

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 30th September, 2022

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.26 of 2020

Petitioner : Dr. Ghanashyam Sharma

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. Zangpo Sherpa, Advocate with Ms. Lusiyana Thapa, Advocate for the Petitioner.

Mr. Sudesh Joshi, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents No.1 to 3.

Mr. A. Moulik, Senior Advocate with Ms. K. D. Bhutia and Mr. Ranjit Prasad, Advocates for the Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1(i). The Petitioner assails the appointment of the Respondent No.4 as Chairperson of the State Pollution Control Board (hereinafter, "the Board"), vide Notification No.27/Home/2020, dated 17-04-2020, on grounds that the Committee which conducted the interview was *per se* illegal being in violation of Rule 12 of the Sikkim Water (Prevention and Control of Pollution) Amendment Rules, 2017 (hereinafter, "2017 Rules"). The prayers being pressed in the instant Writ Petition are for issuance of an Order/declaration that the Selection Committee constituted for selection of the Chairperson by the interview dated 15-03-2020 is illegal and to issue an Order quashing the Notification dated 17-04-2020, as obtains in prayers 'd' and 'e' of the Writ Petition.

(ii) The Petitioner's case briefly, is that, the Respondent Nos.1 and 2 constituted the Board as per the mandate of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter, "1974 Act") and the Sikkim Water (Prevention and Control of Pollution) Rules, 1991 (hereinafter, "1991 Rules") of which, since inception the Chairperson and Members were nominated by the Respondent No.2. Departing from established procedure, on 04-06-2019 the Respondent No.2 issued an advertisement for the post of Chairperson of the said Board. Six applicants including the Petitioner and the Respondent No.4 applied and participated in the interview which was held on 15-03-2020 conducted by a Selection Committee comprising of the Chief Secretary, Government of Sikkim; the Principal Chief Conservator-cum-Principal Secretary, Forest, Environment and Wildlife Management Department; a Professor of the Indian Institute of Science, Bangalore and the Special Secretary, Department of Personnel (for short, "DOP"), Government of Sikkim. The Respondent No.4 was selected. Aggrieved thereof, the Petitioner approached the State Information Officer in the Office of the Chief Secretary, Government of Sikkim, under the Right to Information Act, 2005. On receipt of incomplete information from the said Office, the Petitioner was before the Appellate Authority, from where he learnt from the documents supplied to him that as per Rule 12 of the Sikkim Water (Prevention and Control of Pollution) Amendment Rules, 2016 (hereinafter, "2016 Rules"), the Chairperson and the Member Secretary were to be appointed by a Committee, to be chaired by the Chairperson of the Sikkim Public Service Commission and was to comprise of; the Chief Secretary; the Secretary, Forests,

Environment and Wildlife Management Department and the Secretary, DOP as also a National Expert of Environment Protection, to be nominated by the State Government. By an amendment to the Rules vide Notification dated 30-10-2017 the Committee was to be chaired by the Chief Secretary with the Secretary, Forest, Environment and Wildlife Management Department; the Secretary, DOP and a National Expert on Environment Protection nominated by the State Government as Members. That, in the teeth of the mandate of Rule 12 of the 2017 Rules, the Selection Committee constituted for the interview held on 15-03-2020 comprised *inter alia* of the Special Secretary, DOP, hence the prayers *inter alia* in the Petition as reflected hereinabove.

2. Learned Counsel for the Petitioner advancing his arguments contended that the presence of the Special Secretary, DOP as a Member of the Committee, instead of the Secretary, DOP as mandated by the Rules, has created a legal infirmity in the constitution of the Selection Committee, which cannot be cured. That, the constitution of the Committee is required to follow the Statute and the appointment of the Respondent No.4 having been made on the basis of a *non est* Committee, is liable to be quashed. That, the 2016 Rules and 2017 Rules were inserted as per the directions of the National Green Tribunal in its Judgment dated 24-08-2016¹ making it incumbent upon the Respondent Nos.1, 2 and 3 to abide by it. That, the principle of estoppel is not applicable in the instant matter, as the Petitioner was unaware of the composition of the Committee on the day of interview. Reliance

¹ Rajendra Singh Bhandari vs. State of Uttarakhand and Others : 2016 SCC OnLine NGT 456

was placed on **Dr. (Major) Meeta Sahai vs. State of Bihar and Others**² which ratio has been reiterated in **Krishna Rai (Dead) through Lrs and Others vs. Banaras Hindu University through Registrar and Others**³. To fortify his submission that the requirement of a Statute has to be fulfilled, strength was drawn from **Competent Authority vs. Barangore Jute Factory and Others**⁴. It was urged that the Executive cannot override a Statute, towards which reliance was placed on **Dr. Raghavendra H.K. vs. State of Karnataka and Others**⁵. Reiterating that the appointment based on the recommendation of an illegal Committee ought to be set aside, strength was drawn from the ratio in **Dr. Triloki Nath Singh vs. Dr. Bhagwan Din Misra and Others**⁶. Hence, it was prayed that the offending Notification be quashed and the Selection Committee declared illegal.

3. Vehemently refuting the arguments put forth by the Petitioner, Learned Additional Advocate General appearing for the Respondents Nos.1, 2 and 3 submitted that the question would be whether the Selection Committee would be illegal merely by virtue of the Special Secretary being part of the Committee, considering that she was an equally qualified Officer along with other Members of the Committee and thereby eligible to be a part of the Committee. It was next urged that assuming such infirmity occurred it can be cured by disregarding the marks allotted by the Special Secretary to all the candidates and collating only the marks given by the other Members. That, the result in any event would not see any alteration as the Respondent No.4 had obtained the

² (2019) 20 SCC 17

³ 2022 SCC OnLine SC 750

⁴ (2005) 13 SCC 477

⁵ 2021 SCC OnLine Kar 264

⁶ (1990) 4 SCC 510

highest marks. That apart, the Rules do not specify any Quorum for the Committee, consequently the Special Secretary could well be included or excluded from the Committee towards which reliance was placed on **Shri Ishwar Chandra vs. Shri Satyanarain Sinha and Others**⁷. Besides as held in **Dr. (Major) Meeta Sahai (supra)** the Petitioner having participated in the interview is estopped from assailing the process of the interview. It was next urged that the advertisement for the post impugned was issued on 04-06-2019, the interview was held on 15-03-2020, the appointment order issued on 17-04-2020. When the Petitioner appeared for the interview he did not object to the presence of the Special Secretary. On 30-04-2020, post the appointment order of Respondent No.4, the Petitioner made a representation to the Hon'ble Chief Minister and on the same day he also filed an application under the Right to Information Act which reveals that he was not only disgruntled with his failure but was also aware of the amendments made to the Rules and the constitution of the Panel. To fortify the submissions the ratio in **Madras Institute of Development Studies and Another vs. K. Sivasubramaniyan and Others**⁸ was relied upon. That, the time line of the matter is also to be taken into consideration from the date of interview till the filing of the Writ Petition rendering the Petitioner guilty of delay and laches, hence the Petition deserves a dismissal.

4. Learned Senior Counsel for the Respondent No.4 contended that the power to make Rules have not been delegated to the State Government under Section 64 of the 1974 Act which has been erroneously invoked by the State Government when

⁷ (1972) 3 SCC 383

⁸ (2016) 1 SCC 454

framing the Rules for appointment of a Chairman, when Section 4 of the 1974 Act provides for the composition of the State Board and that the Chairman is to be nominated by the State Government. Section 64 of the 1974 Act from where the State Government allegedly derives its Rule making powers provides that simultaneously with the constitution of the State Board, the State Government may make rules to carry out the purposes of the Act. That, nowhere does Section 64 provide for recruitment of a Chairman of the Board by a Selection Committee. That, consequently constitution of the Selection Committee is illegal as it is not a Statutory Committee. That, in light of the foregoing circumstance the question of the Special Secretary not being qualified to be in the Selection Committee is superfluous. Attention of this Court was also drawn to the fact that on 15-03-2020, the date of interview, the then Secretary, DOP, having already retired on 01-12-2019 in his absence the Special Secretary being as qualified was even placed in charge of the Department as Secretary from 23-11-2019 to 05-12-2019. That, in the alternative, it was put forth that in view of the impugned Notification dated 17-04-2020 having been issued by the Respondent No.1, it is to be assumed that the Respondent No.4 was "nominated" by the Government. Learned Senior Counsel also placed reliance on **Dr. (Major) Meeta Sahai** (*supra*) to bolster his submissions. It was further contended that as the Petitioner had participated in the interview despite knowledge of the constitution of the Committee which he cannot assail post the appointment of Respondent No.4 towards which reliance was placed on **Madras Institute of Development Studies** (*supra*). While endorsing the submissions of

Learned Additional Advocate General it was reiterated by Learned Senior Counsel that even if the presence of the Special Secretary in the Committee is ignored, Respondent No.4 would still have obtained the highest marks. That, in ***Ishwar Chandra (supra)*** the Supreme Court has held that if there is no Rule on constitution of the Quorum then the majority Members would form the Quorum, thereby ruling out illegality in the absence of any Member. That, the Petitioner alleges that the Selection Committee Members were known to the Respondent No.4, if so, he ought to have assailed the constitution of the Committee prior to the interview and not after his failure. Drawing succour from the ratio in ***Dr. G. Sarana vs. University of Lucknow and Others***⁹ it was contended that bias cannot be pleaded upon failure to be selected. Hence, the Petition be dismissed.

5. Having considered the submissions of Learned Counsel for the parties, perused the pleadings and documents appended thereto, what falls for consideration of this Court is whether the selection of the Respondent No.4 is illegal in view of the composition of the Selection Committee. Addressing first the argument of Learned Senior Counsel for the Petitioner that the provisions of Section 64 of the 1974 Act have been wrongly invoked, it may be remarked here that no averments in this context were put forth by the Respondent No.4 in his Return. During the course of arguments, Learned Senior Counsel was of the view that the point pertaining to Section 64 was a legal point and hence required no mention in the averments. Relevant reference on this facet may be made to ***State of Madhya Pradesh vs.***

⁹ (1976) 3 SCC 585

Narmada Bachao Andolan and Another¹⁰ wherein the Supreme Court elucidated as follows;

“**10.** Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties.

11. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice.
” [emphasis supplied]

Hence, the arguments advanced by Learned Senior Counsel with regard to the erroneous invocation of Section 64 deserves no consideration by this Court for the reasons set out by the Hon’ble Supreme Court in the ratio *supra*.

6(i). Now turning to the question of constitution of the Selection Committee even assuming that the Committee was erroneously constituted would it *per se* conclude then that the selection would be invalid? In this context, we may consider that as per Rule 12 of the 1991 Rules, as amended in 2017, the Selection Committee was to comprise of; the Chief Secretary; the Secretary, Forests, Environment and Wildlife Management Department and the Secretary, DOP as also a National Expert of Environment Protection, to be nominated by the State Government. The Secretary, DOP had already demitted Office on

¹⁰ (2011) 7 SCC 639

01-12-2019 thus on the date of interview, i.e., 15-03-2020, the Special Secretary, DOP was made a part of the Selection Committee. Indeed, she may have been qualified for the purpose but surely the Rule did not envisage her presence and she could not have assumed the powers of the Secretary, DOP. There is no provision for relaxation in the Rules permitting the Special Secretary to represent the Secretary, DOP nor was an advance Circular issued in this context to enable the participants to be aware of the position. Two situations arise out of this viz.; whether estoppel would apply to the Petitioner and whether the provision of the Rules (unchallenged as they were) could be overruled by executive action sans any written order. In this context, the observation of the Hon'ble Supreme Court in **Competent Authority** (*supra*) is relevant wherein it was held as follows;

"5.

..... It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in that manner alone. Every word of the statute has to be given its due meaning. In our view, the impugned notification fails to meet the statutory mandate."

(ii) On the same lines, in **Babu Verghese and Others vs. Bar Council of Kerala and Others**¹¹ it was propounded as follows;

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* [(1875) 1 Ch D 426 : 45 LJCh 373] which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* [AIR 1936 PC 253] who stated as under:

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of V.P.* [AIR 1954 SC 322] and again in *Deep Chand v. State of*

¹¹ (1999) 3 SCC 422

Rajasthan [AIR 1961 SC 1527]. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* [AIR 1964 SC 358] and the rule laid down in *Nazir Ahmad case* [(1936) 63 IA 372] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

In ***P. K. Ramachandra Iyer and Others vs. Union of India and Others***¹² referred to by the Supreme Court in ***Krishna Rai (supra)*** it was observed as follows;

“44. By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.”

Further in the case of ***Tata Chemicals Limited vs. Commissioner of Customs (preventive), Jamnagar***¹³, it has been laid down that there can be no estoppel against law. If the law requires something to be done in a particular manner, then it must be done in that manner, and if it is not done in that manner, then it would have no existence in the eye of the law. Consequently, it is ostensible that the constitution of the Committee is to adhere strictly to the Rules.

(iii) The Quorum was not specified which is a correct submission, in such a circumstance the selection Committee could well have comprised only of the Secretaries to the various Departments prescribed by the Rules exclusive of the Special Secretary, DOP. The majority Members being present would have comprised the Quorum as held by the Hon’ble Supreme Court in ***Ishwar Chandra (supra)*** wherein it has been observed as follows;

“10. In such circumstance, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid

¹² (1984) 2 SCC 141

¹³ (2015) 11 628

meeting and matters considered thereat cannot be held to be invalid.”

It is apparent from a bare reading of the extract *supra* that the Quorum comprising of the majority of the Members could not be considered invalid. In the case at hand, the argument advanced by the Petitioner has no concern with the majority of the Members of the Committee, but the fact that a Member who was to comprise a part of the Committee had demitted Office and the Special Secretary, DOP, appropriated his position. The Rules do not mandate such a Quorum. Had the Special Secretary not deigned it her place to fill up the place of the Secretary, DOP the question of illegality of the Committee would not have arisen. There was in fact no necessity of including the Special Secretary in the Selection Committee *dehors* the Rules and sans any provision for relaxation or any order having been issued to that effect. In view of this circumstance, overlooking the marks awarded by the Special Secretary to the Respondent No.4 as submitted by Learned Additional Advocate General and Learned Senior Counsel is not the panacea for the ill.

(iv) The contention of the Respondents that the Petitioner is estopped from assailing the selection process and the constitution of the Committee holds no water as the Petitioner was not aware at the time of the interview that the Special Secretary, DOP was representing the Secretary, DOP *dehors* the Rules. The Petitioner cannot be foisted with knowledge of the composition of the Committee with no documentary evidence to establish that he was apprised of the circumstances or that he was aware of the identity of the Special Secretary, DOP. The ratiocination on **Madras Institute of Development Studies** (*supra*) cited by Learned Additional Advocate

General is to no avail, as the facts therein are clearly distinguishable from the matter in dispute. The ratio *supra* pertains to appointment of Associate Professors by a Committee constituted for the purpose of selection which consisted of eminent Scientists, Professor of Economic Studies and Planning and the Members. The Selection Committee was found to be competent to select an Associate Professor. In the matter at hand, the Selection Committee as specified by the Rule was to comprise of certain officials which was flagrantly flouted at the time of interview.

(v) In ***Dr. (Major) Meeta Sahai*** (*supra*) the Hon'ble Supreme Court has unequivocally pronounced that it is well-settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it, however it was clarified therein that insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality. This pronouncement squarely fits the facts and circumstances of the case at hand so far as constitution of the Committee *dehors* the Rules is concerned.

7. So far as the legality of the appointment of Respondent No.4 is concerned the Constitution Bench of the Hon'ble Supreme Court in ***Secretary, State of Karnataka and Others vs. Umadevi (3) and Others***¹⁴, at Paragraph 53, has in no uncertain terms differentiated between illegal appointment and irregular appointment which for brevity is not being extracted herein. It needs no reiteration that the Hon'ble Supreme Court in ***Government of Andhra Pradesh and Others vs. K. Brahmanandam and Others***¹⁵ *inter alia* observed that appointments made in violation of the mandatory provisions of a

¹⁴ (2006) 4 SCC 1

¹⁵ (2008) 5 SCC 241

Statute would be illegal and thus void. That, illegality cannot be ratified and illegality cannot be regularized, only an irregularity can be. The argument of Learned Senior Counsel that the appointment of Respondent No.4 could in fact be considered as a nomination as provided by Section 4 of the Act to my mind is incongruous the very basis of the order being steeped in illegality considering that it was the outcome of a Committee illegally constituted.

8. Indeed, the time line of the matter reveals that the advertisement was issued on 04-06-2019, the interview conducted as 15-03-2020 and the appointment order issued on 17-04-2020. The Writ Petition was filed on 11-08-2020. The fact that the world was reeling under the effects of the COVID-19 Pandemic can in no way be overlooked. Hence, in my considered opinion, the delay is not extraordinary to propel the matter out of Court.

9. In light of the foregoing discussions, it inevitably falls to reason that the selection and appointment of the Respondent No.4 has been done in contravention to the Rules, hence Notification No.27/Home/2020, dated 17-04-2020, is quashed and set aside as the selection Committee constituted for the interview suffers from a legal infirmity.

10. The Writ Petition stands disposed of accordingly.

11. No order as to costs.

(Meenakshi Madan Rai)
Judge

30-09-2022

Approved for reporting : **Yes**