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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (PIL) No.30 of 2018

Order reserved on: 26-6-2019

Order delivered on: 5-8-2019

Rakesh Choubey, S/o Late Shri G.P. Choubey, aged about 49 years, R/o 34-B, Recreation Marg, Choubey Colony, Raipur, District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Raipur (C.G.)

2. Chhattisgarh State Information Commission, Through its Secretary, 1st Floor, Indrawati Khand, Shastri Chowk, Raipur (C.G.)

3. Shri M.K. Raut, Chief Information Commissioner, Chhattisgarh State Information Commission, 1st Floor, Indrawati Khand, Shastri Chowk, Raipur (C.G.)

4. The Chief Minister, Government of Chhattisgarh, Raipur (C.G.)

5. The Minister, Department of Home, Government of Chhattisgarh, Raipur (C.G.)

6. The Leader of Opposition, Chhattisgarh Legislative Assembly, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Abhyuday Singh, Advocate.
For Respondent No.1 / State: -
Mr. Gagan Tiwari, Deputy Govt. Advocate.
For Respondent No.2: Mr. Shyam Sunder Lal Tekchandani, Advocate.
For Respondent No.3: Mr. Harsh Wardhan, Advocate.
For Respondents No.4 to 6: -
Not noticed.

AND

Writ Petition (PIL) No.46 of 2019

Bhavin Jain, S/o Shri H.C. Jain, aged about 53 years, R/o B-243, NMDC Colony, Opposite Saroj Nursing Home, New Rajendra Nagar, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)

2. Under Secretary, General Administration Department, State of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)

3. Shri M.K. Raut, posted as Chief Information Commissioner, Chhattisgarh State Information Commission, Sector-19, North Block, Atal Nagar, District Raipur (C.G.)

4. Shri Ajay Kumar Singh, posted as Information Commissioner, Chhattisgarh State Information Commission, Sector-19, North Block, Atal Nagar, District Raipur (C.G.)

5. Shri Mohan Rao Pawar, posted as Information Commissioner, Chhattisgarh State Information Commission, Sector-19, North Block, Atal Nagar, District Raipur (C.G.)

6. Shri Ashok Agarwal, posted as Information Commissioner, Chhattisgarh State Information Commission, Sector-19, North Block, Atal Nagar, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Saurabh Dangi, Advocate.
For Respondents No.1 and 2 / State: -
Mr. Gagan Tiwari, Deputy Govt. Advocate.
For Respondent No.3: Mr. Harsh Wardhan, Advocate, on advance copy.
For Respondents No.4 to 6: -
Not noticed.

Hon'ble Shri P.R. Ramachandra Menon, CJ
and Hon'ble Shri Sanjay K. Agrawal, J.

C.A.V. Order

Sanjay K. Agrawal, J

1. Seeking writ in the nature of quo warranto against respondent No.3 in W.P.(PIL)No.30/2018 and against respondents No.3 to 6 in W.P.(PIL)No.46/2019, these two writ petitions have been preferred requiring those respondents to show cause under what authority of law they continue to hold the office of Chief Information Commissioner {respondent No.3 in W.P.(PIL)No.30/2018} and Information Commissioners {respondents No.4 to 6 in W.P.(PIL)

No.46/2019} under Section 15(3) of the Right to Information Act, 2005 (for short, 'the Act of 2005') and consequently seeking quashment and setting aside of their orders of appointment as Chief Information Commissioner and Information Commissioners, respectively, on the said posts by way of these two writ petitions styled as “public interest litigation”.

2. Since both the writ petitions involve common question of law and fact, they are being disposed of by this common order.

3. Essential facts shorn of all paraphernalia requisite to adjudicate the *lis* in these two writ petitions state as under: -

Brief factual background: -

4. In exercise of the power conferred under sub-section (3) of Section 15 of the Act of 2005, His Excellency the Governor on 10-12-2017 appointed respondent No.3 herein as Chief Information Commissioner under Section 15(2)(a) of the Act of 2005, that has been questioned in W.P.(PIL)No.30/2018. This writ petition basically challenges the appointment of respondent No.3 seeking a writ of quo warranto on the ground that his appointment is in teeth of the provisions contained in sub-sections (3) & (5) of Section 15 of the Act of 2005 as well as being in violation of the mandatory and binding directions issued by Their Lordships of the Supreme Court in the matter of **Union of India v. Namit Sharma**[1]. It has been pleaded stating inter alia that Mr. Serjius Minj retired from the post of Chief Information Commissioner on attaining the age of superannuation on 15-3-2016, thereafter, the said post remained

1 (2013) 10 SCC 359

vacant for a period of 1 year 9 months and on 5-12-2017. Thereafter, respondent No.3 made an application for appointment on the post of Chief Information Commissioner on his own accord and thereafter, the State Government did not advertise the said vacancy nor invited any application from eligible candidates to make the considerate appointment on the post of Chief Information Commissioner (CIC). It is the further case of the petitioner that within no time, the sole application of respondent No.3 was considered on 8-12-2017 within a period of less than 10 days from the date of his retirement on 30-11-2017 as Additional Chief Secretary of the State and His Excellency the Governor approved and appointed respondent No.3 as CIC on 10-12-2017 and he was administered the oath of office of the CIC on 13-12-2017 on the recommendation of the Committee constituted under Section 15(3) of the Act of 2005. As such, in a haste and hurried manner, the appointment of respondent No.3 on the post of CIC was made which is in utter violation of the statutory provisions contained in Section 15 of the Act of 2005 and is clear abuse of Articles 14 & 16 of the Constitution of India and therefore it is unsustainable in law. It was also pleaded that the Enforcement Directorate had already issued notice to respondent No.3 for the act of alleged misconduct, which clearly indicates that he is a person of doubtful integrity. Therefore, a writ of quo warranto be issued on respondent No.3 to show cause as to under what authority he holds the post of the State Chief Information Commissioner, Chhattisgarh and his appointment on the post of CIC deserves to be quashed.

5. Respondents No.1 & 2 have filed their return opposing the writ petition stating inter alia that respondent No.3 was the only applicant for the post of CIC and he is qualified and eligible for the said post giving the details of his qualification and the posts which he held with the State Government. It was further pleaded that the requirement of issuance of advertisement is not mentioned in the Act of 2005, yet the Supreme Court in **Union of India v. Namit Sharma** (supra) observed that His Excellency the Governor must be supplied with adequate material for making up his mind to appoint a person as CIC or Information Commissioner. It has also been stated that the notice of the Enforcement Directorate does not create any bar prohibiting respondent No.3 to be appointed as CIC relying upon the decision of the Supreme Court in the matter of **Union of India and others v. K.V. Jankiraman and others**[2]. It has been stated that the petition praying for writ of quo warranto being in the nature of public interest litigation is not maintainable and deserves to be dismissed, as respondent No.3 is fully eligible for appointment on the post of CIC.

6. Respondent No.3 has filed his return stating inter alia that it is a private interest litigation filed by the petitioner against him, as the petitioner had earlier also made complaint against him to the Chhattisgarh Lok Aayog which was closed by the Lok Aayog on 4-3-2017 and based on the same facts, again the petitioner has made complaint against him to the Assistant Director of Enforcement and the Assistant Director considered the matter and under the provisions of the Foreign Exchange Management Act, 1999, the

2 (1991) 4 SCC 109 : AIR 1991 SC 2010

matter has been closed against him on 21-6-2018 after his appointment on the said post. As such, the writ petition as framed and filed deserves to be dismissed.

7. W.P.(PIL)No.46/2019 has been preferred by the petitioner therein claiming to be an RTI activist stating that the appointment of respondent No.3 as Chief Information Commissioner which is also subject-matter of controversy in W.P.(PIL)No.30/2018, is unsustainable and bad in law. Apart from this, he has also challenged the appointment of respondents No.4 to 6 who have been appointed as Information Commissioners under Section 15(3) of the Act of 2005 merely on the ground that the mandate of law and directions issued by the Supreme Court in **Union of India v. Namit Sharma** (supra) have not been followed and they are not the persons of eminence in public life and the Committee while making recommendation has not recorded reasons and not recorded the qualifications as per law and no advertisement was issued calling applications for the post of Information Commissioner which is against Article 14 of the Constitution of India, therefore, a writ in the nature of quo warranto against the private respondents ousting them from the public office of Chief Information Commissioner and Information Commissioners, be issued.

Submissions of parties: -

8. Mr. Abhyuday Singh, learned counsel appearing for the petitioner in W.P.(PIL)No.30/2018, submits that the entire process of appointment of respondent No.3 as CIC lacks fairness, transparency and procedural propriety and thus, it is violative of

Articles 14 & 16 of the Constitution of India and despite being in the knowledge of clear and mandatory guidelines laid down by the Supreme Court in **Union of India v. Namit Sharma** (supra), the respondents acted in complete defiance of the said directions resulted in unfair appointment of respondent No.3 in violation of the statutory provisions contained in Section 15(5) of the Act of 2005, as respondent No.3 is not a person of eminence as prescribed under Section 15(5) of the Act of 2005. He further submits that respondent No.3 was the only candidate who was considered for appointment on the post of CIC and thus, there has been never any consideration upon comparative suitability. He would also submit that this is not only against the spirit of competitive excellence in public service, but also a deprivation of statutory right to have been considered for more suitable candidates and since the Committee constituted under the Act of 2005 has failed to comply the provisions of the Act of 2005, appointment to a public office runs contrary to the statutory provisions, primarily on whims and fancies, therefore, writ of quo warranto is revocable as such, appropriate writ or direction declaring the appointment of respondent No.3 on the post of CIC as unconstitutional, illegal and violative of Section 15 of the Act of 2005 be issued.

9. Mr. Saurabh Dangi, learned counsel for the petitioner in W.P.(PIL) No.46/2019, while making his submission questioning the appointment of respondent No.3 in similar lines with Mr. Singh, would further submit that the appointment of respondent No.3 is in teeth of the imperative directives issued by Their Lordships of the

Supreme Court in **Union of India v. Namit Sharma** (supra). He would also submit that the appointment of respondents No.4 to 6 as Information Commissioners has been made contrary to the mandatory directions issued by the Supreme Court in **Union of India v. Namit Sharma** (supra), they have not been shown to be the persons of eminence in public life, as they are not having qualification in one field and experience in another field which is against the mandate of law declared by the Supreme Court and no reasons have been recorded for selection of private respondents and also qualifications have not been recorded which is against the spirit of Article 14 of the Constitution of India.

10. Mr. Gagan Tiwari, learned Deputy Government Advocate appearing for the State, in both the writ petitions, would submit that the appointment of respondent No.3 on the post of CIC and respondents No.4 to 6 on the post of Information Commissioners is strictly in accordance with law. He would further submit that only W.P.(PIL)No.30/2018 has been entertained by this Court on 5-4-2018 that too on the limited question as to whether, it is necessary or not to invite applications and make a comparative evaluation to reach at the appropriate person to be recommended for appointment. He would also submit that by that order, this Court has declined to set at naught the selection and appointment of respondent No.3 which was the subject-matter of SLP at the instance of the petitioner being SLP (Civil) Diary No.35731/2018 (Rakesh Choubey v. State of Chhattisgarh and others) which the Supreme Court has already dismissed by order dated 26-10-2018

and as such, the order dated 5-4-2018 has become final in which the petitioner has also made a statement before this Court that there is no challenge to the competence of respondent No.3 for being considered and therefore the writ petition deserves to be dismissed. In respect of W.P.(PIL)No.46/2019, he would submit that respondent No.4 who was appointed on 4-8-2014 is nearing completion of his tenure of five years and respondents No.5 & 6 were appointed strictly in accordance with law, therefore, this writ petition also deserves to be dismissed with cost(s).

11. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.

12. In both the writ petitions, the petitioners have sought writ in the nature of quo warranto against respondents No.3 to 6, therefore, we deem it appropriate to notice the meaning of “quo warranto”.

Meaning of quo warranto: -

13. 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.”

14. **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.”

15. 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."

16. In the words of **Spelling, Injunction and other Remedies**, Vol.2, page 1516,

> ""Quo warranto" is the remedy or proceeding where the state inquires into the legality of the claim which a party asserts to an office or franchise, and to oust him from its enjoyment if the claim be not well founded, or to have the same declared forfeited and recover it, if, having once been rightfully possessed and enjoyed, it has become forfeited for misuser or nonuser."

17. In **Words and Phrases**, Permanent Edition, Vol. 35A (page 647)

> "The writ of "quo warranto" is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have."

Principles of law governing issuance of writ of quo warranto: -

18. It has been held that a writ of quo warranto will be issued in respect of an office, only if the following conditions are satisfied, *firstly* that office must be public, *secondly* it must have been created by a statute or by the Constitution itself, *thirdly* the office must be of substantive character, an office independent in title, *fourthly* the respondent must have asserted his claim to the office and *lastly* that the respondent is not legally qualified.

19. The first reported case in India of quo warranto was **Corkhill, Re.**[3]. It was a case of show cause why the incumbent to the office of Commissioner of Corporation should not cease to as such on the ground that he was not voted by qualified voters. On merits, the

3 ILR (1895) 22 Cal 717

application was dismissed. The other case is **Banwarilal Roy, Re,**[4] which was allowed by the High Court, but set aside by the Privy Council on the ground that the writ was issued beyond Presidency Town, i.e., for a mofussil area.

20. A Constitution Bench of the Supreme Court in the matter of **The University of Mysore and another v. C.D. Govinda Rao and another**[5] 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. The object of the writ qua-public office has been explained by Their Lordships 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

4 ILR (1944) 48 Cal 766
5 AIR 1965 SC 491 : (1964) 4 SCR 575

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."

21. In the matter of **B.R. Kapur v. State of T.N.**[6], Their Lordships of the Supreme Court after referring to the Halsbury's Laws of England, Words and Phrases and leading decisions on the point have observed that a writ of quo warranto is a writ which lies against the person who is not 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.

22. Similarly, in the matters of **High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others**[7] and **R.K. Jain v. Union of India**[8] similar proposition of law has been propounded with regard to writ of quo warranto.

23. In the matter of **Centre for PIL and another v. Union of India and another**[9], 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

6 (2001) 7 SCC 231 : AIR 2001 SC 3435
7 (2003) 4 SCC 712
8 (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464
9 (2011) 4 SCC 1

> 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."

24. Similarly, in the matter of **Rajesh Awasthi v. Nand Lal Jaiswal and others**[10], 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 petitioners seeking issuance of writ of quo warranto have to satisfy that the appointment of the private respondents is contrary to statutory rules and they lack eligibility.

25. In the matter of **Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others**[11], 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

10 (2013) 1 SCC 501
11 (2014) 1 SCC 161

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."

26. In a decision in the matter of **Mahesh Chandra Gupta v. Union of India and others**[12], 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: -

> "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).
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> 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.
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> 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 Constitution Bench of this Court in the case of *Supreme Court Advocates-on-Record Assn. v. Union of India*[13] and

12 (2009) 8 SCC 273
13 (1993) 4 SCC 441

Special Reference No. 1 of 1998, Re[14].”

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 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.
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> 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.”

27. In the matter of **N. Kannadasan v. Ajoy Khose and others**[15] the Supreme Court has clearly held that it is not for the court to embark

14 (1998) 7 SCC 739
15 (2009) 7 SCC 1

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 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*[16] and R.K. *Jain v. Union of India*[17]. (See also *Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana*[18].) In *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra*[19], 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*[20].) 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*[21].]
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> 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)
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> "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 the executive to select the personnel as per law or procedure in this behalf."

16 (2003) 4 SCC 712 : 2003 SCC (L&S) 565
17 (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464
18 (2002) 6 SCC 269
19 (1998) 7 SCC 273 : 1998 SCC (L&S) 1802
20 (2006) 9 SCC 375
21 (1993) 2 SCC 703

> 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."

28. The 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**[22].

29. In the matter of **Valsala Kumari Devi M. v. Director, Higher Secondary Education and others**[23], 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"."

30. Similarly, in the matter of **Registrar General, High Court of Madras v. R. Gandhi and others**[24], 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.

31. In the matter of **Renu and others v. District and Sessions Judge, Tis Hazari Courts, Delhi and another**[25], 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

22 (2013) 3 SCC 99
23 (2007) 8 SCC 533
24 (2014) 11 SCC 547
25 (2014) 14 SCC 50

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*[5], *Kumar Padma Prasad v. Union of India*[26], *B.R. Kapur v. State of T.N.*[6], *Mor Modern Coop. Transport Society Ltd. v. State of Haryana*[18], *Arun Singh v. State of Bihar*[27], *Hari Bansh Lal v. Sahodar Prasad Mahto*[28], and *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo*[29].)

32. Very recently, the Supreme Court in the matter of **Bharati Reddy v. State of Karnataka and others**[30] has again examined the scope of writ of quo warranto by revisiting the law on the subject and held that writ of quo warranto has to be issued only when the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, which satisfaction should be founded on the

26 (1992) 2 SCC 428 : 1992 SCC (L&S) 561 : (1992) 20 ATC 239 : AIR 1992 SC 1213
27 (2006) 9 SCC 375
28 (2010) 9 SCC 655 : (2010) 2 SCC (L&S) 771
29 (2014) 1 SCC 161 : (2014) 1 SCC (L&S) 1
30 (2018) 6 SCC 162

indisputable facts and observed as under by cautioning the courts: -

> "39. We have adverted to some of those decisions in the earlier part of this judgment. Suffice, it to observe that unless the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, which satisfaction should be founded on the indisputable facts, the High Court ought not to entertain the prayer for issuance of a writ of quo warranto."

Statutory provisions governing appointment of Chief Information Commissioner and Information Commissioner under the Act of 2005: -

33. The Right to Information Act, 2005 was enacted to put forth a practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The Act further provides for the constitution of a Central Information Commission and State Information Commission for effective implementation of the Act.

34. The Right to Information is a very valuable right imparted to the citizens under the Constitution of India. Their Lordships of the Supreme Court in the matter of **Namit Sharma v. Union of India**[31] reiterated the importance of the Right to Information and observed as under: -

> "2. It is a settled proposition that the right to freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution of India encompasses the right to impart and receive information. The right to information has been stated to be one of the important facets of proper governance. With the passage of time, this concept has not only developed in the field of law, but also has attained new dimensions in its application. This

31 (2013) 1 SCC 745

Court while highlighting the need for the society and its entitlement to know has observed that public interest is better served by effective application of the right to information. This freedom has been accepted in one form or the other in various parts of the world."

35. At this stage, it would be appropriate to notice Section 15 of the Act of 2005 which provides for constitution of State Information Commission. Section 15 of the Act of 2005 states as under: -

"**15. Constitution of State Information Commission.** —(1) xxx xxx xxx

(2) xxx xxx xxx

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of the Opposition.

(4) xxx xxx xxx

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) xxx xxx xxx

(7) xxx xxx xxx"

36. A focused perusal of sub-section (5) of Section 15 of the Act of

2005 would show that it mandates that the State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. Knowledge and experience in different fields mentioned in sub-section (5) of Section 15 of the Act of 2005 would presuppose a graduate who possesses basic qualification in the field concerned. The Supreme Court in **Union of India v. Namit Sharma** (supra) held in this regard as under: -

> "5. After hearing the learned counsel for the respondent-writ petitioner and the learned Additional Solicitor General for the Union of India, this Court held in the judgment under review that the provisions of Sections 12(5) and 15(5) of the Act did not specify the basic qualifications of the persons to be appointed as Information Commissioners and only mentioned that the Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. This Court held that the knowledge and experience in the different fields mentioned in Section 12(5) and Section 15(5) of the Act would presuppose a graduate who possesses basic qualification in the field concerned. ..."

37. Thus, the important aspect of Section 15 of the Act of 2005 for appointment of Chief Information Commissioner or Information Commissioner is that he should be a person of eminence in public life. The meaning of the expression "persons of eminence in public life" has been elaborated by the Supreme Court in **Namit Sharma v. Union of India** (supra) which was later reviewed in **Union of India v. Namit Sharma** (supra). In paragraph 101 of the decision rendered in **Namit Sharma v. Union of India** (supra) it was held

as under: -

> "101. "Persons of eminence in public life" is also an expression of wide implication and ramifications. It takes in its ambit all requisites of a good citizen with values and having a public image of contribution to the society. Such person should have understanding of concepts of public interest and public good. Most importantly, such person should have contributed to the society through social or allied works. The authorities cannot lose sight of the fact that ingredients of institutional integrity would be applicable by necessary implication to the Commissions and their members. This discussion safely leads us to conclude that the functions of the Chief Information Commissioner and Information Commissioners may be better performed by a legally qualified and trained mind possessing the requisite experience. The same should also be applied to the designation of the first appellate authority i.e. the senior officers to be designated at the Centre and State levels. However, in view of language of Section 5, it may not be necessary to apply this principle to the designation of Public Information Officer."

38. After the judgment of the Supreme Court in **Namit Sharma v. Union of India** (supra), recently, in the matter of **Anjali Bhardwaj and others v. Union of India and others**[32] Their Lordships of the Supreme Court taking cognizance of the directions already issued in **Union of India v. Namit Sharma** (supra), issued further directions for appointment on the post of Chief Information Commissioner / Information Commissioners as contained in paragraph 67 of that report which are as under: -

> "67. (i) Insofar as transparency in appointment of Information Commissioners is concerned, pursuant to the directions given by this Court, the Central Government is now placing all necessary information including issuance of the advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. on the website. All States shall also follow this system.
>
> (ii) Insofar as terms and conditions of appointment

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are concerned, no doubt, Section 13(5) of RTI Act states that the CIC and Information Commissioners shall be appointed on the same terms and conditions as applicable to the Chief Election Commissioner/Election Commissioner. At the same time, it would also be appropriate if the said terms and conditions on which such appointments are to be made are specifically stipulated in the advertisement and put on website as well.

(iii) Likewise, it would also be appropriate for the Search Committee to make the criteria for shortlisting the candidates, public, so that it is ensured that shortlisting is done on the basis of objective and rational criteria.

(iv) We also expect that Information Commissioners are appointed from other streams, as mentioned in the Act and the selection is not limited only to the Government employee/ex-government employee. In this behalf, the respondents shall also take into consideration and follow the below directions given by this Court in *Union of India v. Namit Sharma*, (2013) 10 SCC 359.

"32. ...

(iii) We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Ss. 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner.

(iv) We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Ss. 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Ss. 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners.

(v) We further direct that the Committees under Ss. 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the

> citizens as part of their right to information under the Act after the appointment is made."
>
> (v) We would also like to impress upon the respondents to fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time lag between the occurrence of vacancy and filling up of the said vacancy."

39. The Supreme Court while giving directions in **Anjali Bhardwaj** (supra) has now clarified the position and clearly held that all necessary information including issuance of the advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. shall be placed on the website and all the State Governments shall follow this system. The terms and conditions on which such appointments are to be made should also be specifically stipulated in the advertisement and put on the website as well. As such, now, it is imperative for the State Government to make appointment of Chief Information Commissioner and Information Commissioners in consonance with the above-quoted directions issued by the Supreme Court in **Anjali Bhardwaj** (supra) on 15-2-2019 and therefore issuance of advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. all are to be placed in the public domain. Filling up of vacancy has to be initiated 1 to 2 months before the date on which the vacancy is likely to occur in order to avoid time lag between the occurrence of vacancy and filling up of the said vacancy.

40. After having noticed the above-stated legal position for issuance of writ of quo warranto and the requirement of law for appointment of

CIC and Information Commissioners, we shall proceed to consider the contentions of the petitioners qua appointment of CIC and Information Commissioners one by one.

Appointment of respondent No.3 on the post of Chief Information Commissioner: -

41. Mr. Serjius Minj, the then Chief Information Commissioner (CIC), demitted the office on 15-3-2016 and thereafter, the said post remained fell vacant and lying vacant since then. On 5-12-2017, respondent No.3 made a request for appointment on the post of CIC which was processed and meeting was directed to be convened on 7-12-2017 and ultimately, it was convened on 8-12-2017 and he was recommended for the said post by the Committee constituted under Section 15(3) of the Act of 2005 on 8-12-2017. The following recommendation was made by the said Committee: -

राज्य मुख्य सूचना आयुक्त के पद पर नियुक्ति हेतु गठित चयन समिति की दिनांक 08.12.2017 को सम्पन्न बैठक का कार्यवाही विवरण

छत्तीसगढ़ राज्य सूचना आयोग के राज्य मुख्य सूचना आयुक्त के पद पर नियुक्ति हेतु गठित समिति की बैठक दिनांक 08.12.2017 को सायंकाल 07:30 बजे संपन्न हुई | बैठक में चयन समिति के सभी सदस्य उपस्थित रहे | बैठक में राज्य मुख्य सूचना आयुक्त के नियुक्ति हेतु सूचना का अधिकार अधिनियम, 2005 की धारा-15(5) के अधीन विचार किया गया | विचारोपरांत चयन समिति ने राज्य मुख्य सूचना आयुक्त, छत्तीसगढ़ के पद पर नियुक्ति हेतु श्री एम.के. राउत, सेवा निवृत्त, भा.प्र.से., (CG-1984) का चयन किया |

सही/-	सही/-	सही/-
(रामसेवक पैकरा)	**(टी.एस. सिंहदेव)**	**(डॉ. रमन सिंह)**
मंत्री, गृह जेल एवं लोक स्वास्थ्य यांत्रिकी छ. ग. शासन	नेता प्रतिपक्ष छत्तीसगढ़ विधानसभा	मुख्यमंत्री छ. ग. शासन
सदस्य	**सदस्य**	**सदस्य**

42. Thereafter, respondent No.3 was appointed as CIC on 10-12-2017. The writ petitioner in W.P.(PIL)No.30/2018 – Rakesh Choubey has though raised various grounds, but on 5-4-2018 at the time of admission of the writ petition, a statement has been made on his behalf before this Court that there is no challenge to the competence of respondent No.3 for being considered for the post of CIC and the only challenge was that no transparent mode of selection to that post was made, as availability of such a vacancy and any proposal to make appointment was not notified and in absence of any such notification, no applications were received and consequentially, no comparative evaluation of the requirements for the post on an applicant to applicant basis was made which runs contrary to the provisions contained in Section 15(5) of the Act of 2005. In that view of the matter, this Court entertained the writ petition and has recorded in paragraph 5 of the order dated 5-4-2018 to find out as to whether in making appointment to the high office of the Chief Information Commissioner and other Information Commissioners; is it necessary, or not, to invite applications and make a comparative evaluation to reach at the appropriate person to be recommended for appointment. Paragraph 5 of the order dated 5-4-2018 passed by this Court presided over by the then Chief Justice (as then His Lordship was) states as follows: -

> "5) Having regard to the quality of Office, the term of Office and the powers, duties and responsibilities attached to it; the Office of the Chief Information Commissioner and other Information Commissioners; is it necessary, or not, to invite applications and make a comparative evaluation to reach at the appropriate person to be recommended for appointment ? This

issue, appears to loom large for consideration in this Writ Petition."

43. Not only this, thereafter, this Court admitted the writ petition and in paragraph 7 clearly held that there is no reason to set at naught the selection and appointment of respondent No.3 which has already been made by observing as under: -

> "7) We, however, do not see that there is any reason to set at naught (*sic* knot) the selection and appointment of the third respondent which has already been made."

44. Feeling not satisfied and aggrieved with the above order declining to set at naught the selection and appointment of respondent No.3 on the said post, the petitioner – Rakesh Choubey filed Special Leave Petition (SLP) before the Supreme Court. Their Lordships dismissed the said SLP by observing as under: -

> "Heard the learned counsel for the petitioner and perused the relevant material.
>
> Delay condoned.
>
> Applications for exemption from filing certified copy of the impugned order and from filing official translation are allowed.
>
> We are not inclined to interfere. The Special Leave Petition is accordingly dismissed."

45. In our considered opinion, once this Court though by interim order has declined to set at naught the selection and appointment of respondent No.3 and against that, the SLP taken was not entertained, and in view of the own statement of the petitioner made before the Court that there is no challenge to the competence of respondent No.3 for being considered on the post of CIC, the petitioner herein, now, cannot turn around and claim that respondent No.3 is not eligible for appointment on the post of Chief

Information Commissioner. Nevertheless, we will examine the correctness of the submissions on merit so raised on behalf of the petitioner.

46. The submission raised by the petitioner in this writ petition as well as in another writ petition is that the post of Chief Information Commissioner was not advertised and within three days from the date of making application by respondent No.3, appointment on the said post was made. As noticed herein-above, in the Act of 2005, there is no specific provision prescribing issuance of advertisement and calling of vacancy etc. but now, in **Anjali Bhardwaj** (supra), Their Lordships have clearly issued binding directions for CIC & SCICs not only in respect of issuance of advertisement, but also for placement of necessary details regarding receipt and applications, particulars of the applicants, composition of Selection Committee etc. on the website with a direction to follow the system by the State Governments and the terms and conditions on which such appointments are to be made have to be specifically stipulated in the advertisement and also the criteria for shortlisting the candidates to ensure that shortlisting is done on the basis of objective and rational criteria. In that view of the matter, henceforth, the State Government / respondent No.1 is directed to follow the guidelines with regard to issuance of advertisement, placement of information of receipt and applications, particulars of the applicants, composition of Selection Committee, terms and conditions on which the appointments are to be made, criteria for shortlisting the candidates, in the public domain. In absence of

specific provision for advertisement of the vacancy of CIC, as on the date of appointment of respondent No.3, legal position was unclear and the appointment of respondent No.3 cannot be set at naught on that ground. However, the State Government is now under legal obligation to follow the said guidelines issued by the Supreme Court in **Anjali Bhardwaj** (supra) without fail while making appointment on the post of CIC and Information Commissioners.

47. Now, the petitioner's grievance with regard to respondent No.3 is that respondent No.3 is not a person of high integrity, as, against him, complaint under Section 16(3) of the Foreign Exchange Management Act, 1999 has been filed that he has violated the provisions of the said Act and is liable to penalty under Section 19(1) of the said Act, therefore, he is a person of doubtful integrity which was not brought to the notice of the Selection Committee at the time of his appointment and as such, his appointment came to be made on the post of CIC, is ex facie illegal and bad in law.

48. Respondent No.3 has filed his reply before this Court and has stated that the petitioner has also made complaint against him with regard to those allegations before the Chhattisgarh Lok Aayog and the Lok Aayog had already closed the said enquiry against him on 4-3-2017 and thereafter, again the petitioner has filed same complaint based on similar ground before the Assistant Director of Enforcement which has also been closed and the show cause notice issued has been dropped on 21-6-2018, though in the Act of 2005, there is no legal requirement of law {Section 84(1) of the

Electricity Act provides} that Chief Information Commissioner shall be a person of integrity, but it is beyond pale of doubt that person holding the post of CIC (public office) must be of impeccable integrity.

49. 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”.

50. The word “integrity” has also been defined by the Supreme Court in the matter of **Vijay Singh v. State of Uttar Pradesh and others**[33] 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.”

51. Similarly, in the matter of **Union of India and others v. P. Gunasekaran**[34], 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, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc.

33 (2012) 5 SCC 242
34 (2015) 2 SCC 610

> In short, it depicts sterling character with firm adherence to a code of moral values."

52. In **Hari Bansh Lal** (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."

53. In the matter of **M.S. Bindra v. Union of India and others**[35], 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

35 1998 SCC (L&S) 1812

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."

54. In **K.V. Jankiraman's** case (supra), 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."

55. Reverting to the facts of the present case in light of the principles of law with regard to integrity of a person to be appointed on the post of CIC, it is quite vivid that the petitioner had earlier made a complaint against respondent No.3 before the Chhattisgarh Lok Aayog being Case No.271/2013 on 3-12-2013 that he has violated

the Foreign Exchange Management Act, 1999 by visiting foreign country Maldives and thereby committed misconduct which was closed by the learned Lok Aayog after detailed enquiry on 4-3-2017 finding no substance and thereafter, again, the same petitioner has made complaint based on same set of facts before the Assistant Director of Enforcement which was also dropped after detailed enquiry by the Assistant Director of Enforcement, though during the pendency of this writ petition.

56. In the considered opinion of this Court, merely on the basis of registration of case and issuance of show-cause notice which proceeding has already been dropped under the Foreign Exchange Management Act, 1999 during the pendency of this writ petition, respondent No.3 cannot be dubbed and dunked as an officer of doubtful integrity, as in **Hari Bansh Lal** (supra) and **M.S. Bindra** (supra), Their Lordships of the Supreme Court have categorically held that in order to interfere with appointment, there must be adequate adverse material about integrity. As such, the petitioner has failed to bring appropriate evidence of admissible nature to doubt the integrity of respondent No.3 and to declare him as a person of doubtful integrity.

57. Faced with this situation, learned counsel for the petitioner would now contend that the material regarding said initiation of proceeding under the Foreign Exchange Management Act, 1999 was not placed before the statutory Selection Committee constituted under Section 15(3) of the Act of 2005 at the time of consideration of the case of respondent No.3 for the said post

which has resulted in illegality in selection and appointment of respondent No.3 by not considering the incriminating material against respondent No.3.

58. In this regard, the observation made by the Supreme Court in the matter of **B.S. Minhas v. Indian Statistical Institute and others**[36], which relates to appointment of Director of the said Institute, is pertinent which may be noticed herein profitably: -

> "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 before coming to a conclusion."

59. 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**[37] 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."

60. Undoubtedly, the Selection Committee constituted by the State Government under Section 15(3) of the Act of 2005 was statutory in character being a high powered committee and it consisted of

36 (1983) 4 SCC 582
37 (1994) 1 SCC 169

Hon'ble the Chief Minister of the State being the Chairperson of the Committee and also the Leader of Opposition in the Legislative Assembly and a Cabinet Minister who was nominated by the Chief Minister. The said Committee considered the case of respondent No.3 for the post of Chief Information Commissioner and made recommendation to His Excellency the Governor which was accepted and ultimately, respondent No.3 was appointed on the said post. Consequently, the observation made by Their Lordships in **B.S. Minhas** (supra) would squarely apply to the facts of the present case and it cannot be concluded that the Selection Committee did not consider all aspects of the matter while making recommendation of the name of respondent No.3 to the State Government for the post of CIC. We cannot agree with the submission of learned counsel for the petitioner.

61. In view of the aforesaid analysis, we are unable to hold that the appointment of respondent No.3 on the post of Chief Information Commissioner of the Chhattisgarh State Information Commission is unconstitutional, illegal and violative of Section 15 of the Act of 2005 and he lacks eligibility for the post of CIC of the State Information Commission. The petitioner has failed to make out a clear case for issuance of writ of quo warranto for ousting respondent No.3 from the post of CIC of the State Information Commission. We accordingly reject the challenge thrown in this behalf.

Appointment of respondent No.4 – Mr. Ajay Kumar Singh: - {In W.P.(PIL)No.46/2019}

62. Mr. Ajay Kumar Singh was appointed as State Information Commissioner way back on 4-8-2014 and his tenure would be for five years as per the provisions contained in Section 16 of the Act of 2005 from the said date of appointment / assuming office. Since respondent No.4 has been discharging the functions on the post of Information Commissioner continuously for over a long period of about five years since 4-8-2014, his appointment came to be challenged only as late as on 21-6-2019 and his tenure as Information Commissioner is nearing completion in the month of August, 2019, we are not inclined to entertain the challenge to his appointment as Information Commissioner also for the reason that it would be a futile exercise.

Appointment of respondents No.5 & 6 – Mr. Mohan Rao Pawar & Mr. Ashok Agrawal: -

63. Respondents No.5 & 6 have been appointed on the post of Information Commissioner on 26-8-2017. The writ petitioner in W.P.(PIL)No.46/2019 mainly questioned their appointment on the ground that no advertisement was called for filling up of the post of Information Commissioner(s) which is violative of Section 15(5) of the Act of 2005 and Article 14 of the Constitution of India, as such, there is no comparative assessment and the Selection Committee has not recorded any reasons and qualifications as per law. We have already made clear in paragraph 46 of this order noticing the binding directions issued by Their Lordships in **Anjali Bhardwaj** (supra) that henceforth, the State Government shall follow the directions contained in **Anjali Bhardwaj** (supra) and applications

will not only be invited, but details of applicants and applications, composition of Selection Committee and terms and conditions on which the appointments are to be made, manner and criteria of shortlisting the candidates all will be made applicable in the public domain. In that view of the matter, we hereby decline to entertain the challenge towards the appointment of respondents No.5 & 6, as in future appointments to be made on the post of Information Commissioner, the directions contained in **Anjali Bhardwaj** (supra) will be followed religiously and scrupulously by the State Government henceforth.

64. In view of the aforesaid legal analysis, we are fully satisfied that the writ petitioners seeking writ of quo warranto have demonstrably failed to plead and establish that appointment of respondent No.3 on the post of Chief Information Commissioner and that of respondents No.4 to 6 on the post of Information Commissioner is in violation of the statutory provisions contained in the Act of 2005.

65. A Constitution Bench of the Supreme Court in the matter of **Statesman (Private) Ltd. v. H.R. Deb and others**[38] has clearly held that “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”.

66. The principle of law laid down by Their Lordships of the Supreme Court in **Statesman** (supra) sounding a note of caution for this Court to be slow in issuing a writ in the nature of quo warranto in unclear case aptly and squarely applies to the factual score of the

38 AIR 1968 SC 1495

present case, as the petitioners have failed to establish clear infringement of law for the writ claimed in the nature of quo warranto and failed to demonstrate that respondents No.3 to 6 lack eligibility for the post of CIC and Information Commissioner, respectively, and thereby we decline to entertain the writ petitions. However, we wish to emphasize and direct that the State Government will henceforth follow the binding and mandatory directions issued by Their Lordships of the Supreme Court in **Anjali Bhardwaj** (supra) in paragraph 67 of that judgment and reproduced in paragraph 38 of this order, regarding issuance of advertisement and placing all the information into the official website and other directions contained, in its letter and spirit for appointment on the post of Chief Information Commissioner and Information Commissioners.

67. As a fallout and consequence of the aforesaid discussion, the writ petitions are dismissed with the above-stated directions. No order as to cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (PIL) No.30 of 2018

Rakesh Choubey

Versus

State of Chhattisgarh and others

AND

Writ Petition (PIL) No.46 of 2019

Bhavin Jain

Versus

State of Chhattisgarh and others

Head Note

In the appointment of Chief Information Commissioner and Information Commissioners of the State Information Commission, henceforth, the State Government has to follow the directions issued by the Supreme Court in the matter of **Anjali Bhardwaj and others v. Union of India and others** (2019 SCC OnLine SC 205) regarding issuance of advertisement and placing all the information into the official website.