it is synonymous with "probity", "honesty", and "uprightness".

51. The word "integrity" has also been defined by the Supreme Court in the matter of **Vijay Singh v. State of Uttar Pradesh and others**²⁹ stating as under: -

"... Integrity means soundness of moral principle of character, fidelity, honesty, free from every biasing or corrupting influence or motive and a character of uncorrupted virtue. It is synonymous with probity, purity, uprightness, rectitude, sinlessness and sincerity. The charge of negligence, inadvertence or unintentional acts would not culminate into the case of doubtful integrity."

52. Similarly, in a very recent decision in the matter of **Union of India and others v. P. Gunasekaran**³⁰, the Supreme Court has laid down indicators for assessment of integrity in service jurisprudence as under: -

"... Integrity according to Oxford Dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness,

29 (2012) 5 SCC 242

30 (2015) 2 SCC 610

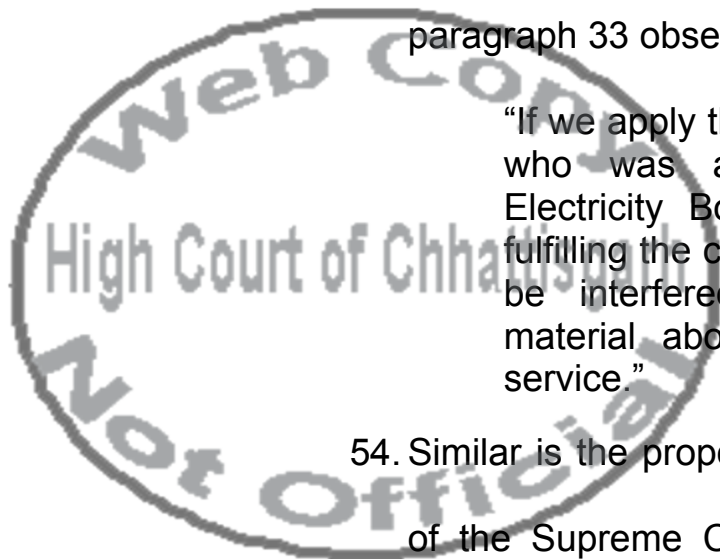
virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values.”

53. In **Hari Bansh Lal**²⁵ (supra), the Supreme Court while dealing with public interest litigation relating to appointment of Chairman of Electricity Board has held that in order to interfere with the appointment of such a post there must be adequate material about his integrity or inefficiency in service and in paragraph 33 observed as under: -

“If we apply the same principles to the appellant, who was appointed as Chairman of the Electricity Board by the Chief Minister, after fulfilling the criteria, the said appointment cannot be interfered with lightly without adequate material about his integrity or inefficiency in service.”

54. Similar is the proposition of law laid down by Their Lordships of the Supreme Court in **Arun Kumar Agrawal** (supra) in which Their Lordships have clearly held that charge of conspiracy has to be taken seriously as it involves the commission of very serious offence and such a charge of criminal intent and conduct had to be clearly pleaded and established by evidence of very high probative value, and observed in paragraph 89 as under: -

“89. We have already considered all the points raised by the petitioner in the earlier part of the judgment. Therefore, it is not necessary to repeat the same. This apart, the charge of conspiracy has to be taken seriously as it involves the commission of very serious criminal offence under Section 120-B IPC. Such a



charge of criminal intent and conduct had to be clearly pleaded and established by evidence of very high degree of probative value. No notice of such allegations can be taken based only on pure conjectures, speculations and interpretation of notings in the official files.”

55. In a decision in the matter of **M.S. Bindra v. Union of India and others**³¹, the Supreme Court while considering the question of integrity has held as under: -

“13. While viewing this case from the next angle for judicial scrutiny, i.e., want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials, no reasonable man would reach such a conclusion. While evaluating the materials, the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "nemo firut repente turpissimus" (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of administrative law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity", it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

21. We have no doubt that there is utter dearth of evidence for the Screening committee to conclude that appellant had doubtful integrity. Such a conclusion does not stand judicial scrutiny even within the limited permissible

scope. We, therefore, allow this appeal and set aside the order under attack including the order by which premature compulsory retirement was imposed on the appellant. The Department concerned shall now work out the reliefs to be granted to the appellant as a sequel to this judgment.”

56. In the matter of Union of India and others v. K.V.

Jankiraman and others³², the Supreme Court while considering the question as to when a criminal prosecution is said to be launched against a particular person, it has been held that criminal prosecution is said to be initiated against a particular person when charge-sheet is filed against that person, and observed in paragraphs 16 and 17 as under:

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As

has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos.1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) * * *

(3) * * *

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two

conclusions.”

57. In light of the proposition of law laid down by Their Lordships of the Supreme Court with regard to integrity of a person to be appointed on the post of Chairperson of the State Commission, the facts of the present case relating to integrity of respondent No.2 need to be noticed. It is not in dispute that first information report was registered against respondent No.2 and eighteen other persons for offence under Sections 120B of the IPC, 13 (1) (c), 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 under Crime No.1/2004, on 3-7-2004. Respondent No.2 has filed a document dated 31-12-2015 stating that since on investigation, no evidence was found by the investigating agency, therefore, the case against accused person therein has been closed. Report dated 31-12-2015 recorded by the Superintendent of Police, State Economic Offence Investigation Bureau, Chhattisgarh, Raipur states as under: -

कार्यालय, राज्य आर्थिक अपराध अन्वेषण एवं एन्टी करप्शन ब्यूरो
छत्तीसगढ़, रायपुर

क्रमांक/अपराध/अनु0-01 (2004)/1401/15,

रायपुर दिनांक 31.12.2015

प्रति,

सचिव,
छत्तीसगढ़ शासन,
सामान्य प्रशासन विभाग,
मंत्रालय-महानदी भवन,
नया रायपुर

विषय:- अपराध क्रमांक [01/2004](#), धारा 120-बी भा0द0वि0 एवं

13(1) सीडी. 13(2) भ्र0नि0अ0 1988 की अद्यतन स्थिति बाबत् ।

संदर्भ:—आपका पत्र क्रमांक ई 5-11/वि.स./2015एक/2 दिनांक 29.12.2015 ।

—0—

कृपया संदर्भित पत्र का अवलोकन करने का कष्ट करें, जिसके अनुसार प्रकरण की अद्यतन स्थिति की जानकारी से अवगत कराने हेतु लेख किया गया है ।

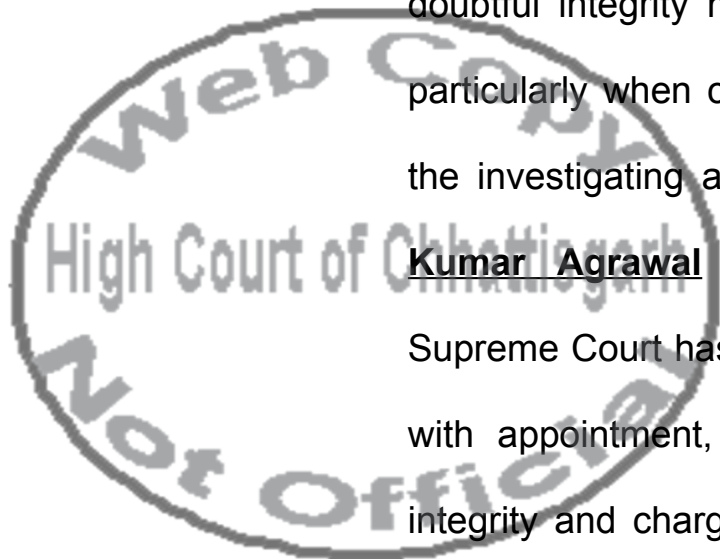
प्रकरण में राज्य आर्थिक अपराध अन्वेषण ब्यूरो, रायपुर में अपराध क्रमांक 01/2004, धारा 120—बी भा0द0वि0 एवं 13(1) सी,डी 13 2 भ्र.नि.अ. 1988 विरुद्ध श्री राबर्ट हृगडोला, आई.ए.एस, तत्कालीन प्रमुख सचिव, छ0ग0 शासन, अनुसूचित जाति, जनजाति, पिछडा वर्ग एवं अल्प संख्यक कल्याण विभाग, रायपुर श्री नारायण सिंह, आई.ए.एस, तत्कालीन सचिव, छ0ग0 शासन, वाणिज्य एवं उद्योग विभाग, रायपुर एवं अन्य के विरुद्ध दिनांक 03.07.2004 को अपराध पंजीबद्ध किया गया था ।

प्रकरण में विवेचना उपरांत अपराध में चालानी योग्य साक्ष्य नहीं पाये जाने से दिनांक 11.02.2015 को खात्मा चाक किया गया है ।

58.The State Government has also admitted in its return filed before the Court that FIR was registered against respondent No.2 for the above-stated offences and respondent No.2 has brought on record the document dated 31-12-2015 that the said case was closed finding no evidence.

59.First Information Report is only a report about the information as to commission of offence, it is not a substantive evidence as the police has yet to investigate the offence. In the case in hand, the police have investigated the offence against respondent No.2 and as per the report of the investigating

agency, no evidence was found against respondent No.2 necessitating the submission of charge-sheet before the jurisdictional criminal court. Thus, applying the law laid down by the Supreme Court in above mentioned cases it cannot be held merely on the basis of registration of offence pursuant to the first information report in which closure report has been submitted, that respondent No.2 is a person of doubtful integrity. Respondent No.2 cannot be dubbed as an officer of doubtful integrity merely on the basis of registration of FIR, particularly when closure report is said to have been filed by the investigating agency. In Hari Bansh Lal (supra), Arun Kumar Agrawal (supra) and M.S. Bindra (supra), the Supreme Court has categorically held that in order to interfere with appointment, there must be adequate material about integrity and charge of conspiracy has to be clearly pleaded and established by evidence of a very high degree and probative value, as such, the petitioner has failed to bring appropriate evidence of admissible nature to doubt the integrity of respondent No.2 and to declare him as the person of doubtful integrity and in order to hold him ineligible for the post of Chairperson of the State Commission, particularly when after registration of offence he was promoted on the post of Secretary by the State Government and thereafter, Additional Chief Secretary and was cleared from vigilance angle also and found fit for all the posts. According to



respondent No.2, the said FIR has been closed as on today. There is an additional reason for saying so. As held in **K.V. Jankiraman's** case (supra), a criminal case is said to be initiated on the date when charge-sheet is filed before the jurisdictional criminal court and in the present case, there is no evidence on record that respondent No.2 was ever served with charge-sheet by the jurisdictional police and that he was facing any trial after initiation of criminal proceeding on the date of his selection and consequent appointment on the post of Chairperson of the State Commission. Therefore, in the considered opinion of this Court, the petitioner's submission that respondent No.2 be dubbed as a person of doubtful integrity rendering his appointment to the post of Chairperson of the State Commission illegal, deserves non-acceptance.

60. Learned counsel for the petitioner would submit that the said registration of FIR was not placed before the statutory selection committee which resulted in illegality in selection and consequent appointment of respondent No.2.

61. At this stage, the observation made by the Supreme Court in the matter of **B.S. Minhas v. Indian Statistical Institute and others**³³, which relate to appointment of Director of the said Institute, is pertinent: -

“The members of the selection committee as also the members of the Council were eminent persons and they may be presumed to have taken into account all relevant considerations

33 (1983) 4 SCC 582

before coming to a conclusion.”

62. Delineating the scope of interference in the function of the selection committee, the Supreme Court in the matter of **The Chancellor and another v. Dr. Bijay Yananda Kar and others**³⁴ has held as under: -

“9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfills the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection. In the present case Dr Kar in his representation before the Chancellor specifically raised the issue that Dr Mohapatra did not possess the specialization in the 'Philosophical Analysis of Values' as one of the qualifications. The representation was rejected by the Chancellor. We have no doubt that the Chancellor must have looked into the question of eligibility of Dr Mohapatra and got the same examined from the experts before rejecting the representation of Dr Kar.”

63. Undisputedly, the selection committee constituted by the State Government was statutory in character and it consisted of former Judge of the High Court as Chairperson and Chief Secretary and Chairperson of the Central Commission as its Members, which considered the cases of eligible candidates and made recommendations. Consequently, the observation made by the Supreme Court in **B.S. Minhas** (supra) applies squarely to the facts of the present case and it cannot be concluded that the selection committee did not consider all the aspects while making recommendation to the State

³⁴ (1994) 1 SCC 169

Government.

64. Learned counsel for the petitioner has also argued, though halfheartedly, that the provision contained in sub-section (5) of Section 85 of the Act of 2003 was not complied with by the selection committee and the committee did not satisfy that respondent No.2 does not have any financial or any other interest which is likely to affect prejudicially his function as Chairperson of the Commission relying upon the decision rendered by the Supreme Court in **Rajesh Awasthi** (supra).

65. Minutes of the Meeting recorded by the selection committee clearly record in paragraph four that the committee has satisfied itself that the persons recommended by the committee does not have any financial interest which is likely to affect prejudicially his function as Chairperson, yet by way of abundant precaution, such an affidavit was recommended to be obtained from the person to be appointed by the State Government. At the risk of repetition, paragraph 4 of the committee's recommendation states as under: -

4/ चयन समिति ने यथासंभव यह संतुष्टि कर ली है कि समिति द्वारा अनुशंसित व्यक्ति द्वारा विधुत अधिनियम, 2003 की धारा-85 (5) की अपेक्षा अनुसार ऐसा कोई वित्तीय या अन्य हित नहीं रखा गया है, जिससे अध्यक्ष के रूप में कृत्य करते हुए प्रतिकूल रूप से प्रभावित होना संभावित हो। फिर भी चयन समिति की राय में यह उचित होगा कि शासन जिस व्यक्ति को अध्यक्ष के पद के लिये चयन करता है, उनसे तत्संबंधी शपथ-पत्र ले लिया जाए कि यथास्थिति वह व्यक्ति ऐसा कोई वित्तीय या अन्य हित नहीं रखता है, जिससे अध्यक्ष के रूप में

कृत्य करते हुए प्रतिकूल रूप से प्रभावित होना संभावित हो।

66. Apart from this, there is one additional reason for not accepting the plea of the petitioner relating to non-compliance of the provision contained in sub-section (5) of Section 85 of the Act of 2003. The petitioner has not pleaded anywhere in this entire writ petition that the provision of sub-section (5) of Section 85 of the Act of 2003 was not complied with by the selection committee constituted by the State Government and only during the course of argument has tried to establish such a plea, though the decision rendered in **Rajesh Awasthi** (supra) was quoted extensively by the petitioner to highlight the duty of the selection committee. It is well settled law that new point cannot be permitted to be raised in the writ court at the instance of the petitioner without there being any foundation in the writ petition, as the other side cannot be taken by surprise because of being deprived of the opportunity to reply suitably to the point raised during the course of argument as such, the submission raised with regard to non-compliance of sub-section (5) of Section 85 of the Act of 2003, deserves to be rejected.

67. In the matter of **Rani Laxmibai Kshetriya, Gramin Bank v. Chand Behari Kapoor**³⁵, the Supreme Court has held that writ petitioner must fully aver facts and rights flowing therefrom to enable the respondents to meet the petitioner's case and

35 (1998) 7 SCC 469

made the following proposition of law: -

“8. ... It is too well settled that the petitioner who approaches the court invoking the extraordinary jurisdiction of the court under Article 226 must fully aver and establish his rights flowing from the bundle of facts thereby requiring the respondent to indicate its stand either by denial or by positive assertions. But in the absence of any averments in the writ petition or even in the rejoinder-affidavit, it is not permissible for a court to arrive at a conclusion on a factual position merely on the basis of submissions made in the course of hearing.”

68. Similarly, in the matter of **B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd. and others**³⁶, the Supreme Court has held that the point not raised in the writ application cannot be permitted to be urged during hearing of the writ petition.

69. Their Lordships of the Supreme Court in a Constitution Bench judgment in the matter of **Statesman (Private) Ltd., v. H. R. Deb and others**³⁷ have held that in an unclear case, writ of quo warranto should not be issued and observed as under:-

“The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law.”

70. The aforesaid judgments have been followed by the Supreme Court in the matter of **A. N. Shashtri v. State of Punjab and others**³⁸.

71. Thus, on the basis of above-stated analysis, this Court is satisfied that the petitioner seeking a writ of quo warranto has demonstrably failed to plead and establish that appointment of

³⁶ (2006) 11 SCC 548

³⁷ AIR 1968 SC 1495

³⁸ 1988 Supp SCC 127

2nd respondent Narayan Singh as Chairman of the Chhattisgarh State Electricity Regulatory Commission is in violation of the statutory provisions contained in the Act of 2003. The law laid down by Their Lordships of the Supreme Court in **Statesman** (supra) sounding a note of caution for this Court to slow in issuing a writ in the nature of quo warranto in unclear case aptly and squarely applies to the factual score of the present case, as the petitioner has failed to establish clear infringement of law for the writ claimed in the nature of quo warranto and as such, the petitioner is not entitled for any of the reliefs claimed in the writ petition.

72. As a fallout and consequence of aforesaid discussion, the writ petition being sans substratum, deserves to be and is accordingly, dismissed with cost quantified at ₹ 10,000/-.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.6522 of 2014

Virendra Pandey

Versus

State of Chhattisgarh and another

HEAD NOTE

Writ of quo warranto should be issued where clear infringement of law is established by the writ petitioner.

अधिकार पृच्छा रिट वहीं जारी की जानी चाहिए जहाँ रिट याचिकाकर्ता द्वारा विधि की अतिलंघन स्पष्ट रूप से स्थापित किया गया हो।

