
(2018) 01 UK CK 0001
In the Uttarakhand High Court
Case No : 165 of 2016

Chandra Shekhar Kargeti

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 51A\(j\)](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Fundamental duties

Citation : (2018) 01 UK CK 0001

Hon'ble Judges : Sudhanshu Dhulia, U. C. Dhyani

Bench : Division Bench

Advocate : M.C. Pant, Ravi Joshi, M.C. Pandey, Yogesh Pandey, Vipul Sharma

Final Decision : Dismissed

Judgement

1. By means of present writ petition (PIL), the petitioner seeks following reliefs, among others:

(i) Issue a writ, order or direction in the nature of declaration or any appropriate writ and to declare the appointment in violative to the

constitutional mandate and against the public at large and as well as against the objects of the Right to Information Act, 2005.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 08.11.2016 (Annexure 6 to the petition) along with

its effect and operation.

2. The petitioner, as stated, is a practicing Advocate enrolled with the Bar Council of Uttarakhand, an RTI activist and a public spirited person

with more than 40 odd applications and appeals filed and pending under the Right to Information Act, 2005, under his name and is actively

involved in unveiling several anomalies in the Social Welfare and Education Department in the State of Uttarakhand for public good and welfare.

3. Petitioner drew the attention of this Court towards the fact that despite the pendency of a writ petition with regard to the appointment of Chief

Information Commissioner and State Information Commissioners in the State of Uttarakhand, having assured the Court that they will seek

instructions in the matter, have, in a clandestine manner appointed Sri Shatrughan Singh as the State Chief Information Commissioner, in order to

frustrate the very purpose of filing the earlier petition.

4. It is submitted that earlier a Writ Petition (PIL) no. 158 of 2016 was filed by the petitioner highlighting the fact that the State of Uttarakhand is

trying to defy the mandate of the Union Legislature and the spirit of the RTI Act by permitting a single member to preside and act on behalf of the

entire State Information Commission while hearing second appeals under the Right to Information Act, 2005, and appointing Chief Information

Commissioner in a most clandestine manner to favour certain officers who have retired or are due to retire in near future.

5. The question, therefore, posed in present Writ Petition (PIL) is ? whether the State Government can defy the mandate of the Union Legislature

and the spirit of the RTI Act by appointing Chief Information Commissioner in a most clandestine manner to favour certain officers, who have

retired, or are due to retire in near future?

6. Learned counsel for the petitioner submitted that the Union of India enacted the Right to Information Act, 2005 (Act no. 22 of 2005) and the

same came into force with effect from 15.06.2005. The Act is a complete code in itself with the inbuilt procedure to harmonize various conflicting

interests while protecting the rights of the citizens to access to information as also the efficient operation of the Government, optimum use of limited

fiscal resources and the preservation of confidentiality of sensitive information. However, the right of the citizens to access to public information

remains supreme which is the main guiding force of the Right to Information Act, 2005.

7. The State of Uttarakhand came into existence on 09.11.2000 after bifurcation of the State of Uttar Pradesh. After it came into existence, it

became one of the first States to implement the Right to Information Act, 2005,

within its territory. The State of Uttarakhand also formulated its own rules known as the Uttarakhand Right to Information Rules, 2013, in exercise of its powers under Section 27(1) and 27(2) of the Central Act.

After the implementation of the Right to Information Act, 2005 (here-in-after referred to as "the Act"), the State of Uttarakhand constituted the

Uttarakhand State Information Commission with its principal seat at Dehradun, in exercise of its powers under Section 15 of the Act. A post of

State Chief Information Commissioner was created with such number of State Information Commissioners (not exceeding ten) as the State

Government may deem fit.

8. As per Section 19(3) of the Act, any second appeal preferred against an order passed by an authority in first appeal under Section 19(1), shall

lie to the State Information Commission. The constitution of the State Information Commission is provided under Section 15(2) of the Act which is

intended to be a multi member commission consisting of a State Chief Information Commissioner and such number of State Information

Commissioners (not exceeding ten) as the State Government may deem fit. Despite clear and unambiguous legal provisions, surprisingly, in the

State of Uttarakhand, the second appeals under Section 19(3) are being heard and decided by a single member under the name and on behalf of

the State Information Commission.

9. Such a practice has been deprecated and discouraged by the Division Bench of Hon"ble Himachal Pradesh High Court in Virender Kumar vs

P.S. Rana and another, AIR 2007 HP 6 3, while dealing with a similar controversy. The said decision has been affirmed by Hon"ble Apex Court.

10. The main attack in present Writ Petition (PIL) is that a trend is being noticed in the State of Uttarakhand that the office of the State Chief

Information Commissioner has become the "dumping ground" (the words used by the petitioner; euphemism would, probably be, "rehabilitation")

for retired bureaucrats, who are rewarded for their loyalty to the State Government. When the appointment itself is a reward for loyalty, then the

fairness and credibility of such appointee itself becomes doubtful.

11. It is submitted by learned counsel for the petitioner that qualification for the post of State Chief Information Commissioner is provided under

Section 15(5) of the Act which nowhere requires the appointment of a retired

bureaucrat, rather it prescribes that he shall be a person 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.

12. As per Article 51A(j) of the Constitution, it is incumbent upon the State as well as its citizens to strive for excellence in all spheres of individual

and collective activity so that the nation constantly rises to higher levels of endeavour and achievement and in doing so the best possible individual

must be chosen to man the post of State Chief Information Commissioner, rather than choosing a retired bureaucrat. Ever since its creation, the

post of State Chief Information Commissioner is regularly being manned by the retired Chief Secretary of the State which is nothing but arbitrary

and unreasonable and is clearly violative of Article 14 of the Constitution of India, according to pleadings.

13. The post of State Chief Information Commissioner was lying vacant since 01.04.2015 and the administrative work was being carried out

through the State Information Commissioners. The post of State Chief Information Commissioner was advertised first on 02.07.2015. The same

was further extended vide advertisement dated 17.09.2016, which clearly indicated that the State Government was doing so to accommodate

persons of its choice, who were due to retire soon. The above, among others, are the legal and factual submissions made before us.

14. A prayer has, therefore, been made, among other things, to set aside the order dated 08.11.2016 (copy Annexure 6 to the petition), which is a

Notification appointing Sri Shatrughan Singh as State Chief Information Commissioner.

15. The first submission of learned counsel for the petitioner is that respondent no. 4 has been appointed during the pendency of writ petition, in a

clandestine manner to frustrate the very purpose of filing the earlier petition. It may be noted here that Writ Petition (PIL) no. 158 of 2016 is still

pending before this Court. At present only Writ Petition (PIL) no. 165 of 2016 is being decided. If the Court directed the respondents to seek

instructions in the matter and the respondents, in the meanwhile, appointed respondent no. 4 as State Chief Information Commissioner, the Court

does not find any impropriety on the part of the respondents in doing the same.

16. Further, it is the submission of learned counsel for the petitioner that some officers, who have either retired or due to retire in near future, are favoured for appointment on the post of State Chief Information Commissioner. It may be noted here that writ of quo warranto proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title, he would be directed to be removed from the said office by a judicial order. The proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to protect the public from being deprived of public office to which it has a right. It is indisputably a high prerogative writ which was reserved for the use of Crown.

17. It is settled law, by a catena of decisions, that Court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses prescribed qualification and is otherwise eligible for appointment. Hon"ble Supreme Court in R.K. Jain vs. Union of India, (1993) 4 SCC 119, was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, it may be open to be considered. It was also held that in service jurisprudence it is settled law that except for issuing a writ of quo warranto, it is for the aggrieved person that is the non-appointee to assail the legality or correctness of the action and that third party has no locus standi to canvass the legality or correctness of the action.

18. In para 13 of the present PIL, it has been averred that despite clear and unambiguous legal provision, second appeals under Section 19(3) are being heard and decided by a single member on behalf of the State Information Commission.

19. Now that the Chief Information Commissioner has been appointed by the respondents, the anomaly, if any, in hearing of second appeal stands cured. Petitioner's complaint in this respect has, therefore, been redressed.

20. It is also the submission of learned counsel for the petitioner that the post of State Chief Information Commissioner has become a place for "accommodating" retired bureaucrats, who have been rewarded for their loyalty

to the State Government. It is also submitted that when the appointment is itself a reward for loyalty then the fairness and credibility of such appointee itself becomes doubtful.

21. The selection and appointment of Chief Information Commissioner and Information Commissioners has not been left entirely to the discretion

of the State Government under Section 15 of the Act. Section 15(3) provides that the Chief Information Commissioner and Information

Commissioners shall be appointed by the Governor on the recommendation of the Committee named therein. It has been declared that Section

15(5) of the RTI Act is not ultra vires the Constitution.

22. Section 15(5) of the RTI Act provides that Chief Information Commissioner and Information Commissioners have to be persons of eminence

in public life with wide knowledge and experience in different fields mentioned therein, namely, law, science and technology, social service,

management, journalism, mass media or administration and governance. Thus, the basic requirement for a person to be appointed as a Chief

Information Commissioner or Information Commissioner is that he should be a person of eminence in public life with wide knowledge and

experience in a particular field. Parliament has insisted on this basic requirement having regard to the functions that the Chief Information

Commissioner and Information Commissioners are required to perform under the RTI Act.

23. As the preamble of the Act states, democracy requires an informed citizenry and transparency of information which are vital to its functioning

and also requires that corruption is contained and Governments and their instrumentalities are held accountable to the governed.

24. Thus, persons of eminence in public life with wide knowledge and experience in the fields mentioned in Section 15(5) of the RTI Act, namely,

law, science and technology, social service, management, journalism, mass media or administration and governance, are to be considered by the

Committees under Section 15(3) of the RTI Act for appointment as CIC/ICs. The Committees under Section 15(3) of the RTI Act while making

recommendations to the Governor for appointment of CIC/ICs 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 citizens as part of their right to information under the RTI Act after the appointment is made.

25. Section 15(5) of the RTI Act provides for appointment of persons with wide knowledge and experience in law. It is expected that persons

with wide knowledge and experience in law will be appointed in the Information Commissions in the States. Accordingly, wherever the CIC is of

the opinion that intricate questions of law will have to be decided in a matter coming before the Information Commissions, he will ensure that the

matter is heard by an Information Commissioner who has such knowledge and experience in law.

26. From Sections 18 to 20 of the RTI Act, it is clear that the functions of the Information Commissions are limited to ensuring that a person who

has sought information from a public authority in accordance with his right to information conferred under Section 3 of the Act, is not denied such

information, except in accordance with the provisions of the Act. While deciding whether a citizen should or should not get a particular information

"which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more

parties concerning their legal rights other than their right to get information in possession of a public authority. The Information Commission is

required to decide whether the information could be given to the person asking for it or should be withheld in public interest or any other interest

protected by the provisions of the RTI Act. The information Commission, therefore, while deciding this is does not really perform a judicial

function, but performs an administrative function in accordance with the provisions of the RTI Act.

27. The decision taken by the State Public Information Officer under Section 11 of the RTI Act, to disclose any information or record or part

thereof, on a request made under the RTI Act, which relates to or has been supplied by a third party and has been treated as confidential by that

third party, is appealable under Section 19 of the RTI Act before the Information Commission. When the Information Commission decides such an

appeal, it decides only whether or not the information should be furnished to the citizen in view of the objection of the third party. Here also the

Information Commission does not decide the rights of a third party but only whether the information which is held by or under the control of a

public authority, in relation to, or supplied by that third party, could be furnished to a citizen under the provisions of the RTI Act. Hence, the

Information Commission discharges administrative functions, not judicial functions.

28. While performing these administrative functions, however, the Information Commissions are required to act in a fair and just manner following

the procedure laid down in Sections 18, 19 and 20 of the RTI Act. But this does not mean that the Information Commissioners are like Judges or

Justices who must have judicial experience, training and acumen.

29. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been

made out for issuance of a writ of quo warranto or not? A writ of quo warranto does not lie if the alleged violation is not of statutory

provisions/rules or if the alleged violation is not of a statutory nature.

30. In High Court of Gujarat & Anr. Vs. Gujarat Kishan Mazdoor Panchayat & Ors., (2003) 4 SCC 712, it was held by Hon''ble Supreme Court

that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. The judgment rendered by Hon''ble Apex

Court in Mor Modern Coop. Transport Society Ltd. Vs. Financial Commissioner & Secretary to Government of Haryana, (2002) 6 SCC 269,

supports this view.

31. We have gone through the documents relating to the appointment of State Chief Information Commissioner, which have been supplied on

behalf of respondent no. 3 Commission. No doubt, the Act nowhere requires the appointment of a retired bureaucrat but, at the same time,

provides that the appointee should be a person 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. It goes without saying that respondent no. 4 is a retired

Chief Secretary and must have wide experience in the field of administration and governance. It cannot be said, on the basis of documents thus

placed on behalf of respondent no. 3, that he is not a person of eminence in public life with wide knowledge and experience in administration and

governance. The Committee has recommended his name after due consideration on this score.

32. It may be stated that judicial review for the purpose of issuance of writ of quo warranto in a case of this nature would lie in the event the holder

of a public office was not eligible for appointment; and if processual machinery relating to consultation was not fully complied. Here, respondent

no. 4, as per report of the Committee was eligible for appointment and processual requirement has been fully complied with.

33. A writ of quo warranto cannot be issued unless there is a clear violation of law. The High Court would err in issuing a writ of quo warranto if

there is no clear violation of law in the appointment of the private respondent. Here, we do not find any violation of law in the matter of

appointment of respondent no. 4.

34. The jurisdiction of the High Court to issue a Writ of quo warranto is a limited one which can only be issued when the appointment is contrary

to the statutory rules. A writ of quo warranto can be issued when the holder of a public office has been appointed in violation of constitutional or

statutory provisions. Issuance of a writ of quo warranto is a discretionary remedy. Authority of a person to hold a high public office can be

questioned inter alia in the event an appointment is violative of any statutory provisions. Here, we find that, it is not contrary to any constitutional or

statutory scheme.

35. In *Corpus Juris Secundum* [74 C.J.S. Quo Warranto 14], "'Quo Warranto'" is defined as under:

Quo warranto, or a proceeding in the nature thereof, is a proper and appropriate remedy to test the right or title to an office, and to remove or

oust an incumbent. It is prosecuted by the state against a person who unlawfully usurps, intrudes, or holds a public office. The relator must establish

that the office is being unlawfully held and exercised by respondent, and that relator is entitled to the office.

36. In the *Law Lexicon* by J.J.S. Wharton, Esq., 1987, "'Quo Warranto'" has been defined as under:

QUO WARRANTO, a writ issuable out of the Queen's Bench, in the nature of a writ of right, for the Crown, against him who claims or usurps

any office, franchise, or liberty, to enquire by what authority he supports his

claim, in order to determine the right. It lies also in case of non-user, or long neglect of a franchise, or mis-user or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise having never had any grant of it, or having forfeited it by neglect or abuse.

37. 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 inquire 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 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 not 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 the enquiry as to whether the appointment of the alleged usurper has been made in

accordance with law or not.

38. Judicial review in our constitutional scheme itself is a part of its basic structure. Decisions, whether arrived at by the executive or the judiciary,

are subject to judicial review. The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are

often more easily made than proved, and the very seriousness of such allegations demands proof of a higher order of credibility. The anxiety of the

Court should be all the more greater to insist on a higher degree of proof.

The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it particularly when they are made against the holder of an office, who owes high responsibility in the administration.

39. Given the vast multitudinous activities in which a modern State is engaged, there are bound to be some posts which require for adequate discharge of their functions, high degree of intellect and specialized experience. It is always a difficult problem for the Government to find suitable officers for such specialized posts. There are not ordinarily many officers who answer the requirements of such specialized posts and the choice with the Government may, at times, be very limited. The Government has, in the circumstances to make the best possible choice it can, keeping in view the larger interests of the administration.

40. A public law declaration can only be made at the behest of a public spirited person coming before the court as a petitioner. An evaluation of the comparative merits of candidates for a post cannot be gone into in a public interest litigation and only in a proceeding initiated by an aggrieved person, such comparative merits may be considered. In service jurisprudence, it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and a third party has no locus standi to canvass the legality or correctness of the action.

41. The next submission of learned counsel for the petitioner is that respondent no. 4 is in the habit of flouting orders passed by State Information Commission and when complaints were made against him in the past, he was admonished and was warned on several occasions by the Commission. It is thus submitted that a person who has no respect for the law and particularly, the Right to Information Act, 2005, or the orders passed by State Information Commission, cannot be permitted to head the same. It is true that a person holding the post of State Chief Information Commissioner should have faith in the system which he is going to head and his past record should be taken into consideration but, ultimately, it is for those, who appoint any person of eminence to such post, to see the same. The Court is not supposed to enter into such niceties. Of course, the Court will look into the same if there is breach of certain constitutional or statutory provisions. Moreover, the Court is not in a position to comment on such an allegation leveled against respondent no. 4, in the absence of reliable

material in support of the same.

42. It has already been held by Hon''ble Apex Court in Hari Bansh Lal vs Sahodar Prasad Mahto and others, (2010) 9 SCC 655, that suitability

or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is

contrary to the statutory provisions/rules.

The following are the principles:

(a) Except for a writ of quo warranto, PIL is not maintainable in service matters.

(b) For issuance of a writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

(c) Suitability or otherwise of a candidate for appointment to a post in government service is the function of the appointing authority and not of the

court unless the appointment is contrary to statutory provisions / rules.

43. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to

see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as

an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of "public interest litigation" should

not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented

or founded on personal vendetta. Courts must be careful to see that a body of persons or member of public, who approaches the court is acting

bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to

be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of

habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve

to be thrown out by rejection at the threshold, and, in appropriate cases, with exemplary costs.

44. To sum up, a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. The Court can interfere when the

holder of a public office has been appointed in violation of constitutional or statutory provisions. If constitutional or statutory provisions have been

violated, the decision taken is subject to judicial review. The Court cannot sit into judgment over the wisdom of the Government in the choice of the persons to be appointed so long as the person chosen possesses prescribed qualifications and is otherwise eligible for appointment. The Court, in the instant case, does not find any illegality or irregularity in the appointment of respondent no. 4, as State Chief Information Commissioner. Even though, evaluation of comparative merit of the candidates would not be gone into in a PIL, yet on a bare reading of the qualifications and merits of the candidates, who were considered for the post of State Chief Information Commissioner, we do not find anything wrong in the selection of respondent no. 4, as State Chief Information Commissioner.

45. We, however, agree with the submission of learned counsel for the petitioner that in the matter of appointments to higher echelons, fairness should be the hallmark of selection. In the past, all the Chief Information Commissioners, in the State, were former Chief Secretaries. There are innumerable statutes where it is provided that a designated officer can only be appointed to a top post. In Right to Information Act, 2005, there is no such requirement that a former Chief Secretary can only be appointed as State Chief Information Commissioner. No person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism or mass media has been appointed as State Chief Information Commissioner so far. We hope, that in future, the persons of eminence will be drawn from these walks of life also.

46. Here, the petitioner has not moved present writ petition (PIL) actuated by any motive or oblique consideration. Petitioner is not actuated by a desire to win notoriety or cheap publicity either. His sole intention behind filing present writ petition (PIL), it appears, is to espouse the cause of his fraternity (Lawyers), i.e., to appoint a person of eminence, in law, as CIC, and nothing else.

47. Writ Petition (PIL) fails and is dismissed.