

**(2014) 01 MP CK 0047**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition (PIL) No. 20348/2013**

Ajay Dubey

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

**Date of Decision : 09-01-2014**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 163, 167, 167(c)

**Citation :** (2014) 2 JLJ 143 : (2014) 2 MPHT 9

**Hon'ble Judges :** A.M. Khanwilkar, C.J.;K.K. Lahoti, J

**Bench :** Division Bench

**Advocate :** Siddharth Gupta, Advocate for the Appellant; Purushendra Kaurav, Addl. Advocate General for the Respondent Nos. 1, 2, 3 and 5 and Mr. Siddharth Seth, Advocate for the Respondent Nos. 6 and 7, Advocate for the Respondent

**Final Decision :** Dismissed

## Judgement

A.M. Khanwilkar, C.J.—This petition, filed as PIL, takes exception to the appointment of Mr. R. Parshuram as State Election Commissioner of the State of Madhya Pradesh vide Departmental Order, dated 17-9-2013. Only three grounds have been urged before us. First ground is that, in absence of Rules regarding procedure for appointment of State Election Commissioner, it is imperative for the Competent Authority to observe fairness and transparency in the appointment process to comply with the mandate of Articles 14 and 16 of the Constitution of India and in absence thereof, the appointment process will be vitiated.

2. It is indisputable that the State Election Commissioner is appointed by the Governor, in view of Article 243-K of the Constitution of India. The State Election Commissioner is appointed for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats in the State. No Rules have been framed by the State for the procedure to be followed for appointment of the State Election Commissioner. As aforesaid, there is neither provision in the Constitution nor any enactment or

Rule in place, providing for the manner in which process to appoint the State Election Commissioner should be followed. That can be traced to Article 243-K of the Constitution, which postulates that State Election Commissioner be appointed by the Governor. In the present case, it is common ground that the term of the out going State Election Commissioner had expired on 16-9-2013. As a result, the Chief Minister made recommendation to the Governor to appoint Mr. R. Parshuram as the State Election Commissioner for the State of Madhya Pradesh, on 17-9-2013. The Governor, on the same day, approved the said recommendation; and as a consequence whereof, the impugned Departmental Order, dated 17-9-2013 came to be issued.

3. Reverting to the grievance of the petitioner, the question whether this appointment process can be said to be non-transparent, unfair, arbitrary or otherwise hit by Articles 14 and 16 of the Constitution of India, we agree with the submission of respondents that the subject appointment by the Governor, cannot be treated as appointment to any office under the State as such. For, the Election Commission is an autonomous body, created for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats in the State. For that reason, reliance placed by the learned Counsel for the petitioner on the decision of the Apex Court in the case of Comptroller and Auditor General Vs. Kamlesh Vadilal Mehta, thereof in particular, will be of no avail. Further, since it is not an employment or appointment to any office under the State as such, the question of following procedure relating to such employment or appointment to office under the State by giving advertisement, inviting applications or public notice etc. will have no application at all. It is, indeed, the subjective satisfaction of the Competent Authority and finally the decision of the Governor to appoint a person as State Election Commissioner, that ought to prevail. The fact that the entire process has been concluded in one day cannot be the basis to hold that the decision so taken is vitiated, unless something more is attributed.

4. The second contention of the petitioner, is that, since Article 243-K does not provide for specific procedure to be followed in the appointment of State Election Commissioner it should necessarily follow that the Governor is obliged to observe the mandate of Article 163 of the Constitution of India. In that, he ought to take that decision only on the aid and advise of the Council of Ministers with the Chief Minister as the head; and not singularly on the basis of the recommendation of the Chief Minister, as in the present case. Even this submission does not commend to us. As aforesaid. Article 243-K postulates that the appointment of State Election Commissioner is to be made by the Governor. The argument clearly overlooks the efficacy of the sub-article (1) of Article 163 of the Constitution of India read with Rule 7 of the Rules of Business and Part II dealing with the directions issued under Rule 7 of the Business Rules in regard to Council cases or cases to be brought before the Council. Rule 7 of the Rules reads thus:--

7. Cases shall be brought before the Council in accordance with the general

directions issued hereunder or by a special direction of--

(i) the Chief Minister;

(ii) the Minister-in-Charge of the case with the consent of the Chief Minister; or

(iii) the Governor under Article 167(c):

Provided that no case is regard to which the Finance Department is required to be consulted under Rule 11 shall, save in an emergency under the direction of the Chief Minister, be discussed by the Council of Ministers unless the Finance Minister is ready for its consideration.

The relevant part of Part II of the Rules referred to above reads thus:--

Part II: Direction issued under Rule 7 of the Business Rules in regard to Council cases or cases to be brought before the Council:

Under Rule 7 of the Business Rules, the Governor of Madhya Pradesh is pleased to issue the following directions as to the cases, which shall be brought before the Council:--

The following cases shall be brought before the Council, subject to the proviso that if the Chief Minister considers any case to be so urgent as to necessitate the immediate issue of orders, he may direct the issue of orders at once, and when orders have been issued, the papers shall, without avoidable delay, be circulated and brought, before a meeting of the Council in accordance with the procedure laid down in supplementary instruction 18 under Rule 13:--

(xv) Cases relating to the following appointments--

(1) Chairman and Member of the Public Service Commission;

(2) Advocate General; and

(3) Lokayukt and Up-Lokayukt.

(xxxi) Any case or class of cases, not specified herein, which the Chief Minister may direct to be brought before the Council or to which the circumstances of the moment may have, given special importance.

5. From the plain language of clauses (i) to (xxxii) of Rule 7, it is clear that the cases relating to the appointment of State Election Commissioner has not been expressly provided in this Rule to be placed before the Council, unlike, the appointments to the office of Chairman and Member of the Public Service Commission; Advocate General; and Lokayukt and Up-Lokayukt. In other words, no general direction is issued by the Governor to place the case for appointment of the State Election Commissioner before the Council. The validity of these Rules is not challenged in this petition. Therefore, clause (xxxi), which is reproduced above, will also be of no avail to the petitioner. For, Rule 7 opens with the statement that cases shall be brought before the Council in accordance with the

general directions issued under the Rules or by a special direction of, inter alia, the Chief Minister. Thus understood, it is the discretion of the Chief Minister to refer the case relating to appointment of State Election Commissioner to the Council before it is forwarded to the Governor for consideration. Moreover, if these provisions are read in proper perspective, it is not possible to countenance the argument of the petitioner that it was obligatory on the part of the Governor to wait for or invite the aid and advise of the Council of the Ministers before taking a final decision in the matter. This position is further reinforced by Article 167 of the Constitution which reads thus:--

167. Duties of Chief Minister as respects the furnishing of information to Governor, etc.-- It shall be the duty of the Chief Minister of each State--

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister, but which has not been considered by the Council.

6. From the plain language of this Article, it is noticed that the Chief Minister would be obliged to place the case relating to appointment of State Election Commissioner before the Council of Ministers, if the Governor had so required. Somewhat similar proposition has been examined by the Division Bench of our High Court in the case of *Ajay Dubey Vs. State of M.P. and others*, W.P. No. 7791/2012 (PIL), decided on 18-6-2012, namely, whether such direction ought to have been issued by the Governor being his subjective satisfaction, it is not open to the Court to sit over that judgment. That cannot be within the purview of judicial review to be undertaken by the Court. In the present case, the Governor without requiring the aid and advise of the Council of Ministers proceeded on the basis of the recommendation given by the Chief Minister. That procedure, per se, cannot be said to be either improper, irregular, much less illegal. Nevertheless the matter was placed before the Council of Ministers on 18-9-2013 in which the recommendation made to the Governor, which was the basis for decision of the Governor to appoint Mr. R. Parshuram as State Election Commissioner of Madhya Pradesh, came to be ratified. That decision of Council of the Ministers is not the subject matter of challenge in this writ petition. Once the decision having been ratified, nothing more was required to be done. In our opinion, therefore, the appointment of Mr. R. Parshuram as State Election Commissioner is neither irregular nor illegal, much less against any statutory or constitutional provision. It is not the case of the petitioner that the said appointee was disqualified to be so appointed, so as to invoke the power of issuing writ of quo warranto.

7. The third and the last contention urged before us, is that, the Chief Minister

could have directly made recommendation only if it was an exceptional situation. We have already examined the sweep of Rule 7. As found earlier, Rule 7 read with Part II of the Rules of Business, does not mandate that the case for appointment of State Election Commissioner is required to be first placed before the Council of Ministers before it is forwarded to the Governor by the Chief Minister. In any case, the recommendation having been ratified by the Council of Ministers, nothing more is required to be done in the present Public Interest Litigation. Accordingly, this petition is dismissed being devoid of merits.