

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

WA No. 06/2022

STATE OF SIKKIM & ORS.

APPELLANT (S)

VERSUS

DR. GHANASHYAM SHARMA & ANR.

RESPONDENT (S)

- For Appellants : Dr. Doma T. Bhutia, Senior Advocate and Addl. Advocate General with Mr. Shakil Raj Karki and Mr. Sujan Sunwar, Asst. Govt. Advocates.
- For Respondent No.1 : Ms. Lusiyana Thapa and Ms. Anjali Shah, Advocates.
- For Respondent No.2 : Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Advocates.

WITH

WA No. 10/2022

DR. THOMAS CHANDY

APPELLANT (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

- For Appellant : Mr. A. Moulik, Sr. Advocate with Mr. Ranjit Prasad, Advocate.
- For Respondent Nos. 1, 2 & 3 : Dr. Doma T. Bhutia, Senior Advocate and Addl. Advocate General with Mr. Shakil Raj Karki and Mr. Sujan Sunwar, Asst. Govt. Advocates.
- For Respondent No. 4 : Ms. Lusiyana Thapa and Ms. Anjali Shah, Advocates.

Date: 24/05/2023

CORAM:

HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

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JUDGMENT: (per the Hon'ble, the Chief Justice)

The instant writ appeal arises in respect of a judgment and order dated 30th September, 2022, passed by a learned Single Judge in Writ Petition (C) No.26 of

2020, (Dr. Ghanashyam Sharma vs. State of Sikkim and others). By the impugned judgment and order, the learned Single Judge disposed of the writ petition, while observing that the selection and appointment of private-respondent no.4 (Dr. Thomas Chandy) had been done in contravention to the Rules, hence Notification No.27/Home/2020 dated 17th April, 2020, was quashed and set aside, as the Selection Committee constituted for the interview suffered from a legal infirmity.

There are two appeals filed before this Court. The first appeal, being Writ Appeal No. 06 of 2022, has been filed by the State of Sikkim and others, whereas, the second appeal, being Writ Appeal No. 10 of 2022, has been filed by Dr. Thomas Chandy, being the private-respondent no.4 before the Writ Court.

The issue sought to be raised in the writ petition centered around the post of Chairperson of the State Pollution Control Board of Sikkim. Pursuant to an advertisement dated 04th June, 2019, Dr. Ghanashyam Sharma, being the writ petitioner, along with five others, which included Dr. Thomas Chandy (being the private respondent no.4 in the writ petition) participated in the selection process. Dr. Ghanashyam Sharma and others were unsuccessful participants in the selection process and it was Dr. Thomas Chandy who was selected for the post in question.

The main question which has been sought to be raised by Dr. Ghanashyam Sharma, being one of the unsuccessful candidates, is with regard to non-compliance of Rule 12 of the Sikkim Water (Prevention and Control of Pollution) Rules, 1991, (for short, "the Rules, 1991"), as amended in the year 2017. The amended Rule 12 of the Rules, 1991, reads as follows:

"12. Appointment of Chairperson and Member Secretary

The Chairperson and Member Secretary shall be appointed by a Committee to be chaired by the Chief Secretary and consisting of the Secretaries of Forest, Environment and Wildlife Management Department and Personnel and a national expert on environment protection to be nominated by the State Government by

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open advertisement or by selection from a select list to be prepared by the Forest, Environment and Wildlife Management Department based on the qualifications prescribed in the rules.”

According to the learned Advocate representing Dr. Ghanashyam Sharma, the amended Rule 12 of the Rules, 1991, makes it mandatory for the Selection Committee to be comprised, *inter alia*, of the Secretaries of Forest, Environment and Wildlife Management Department and Personnel and a national expert on environment protection to be nominated by the State Government. However, in the instant case, according to the learned Advocate representing Dr. Ghanashyam Sharma, instead of the Secretary, Department of Personnel, it was the Special Secretary, Department of Personnel, who was present during the selection process.

In our view, however, a plain reading of Rule 12 of the Rules, 1991, as quoted hereinabove, will clearly reveal that the Chairperson and Member Secretary shall be appointed by the Committee to be chaired by the Chief Secretary and consisting all those authorities who have been stated in Rule 12 of the Rules, 1991. The phrase “.....to be chaired by the Chief Secretary and consisting of.....” is not the same as “.....shall be chaired by the Chief Secretary and shall be consisting of”. Instead of the Secretary, Personnel, it was the Special Secretary, Personnel, who was present during the selection process. Even if we accept the contention of the learned Advocate representing Dr. Ghanashyam Sharma that it was only the Secretary, Department of Personnel, who was required to be present at the time of selection process, that by itself is not good enough for this Court to hold that there has not been substantial compliance of the formalities as required under Rule 12 of the Sikkim Water (Prevention and Control of Pollution) Rules, 1991, as amended in the year 2017.

That apart and in any event, Dr. Ghanashyam Sharma himself participated in the selection process, without any demur or protest. He was an unsuccessful candidate. He cannot turn around after several months and file a writ petition challenging the selection process, citing irregularity at a subsequent stage. The law in this regard is quite well settled and we do not wish to restate the same considering the facts and circumstances of the instant case.

For reasons stated above, we have no hesitation to allow the two writ appeals and set aside the judgment and order dated 30th September, 2022, passed by the learned Single Judge in Writ Petition (C) No.26 of 2020.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

jk /bp/avi