

(2003) 04 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 757 of 2002

Arvind Sharma

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Constitution of India, 1950 — Article 124(3), 14, 16, 226
Government of Union Territories Act, 1963 — Section 54
Himachal Pradesh State Electricity Regulatory Commission Act, 1998 — Section 17,
17(1), 17(2), 17(5), 17(6)

Citation : (2003) 2 ShimLC 129

Hon'ble Judges : Kuldip Chand Sood, J; Arun Kumar Goel, J

Bench : Division Bench

Advocate : S.S. Mittal and Prakash Thakur, for the Appellant; P.M. Negi, Assistant A.G. for Respondent No. 1 and K.D. Sood, for the Respondent

Judgement

Arun Kumar Goel, J.—After having heard learned Counsel for the parties, facts which emerge from the record are, and on which they were not at variance by and large are as under:

State of Himachal Pradesh decided to constitute State Commission under the provisions of the Electricity Regulatory Commission Act, 1998 (hereinafter referred to as the "Act")- Record produced by the learned Assistant Advocate General suggests that initially it was proposed to be three Member Commission under the Act. However, later on it was decided that it will be a one Member Commission. Accordingly notification u/s 17 of the Act was issued by Respondent No. 1. This was followed by constitution of Selection Committee for the purpose of selecting the Member. Initially, Shri Justice R.K. Mahajary (Retd.) was to head this committee. Thereafter Shri Justice A.L. Vaidya (Retd.) was substituted in his place, and finally again notification appointing Shri Justice A.L. Vaidya to head the Selection Committee u/s 18 of the Act was with drawn and Shri Mahajan was re-nominated to head the said Committee.

2. Selection Committee constituted u/s 18 of the Act that was headed by Shri Justice Mahajan (Retd.), prepared a panel of two names as per provisions of the Act. Respondent No. 3 figured at Sr. No. 1, whereas the other person was at Sr. No. 2.

3. After receipt of recommendations from the Selection Committee, Respondent No. 1 made an offer vide Annexure R-2/E on 30.12.2000 to the Respondent No. 3. Alongwith this offer, terms and conditions of his appointment as one Member H.P. State Electricity Regulatory Commission (HPSERC) were also attached. This offer made by Respondent No. 1 was accepted by Respondent No. 3 vide his communication Annexure R-2/F. For ready reference, contents of this Annexure are extracted herein below:

From:

S.S. Gupta,

Member (Operation),

HPSEB, Vidyut Bhawan,

Shimla-4.

To

The Secretary (MPP & Power),

Government of Himachal Pradesh,

Shimla-171002.

Sir,

Kindly refer to your letter No. MPP-A(7)-I/98 dated 30th December, 2000 on the subject offer of appointment as one member H.P. State Regulatory Commission. I hereby accept the offer on the terms and conditions appended to the offer.

Thanking you.

Yours faithfully, Sd/- (S.S. Gupta)

30.12.2000.

4. In the context of Annexure R-2/F supra, we may notice that this was followed by notification appointing Respondent No. 3 as One Member H.P. State Electricity Regulatory Commission w.e.f. 6.1.2001 for a period of five years from the date he enters upon his office or till he attains the age of 62 years, whichever is earlier. Notification issued by the State Government on 6th January, 2001 (Annexure R-2/G) is also extracted herein below:

Government of Himachal Pradesh Department of MPP and Power No. MPP(B) 3-1/2001, Dated, Shimla-2, the 6th January, 2001.

NOTIFICATION.

In exercise of the powers conferred by Section 17(6) read with Section 19(l)(b) of the H.P. State Electricity Regulatory Commission Act, 1998, the Governor, Himachal Pradesh, is pleased to appoint Sh. S.S. Gupta, Member (Operations), HPSEB as One Member Himachal Pradesh State Electricity Regulatory Commission, with effect from 6th January, 2001 for a term of 5 years from the date on which he enters upon his office or till he attains the age of 62 years, whichever is earlier.

By order Harsh Gupta.

Additional C.S.-cum-Secretary (Power) to Government of Himachal Pradesh.

5. This was followed by the oath of office and oath of secrecy both subscribed by Respondent No. 3. Again, both these are extracted herein below:

Form of Oath of Office.

I, S.S. Gupta, having been appointed as One-Member Himachal Pradesh State Electricity Regulatory Commission do swear in the name of God that I will faithfully and conscientiously discharge my duties as One-Member Commission to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will.

(S.S. Gupta)

Dated 6.1.2001 Place : Shimla-2.

For, of Oath of Secrecy

I, S.S. Gupta, having been appointed as One-Member Himachal Pradesh State Electricity Regulatory Commission do swear in the name of God that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as One-Member of the said Commission except as may be required for the due discharge of my duties as One-Member Commission.

Date : 6.1.2001. Place : Shimla.

(S.S. Gupta) Sd/-

6. After having been appointed as One Member Commission as aforesaid, Respondent No. 3 represented to the State Government that in the absence of Chairperson, who is also the Chief Executive of the State Commission u/s 17(8) of the Act, as also the Chairperson Ex-Officio, Chairperson of the State Advisory Committee, this defect in the constitution of the Commission needs to be removed by issuing necessary amendment in the offer of appointment/ notification as also in the terms and conditions appended thereto (Annexure R-2/ E) dated 30.12.2000.

7. With a view to support his case, Respondent No. 3 placed reliance on an order passed by the Government of National Capital Territory of Delhi, whereby for the change of designation of One Member, the Lt. Governor

had consented to Chairman (One Member, Commission) instead of sole Member. Respondent No. 1 vide Annexure P-I dated 26.4.2001 issued the notification whereby the Respondent No. 3 was appointed as Chairman, "One Member" of the Commission for a period of five years from the date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier. This notification is in the following terms:

NOTIFICATION

In continuation of this Department Notification No. MPP-(B) 3-1/2001, dated 6th January, 2001 and in exercise of the powers conferred by Section 17(6) read with Section 19(1)(a) of the Electricity Regulatory Commission Act, 1998, the Governor, Himachal Pradesh is pleased to appoint Sh. S.S. Gupta, one member H.P. Electricity Regulatory Commission; as Chairman, "One Member" H.P. Electricity Regulatory Commission, for a term of 5 years from the date on which he enters upon his office or till he attains the age of 65 years, ? whichever is earlier.

By order,

Additional C.S.-cum-Secretary (Power) to the Government of Himachal Pradesh.

8. Petitioner has filed this writ petition making grievance against the appointment of Respondent No. 3 as Chairperson of the aforesaid Commission. As according to him, it is void ab initio being ultra vires of the provisions of Sections 18 and 19 of the Act. Thus, he has prayed for quashing Annexure P-I and for declaring the Petitioner to be usurper of the office of Chairperson. It may be observed in this behalf that learned Senior Counsel appearing on behalf of the Petitioner submitted that so far appointment of the Petitioner as One Member Commission is concerned, the same being in accordance with the provisions of law, is in order.

9. So far State Government is concerned, it was stated by the learned Assistant Advocate General that the post of Chairman was never notified at any point of time. Whenever reference was made to other authorities like Central Electricity Regulatory Authority etc., it was always held out that the candidates need to be recommended for the post of a Member only. He further stated that at his askance, Respondent No. 3 was appointed as Chairperson of the Commission and thereafter terms of his appointment were also changed. Even if Respondent No. 1 had not changed the terms of appointment of Respondent No. 3 as Chairperson, that was bound to be the natural consequence in view of the provisions of the Act. For ready reference Sections 17, 18 and 19 of the Act are extracted herein below:

17. Establishment and incorporation of State Commission.--(1) The State Government may, if it deems fit, by notification in the Official Gazette, establish,

for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission.

(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification in the Official Gazette, specify.

(4) The State Commission shall consist of not more than three Members including the Chairperson.

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

(6) The Chairperson and the Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in Section 18.

(7) Notwithstanding anything contained in Sub-section (5) or Sub-section (6), the State Government may appoint any person as the Chairperson from amongst persons who is or has been a Judge of a High Court:

Provided that no appointment under this sub-section shall be made except after consultation with the Chief Justice of that High Court.

(8) The Chairperson shall be the Chief Executive of the State Commission.

(9) The Chairperson or any other member of the State Commission shall not hold any other office.

18. Constitution of Selection Committee by State Government.--(1) The State Government shall, for the purposes of selecting the Members of the State Electricity Commission, constitute a Selection Committee consisting of-

(a) a person who has been a Judge of the High Court. Chairperson. (b) the Chief Secretary of the concerned State. Member. (c) the Chairperson or a Member of the Central Electricity Authority: Member. Provided that nothing contained in this clause shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court.

(2) No appointment of a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal and six months before the superannuation or end of tenure of any Chairperson or a Member, make a

reference to the Selection Committee for filling up of the vacancy.

(4) The Selection Committee shall finalise the selection of the Member, within one month from the date on which the reference is made to it.

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

(6) Before recommending any person for appointment as a Member, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as a Member.

19. Term of office, salary and allowances and other conditions of service of Chairperson and Members.--(1) The Chairperson or other Members shall hold office as such for a term of five years from the -date on which he enters upon his office, but shall not be eligible for reappointment:

Provided that no Chairperson or other Member shall hold office as such after he attained,-

(a) in the case of the Chairperson, the age of sixty-five years; and

(b) in the case of any other Member, the age of sixty-two years.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the Members of the State Commission shall be such as may be prescribed by the State Government.

(3) The salary, allowances and other conditions of service of the Members, shall not be varied to their disadvantage after appointment.

(4) Every Member of the State Commission shall, before entering upon, his office, make and subscribe to an oath of office and of secrecy in such form and in such manner and before such authority as may be prescribed.

(5) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), a Member may--

(a) relinquish his office by giving in writing to the Governor notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of Section 20.

(6) Any Member ceasing to hold office as such shall-

(a) be ineligible for further employment under the Central Government or any State Government for a period of two years from the date he ceases to hold such office;

(b) not accept any commercial employment for a period of two years from the date he ceases to hold such office; and

(c) not represent any person before the Central Commission or State Commission in any manner.

Explanation.--For the purpose of this sub-section,-

(i) "employment under the Central Government or under the State Government" includes employment under any local or other authority within the territory of India or under the control of the Central Government or a State Government or under any corporation or society owned or controlled by the Government.

(ii) "Commercial employment" means employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in the electricity industry and includes also a director of a company or partner of a firm and it also includes setting up practice either independently or as partner of a firm or as an advisor or a consultant.

10. Since Selection Committee was constituted for the appointment of a member, therefore, its constitution was in accordance with law. However, as per provisions of Section 17(6), Chairman as well as Members of the State Commission are to be appointed by the State Government on the recommendations of the Selection Committee referred to in Section 18. As per provisions of Section 18(4) supra, Selection Committee was called upon to finalise selection as Member which it did by recommending two names as per Section 18(5) thereof.

11. What is the effect of Annexure P-I appointing Respondent No. 3 as Chairman is directly covered by Section 19. A Chairperson can hold office till the age of 65 years, whereas a Member can hold the office till the age of 62 years. This is the major and substantial difference of holding of office by a Chairperson as well as by a Member.

12. In addition to this, in the instant case, Respondent No. 3 was appointed as a Member in the scale of Rs. 22400-525-24500 besides D.A., and other allowances as per condition No. 1 of the terms and conditions of his appointment under the heading "Terms and Conditions". Similarly, he could hold office under the said terms for a period of five years or upto the age of 62 years whichever was earlier. In case of his appointment as Chairperson vide Annexure R-2/M, his pay was enhanced to Rs. 26,000 per month. As per Section 19 supra, he was to hold the office upto the age of 65 years.

13. Mr. K.D. Sood, learned Counsel for the Commission i.e., Respondent No. 2 as well as for Respondent No. 3 submitted that this writ petition deserves to be dismissed on the ground of delay and laches as also Petitioner having no right to maintain the same. He further submitted that since definition of a Member is inclusive of Chairperson also u/s 2(g) of the Act and constitution of Committee which was to make selection to both these posts is the same, no exception can be taken to Annexure P-I. He further submitted that without admitting that the appointment of his client as Chairman is defective, in the alternative, it is a curable defect. As such present litigation is an exercise in futility. Therefore, it

deserves to be dismissed.

14. According to him this is a case of change of designation and nothing else.

15. Mr. Sood further highlighted that no relief can be given to the Petitioner in the present litigation, as according to him, on a joint reading of Sections 18 and 2(g) of the Act, person recommended to be appointed as a Member by the Selection Committee can also be appointed as a Chairperson of the Commission. As such, no exception can be taken to Annexure P-1 which needs to be upheld, particularly when definition clause 2(g) is inclusive i.e. that member also includes Chairperson.

16. After having heard learned Counsel for the parties and for the reasons to be recorded hereinafter, in our considered view, the appointment of Respondent No. 3 as a Chairperson One Member of Himachal Pradesh State Electricity Regulatory Commission, vide notification No. MPP-A(7) 1/98, dated Shimla, 171002, 26.4.2001, Annexure P-I extracted hereinabove is ultra vires of the provisions of the Act, particularly, Sections 18 and 19 thereof and thus is void ab initio.

17. From the documents placed on record as well as on the basis of the Government file produced by Mr. Negi, position that emerges is, that initially State Government intended to constitute the aforesaid Commission consisting of three Members. However, finally, it was decided that it will be a One Member Commission. For recommending the name to the post of a Member, Selection Committee was constituted as per provisions of Section 18 supra. Said committee made recommendations of two names for the post of Member alone. So far constitution of committee for recommending two names for the post of One Member Commission is concerned, it was not even disputed at the time of hearing on behalf of any of the Respondents. Record further shows that vide communication dated Nil, Annexure R-2/F, Respondent No. 3 unconditionally, unequivocally, as well as without any demur accepted the offer made to him by the State Government on 30.12.2000 vide Annexure P-2/E, when he informed Respondent No. 1 of his such acceptance vide Annexure R-2/F. After having accepted the offer of Respondent No. 1 for appointing him, (Respondent No. 3), and also after joining as a Member as per Act on 6.1.2001, that said Respondent started raking up the matter with Respondent No. 1. This he did after having entered the office. When he started asking the Government for something more than that was initially offered to him which he accepted as noted hereinabove.

18. Respondent No. 1 for the reasons best known to it started giving a second thought to Petitioner's case. And finally again for the reasons best known to it, Respondent No. 1 issued notification dated 26.4.2001 thereby appointing Respondent No. 3 as a Chairperson of One Member Commission for a term of five years from the date of entering the office or till he attains the age of 65 years whichever is earlier. This offer was made vide Annexure R-2/J, dated 3.4.2001. For ready reference, this Annexure is extracted herein below:

No. MPP-A(7)-1/98,

Government of Himachal Pradesh Department of MPP and Power.

From

The ACS-cum-Secy. (Power) to the Government of Himachal Pradesh

To

Shri S.S. Gupta

Member,

H.P. Electricity Regulatory Commission

Vidyut Bhawan, Shimla-171004

Dated, Shimla-171002, the 3rd April, 2001.

Subject:--Appointment to the post of Member H.P. Electricity Regulatory Commission, Regarding.

Sir,

With reference to your letter No. HPSERC/Misc./2001021, dated 15th January, 2001, on the "above mentioned subject, I am directed to inform you that the Governor of Himachal Pradesh, has given his kind consent to the change of the designation of the post being held by you as "Chairman" (One Member Commission), H.P. Electricity Regulatory Commission instead of "Sole Member".

(Emphasis supplied).

(2) You are, therefore, requested to consider and convey your acceptance in this behalf at the earliest after which further appropriate action will be taken.

Yours faithfully, Sd/-

Commissioner-cum-Secretary (Power) to the Government of Himachal Pradesh.

19. A perusal of Annexure R-2/J shows that Government has asked for the consent of Respondent No. 3 only for the change of his designation from the post of a Member of the Commission to Chairperson, One Member Commission and nothing more. Strangely enough, vide Annexure P-1 on 26.4.2001, Respondent No. 3 was appointed as Chairperson of the Commission and was given the benefit of Section 19(1)(a) of the Act. How he could be appointed as Chairperson when offer was made to him for change of designation only.

20. Learned Advocate General was unable to explain this and Mr. Sood, learned Counsel appearing for Respondents No. 2 and 3 again placed reliance to Section 2(g) of the Act.

21. We may observe in this behalf that when the process was initiated and/or reference was made by Respondent No. 1, it was only for the appointment of a person to the post of One Member of the Himachal Pradesh State Electricity

Regulatory Commission. A person might like to apply for the post of Chairperson, but not for being appointed-as a Member. After noticing that Respondent No. 1 intended to appoint a Member only, such person may not have come forth.

22. Besides this, person as a Member was to continue for five years or upto the age of 62 years whichever was earlier. In case of Chairperson, he was to continue for five years, or till he attains the age of 65 years whichever is earlier.

23. By appointing Respondent. No. 3 as a Chairperson of the Commission in question, his term of office has been extended from 62 years to 65 years or five years whichever was earlier. His emoluments have been enhanced from the pay scale of Rs. 22,400 to 26,000 (fixed), as Chairperson. It hardly needs to be clarified that benefit of enhanced salary has been allowed to Respondent No. 3 by Respondent No. 1. Record of Respondent No. 1 suggests that without any justifiable cause or otherwise simply on the asking of Respondent No. 3 and by taking into account the Delhi instance, as referred to hereinabove, it decided to appoint Respondent No. 3 as Chairperson of the Commission. As such, the appointment as Chairperson of Respondent No. 3 was neither warranted in the facts and circumstances of the case, nor can be supported in law. That being so, it is held that appointment of Respondent No. 3 as a Chairperson One Member, H.P. State Electricity Regulatory Commission for a term of five years from the date on which he enters the office or till he attains the age of 65 years vide notification, dated 26.4.2001 is void ab initio being ultra vires of the provisions of the Act and is declared to be so.

24. Now coming to the objection raised by Mr. Sood regarding maintainability of this writ petition on the ground of delay and laches in filing the same. It may be noted here that notification appointing Respondent No. 3 as Chairperson of the Commission in question is dated 26.4.2001, whereas this writ petition was filed on 5.6.2002. Again for the reasons to be recorded hereinafter, we feel that the doctrine of delay, as also the right of the Petitioner to maintain this writ petition will not come in the way of this Court in deciding this writ petition. Admittedly, Respondent No. 3 is holding a public office for which the provisions have been made in the Act. As such, it is for Respondent No. 3 to satisfy this Court that he is holding the post of the Chairperson as per requirement of the Act and, therefore, no exception can be taken to his such appointment.

25. No doubt, a person in order to maintain a writ petition, is "ordinarily" required to show how he is affected by the impugned action and what right he has to maintain an action under Article 226 of the Constitution of India. This principle of law has to be justified in case of maintaining a writ of mandamus or certiorari etc. Even this has also, in course of time, been whittled down to a very large extent. Cases of payment of minimum wages to the labourers employed at the time of construction of stadium for holding of Asiad Games, as well as those who became blind while lodged in Bhagalpur Jail, are some instances where the Court had interfered and dealt with such matters. These are only illustrative examples and not exhaustive.

26. In *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, , Constitution Bench of the Supreme Court of India while dealing with the issuance of a writ of quo warranto extracted from the Halsbury's Law of England 3rd Edition, Vol. II, P-145 which squarely negatives the plea of Mr. Sood, as to who can maintain the writ of quo warranto is concerned. For ready reference, this is extracted hereinbelow:

(7) As Halsbury has observed:

An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay 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. 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 inquiry 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 office 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 held, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

This decision was relied upon by Mr. Sood in support of his contention that this writ petition is not maintainable. But that is not the situation.

27. A Full Bench decision of Allahabad High Court in *Hari Shankar Prasad Gupta Vs. Sukhdeo Prasad and Another*, as well as Full Bench Decision of Delhi High Court in the case of *P.L. Lakhanpal Vs. A.N. Ray and Others*, were next relied upon by Mr. Sood with a prayer to dismiss the writ petition.

28. We have gone through both these decisions. In Allahabad case, the Constitution of Election Tribunal was challenged. Delay was taken as one of the grounds, particularly, when Tribunal had commenced and had almost recorded all the evidence. Besides this, in this case, challenge was on the ground of the one

Member not qualified to act as such on the date of his appointment, but at the time of date of hearing of the case, he had become qualified and there was nothing to ban his re-appointment as such. High Court refused to entertain application under Article 226 of the Constitution of India. Likewise, in the Full Bench Decision of Delhi High Court, appointment of Shri Justice A.N. Ray as Chief Justice of India on the retirement of Justice S.M. Sikri was challenged. Looking to the fact that after his appointment as Chief Justice of India, Senior Judges had resigned before the writ petition was filed. It was held that even after his appointment as Chief Justice of India, he does not cease to be a Judge of that Court. As such, Justice Ray did not lack the necessary qualification mentioned in Article 124(3) of the Constitution of India and thus he could be re-appointed as such. In these circumstances, it was held that the issuance of writ, would be an exercise in futility. Thus, both these decisions do not in any manner advance the case of Respondents in the present case.

29. Again reference was made to by Mr. Sood to a Division Bench Judgment of Orissa High Court reported as Gunanidhi Mohapatra Vs. The Chairman, N.A.C. and Others, In this case also, the relief was denied on the ground that a holder of the public office was not qualified on the date of his appointment, but acquired necessary qualification during the pendency of the writ petition. It was also held that where a person challenges holding of a public in contravention of Article 16 of the Constitution, such person ought to be an aspirant himself. Division Bench also held that if a writ asked for is a writ of mandamus or certiorari, the Petitioner has to establish that he has some personal interest in the matter which the law recognises as sufficient. In this case election was challenged and the relief was declined.

30. In Moti Ram Vs. Union of India (UOI) and Others, while dealing with the question as to who can maintain a writ of quo warranto, what was observed and is relevant to the present was as under:

(42) A preliminary objection, that the Petitioner has no locus standi to file the writ petition as none of his constitutional or legal rights has been infringed by the provisions of Section 54 of the Government of Union Territories Act, was taken. But this objection was not pressed at the time of arguments. The objection does not appear to be well founded.

Respondent Nos. 3 to 47 are holding office of a public nature, in Himachal Pradesh by virtue of the provisions of the Government of Union Territories Act enacted by Parliament, and being enforced by Respondent Nos. 1 and 2. The Petitioner a resident of Himachal Pradesh was entitled to challenge, by a writ petition under Article 226 of the Constitution, whether Respondent Nos. 3 to 47 were validly holding their offices irrespective of the fact whether his personal right had been infringed or not. It was observed in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, that though the existence of a legal right and its infringement is the foundation of the exercise of jurisdiction under Article 226 of the Constitution, yet this rule may have to be

relaxed or modified in the case of a writ of quo warranto. The question, whether a person whose right has not been infringed is entitled to file a writ petition for the issue of a writ of quo warranto was considered in *Rajendar Kumar Chandanmal Vs. Government of State and Others*, it was held that:

For the issue of a writ of quo warranto, no special kind of interest in the relator is needed nor is it necessary that any of his specific legal right be infringed. It is enough for its issue that the relator is a member of the public and acts bona fide and is not a mere pawn in the game having been set up by others.

31. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, while considering the maintainability of a writ petition in the nature of quo warranto, Supreme Court observed as under:

(8) The first question is whether the Appellant had locus standi to file a petition in the High Court under Article 226 of the Constitution. This Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, dealing with the question of locus standi of the Appellant in that case to file a petition under Article 226 of the Constitution in the High Court, observed:

Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Para III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply there under; but it is implicit in the exercise of the extra-ordinary jurisdiction that the relief asked for must be one to enforce a legal right .the right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the Petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified.

32. To similar effect is the decision in *Dineshwar Prasad Vs. The State of Bihar and Another*,

33. We may further notice in this case that Respondent No. 1 ought to have been more careful and cautious while dealing with this matter, particularly when it had never intended to appoint a Chairperson in the first instance. This is clearly supported from the fact that selection committee constituted u/s 18(1) of the Act was in fact called upon to send a panel of two names for being appointed a Member of the Commission. On receipt of such recommendation, offer was made to Respondent No. 3 for his appointment as a Member and nothing more. At the risk of repetition, we may reiterate that he accepted such offer and then subscribed to the requisite oaths of office and secrecy vice Annexures R-2/H-1 and R-2/H-2, respectively. We may notice that Respondent No. 3 was in hurry to join as a One Member to the Commission in question. This is clearly spelt out from the fact that offer with terms and conditions was made to him on 30.12.2002 (Annexure R2/E1). He submits his acceptance. He is appointed on

6.1.2001 he joins as Member on that very day as noticed hereinabove. Thereafter on 15.1.2001, he starts making demands. To his such demands/pricks, the State Government-Respondent No. 1 fell prey and finally appointed him as Chairperson; little realising that right of other persons who may have applied for being considered for appointment as Chairperson of the Commission is being taken away, had applications been called to the post of Chairperson. Looking to the provisions of the Act, we have no hesitation in holding that it was without following the procedure prescribed by law. Thus, benefit of enhanced salary, as well as tenure was extended to Respondent No. 3 and on what basis in law, Mr. Negi was not able to justify the action of his clients. Though Mr. Sood persisted with vehemence that there is nothing wrong in it by placing reliance on the provisions of Sections referred to hereinabove.

34. Petitioner has not only been successful in pointing out, but also highlighting the fact that Respondent No. 3 is an usurper of office of Chairperson "One Member" of the H.P. State Electricity Regulatory Commission without having been either recommended or selected to hold the said post. In fact Annexure P-1 is violative of Article 14 of the Constitution of India directly and as such action of Respondents is liable to be struck down on this ground alone.

35. No other point is urged.

36. In view of the aforesaid discussion, this writ petition is allowed and as a consequence of it, it is held that the appointment of Respondent No. 3 as Chairperson "One Member" of the H.P. State Electricity Regulatory Commission, notified on 26.4.2001 vide notification No. MPP-A(7)-1/98, i.e. Annexure P-1 by Respondent No. 1 being ultra vires of the Act is thus declared void ab initio. What follows from this is that office of Chairman is held vacant.

37. Now the further question that arises is as to what is to be done with the actions already taken by Respondent No. 3 while holding the office of Chairperson. We feel that any action taken by said Respondent till the date of this judgment will not be affected by this decision.

38. Respondent No. 1 will pay cost of this litigation which we quantify at Rs. 10,000. We leave it to the good sense of Respondent No. 1 to decide whether to recover this amount from the officers/officials who were instrumental in guiding the State Government in the appointment of Respondent No. 3 as Chairperson being its eyes and ears. This we are saying looking to the files of Respondent No. 1. In case, Respondent No. 1 decides to recover this amount, as aforesaid, it shall afford a reasonable opportunity of being heard to such officers/officials whether in service or have since retired from service before effecting recovery.

39. At this stage, Mr. Mittal, learned Senior Counsel appearing for the Petitioner submitted that 50% of the cost may be paid to H.P. High Court Bar Association for purchase of Books and the remaining 50% be ordered to be deposited with the Bar Council of Himachal Pradesh for being utilized towards the Advocates' Welfare Fund. Prayer allowed and it is ordered accordingly. Costs be deposited by

or before 30.6.2003.

40. Record produced by Mr. Negi has been returned to him in Court in sealed cover.