
(2005) 08 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1087 of 2004

Citizen Rights Protection Forum

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-08-2005

Acts Referred:

Constitution of India, 1950 — Article 154, 162, 163, 164, 164(1A)

Citation : (2006) 1 ShimLC 60

Hon'ble Judges : V.K. Gupta, C.J.;Deepak Gupta, J

Bench : Division Bench

Advocate : S.P. Jain and Sandeep Kaushik, for the Appellant; Sandeep Sharma, Assistant Solicitor General of India for Respondent No. 1, Y.K. Thakur, for Respondent Nos. 2, 3, 4, 6, 7, 9 and 11 to 14, Rakesh Jaswal, for Respondent No. 5, B.C. Negi and Rajiv Sharma and Rajiv Jiwan, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—In this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner, "Citizen Rights Protection Forum", a Society registered under the Societies Registration Act, has prayed for the following reliefs:

(i) That this Hon"ble Court may direct the respondents to produce the entire record of the present case for the perusal of this Hon"ble Court.

(ii) That the Hon"ble Court be pleased to quash Section 3(d) of the Himachal Pradesh Legislative Assembly Members (Removal of Dis-qualification) Act, 1971, being ultra vires of the Constitution of India.

(iii) That this Hon"ble Court may kindly be pleased to quash the appointment of respondents No. 3 to 10 as Chief Parliamentary Secretaries and that of 11 to 14 as Parliamentary Secretaries in the State of H.P. being illegal.

(iv) That the respondents State may kindly be directed to abide by the Constitution and the amendment taken place in Article 164 of the Constitution of

India.

(v) Any other order which this Hon"ble Court deems fit in the facts and circumstances of the matter may kindly be passed in favour of the petitioner.

(vi) That the petition may kindly be allowed with costs throughout.

2. Detailed arguments were heard yesterday and today from both the sides. Vide order passed on 3rd August, 2005, with the agreement and consent of the parties, this case was directed to be listed yesterday for final disposal. It was accordingly heard in part yesterday and was kept for today for continuation of arguments and for production and the perusal of the original record.

3. We have perused the original record produced before us by the learned Counsel for respondent No. 2.

4. Even though a large number of contentious issues were raised before us by the petitioner touching upon the interpretation of Article 164 of the Constitution of India as amended by the Constitution (Ninety-first Amendment) Act, 2003, and the scope and applicability of Article 191 of the Constitution and based thereupon the vires of Section 3(d) of the Himachal Pradesh Legislative Assembly Members (Removal of Dis-qualifications) Act, 1971, in view of the order that we propose to pass in this case, we wish to observe that we have not gone into any question relating to the interpretation or applicability of Article 164(1A) of the Constitution of India, or the applicability and scope of Article 191 or that matter the vires of Section 3(d) of the aforesaid-1971 Act on the touchstone of Article 191.

5. Arguments were also advanced by the learned Counsel for the parties with respect to the issue relating to the State's (and thus the public's) requirement of providing Chief Parliamentary Secretaries and Parliamentary Secretaries, when a full-fledged Council of Ministers is already in place. In view of the order that we propose to pass in this case we wish to observe that we have not gone into this contentious issue also and do not wish to bind ourselves with expressing any opinion or offering any comments with respect thereto.

6. The only issue with which we are concerned in deciding this case and which has persuaded us to allow this petition and quash and set aside the appointment of respondents No. 3 to 14 as Chief Parliamentary Secretaries and Parliamentary Secretaries in the State of Himachal Pradesh is the manner of their appointment. Undoubtedly the pith and substance of the arguments of Mr. S.P. Jain, learned senior Counsel appearing for the petitioner is that neither the Constitution of India nor any statutory enactment provides for and caters to the appointment of Chief Parliamentary Secretaries and Parliamentary Secretaries and in the absence of any enabling provision or any source of power, respondent No. 2 has no jurisdiction, power, authority, or competence to appoint the Chief Parliamentary Secretaries or Parliamentary Secretaries in Himachal Pradesh. Neither any provision of the Constitution of India nor any statutory enactment,

nor for that matter any executive instruction or any subordinate or delegated legislation contains any provision, which empowers the State Government to appoint the Chief Parliamentary Secretaries or Parliamentary Secretaries.

7. Faced with the aforesaid very simple contention raised by the learned senior Counsel for the petitioner, Mr. H.S. Mattewal, learned senior Counsel for respondent No. 2 and Mr. Rajiv Sharma, learned senior Counsel appearing for respondent No. 10 have submitted that it is a fact that respondents No. 4 to 14 were appointed as Chief Parliamentary Secretaries and Parliamentary Secretaries on 18th April, 2005. Respondent No. 3 had been appointed Chief Parliamentary Secretary before the appointment of respondents No. 4 to 14. Actually the petitioner has annexed alongwith the writ petition (Annexure PA) copy of gazette Notification No. GAD-(PA)-4-(D)-20/87 dated 18th April, 2005 issued by the General Administration Department (Confidential and Cabinet), which does suggest that respondents No. 3 to 14 had been appointed as Chief Parliamentary Secretaries and Parliamentary Secretaries. For ready reference, the text of this Notification is reproduced hereunder, which reads thus:

Consequent upon the appointment of Chief Parliamentary Secretaries/ Parliamentary Secretaries, the Chief Minister has been pleased to approve their attachment, with immediate effect, in the public interest, as under:

CHIEF PARLIAMENTARY SECRETARIES

1. Shri Thakur Singh Bharmouri Attached to Chief Minister for Higher Education and H.P. University De- partment.
2. Smt. Anita Verma Attached to Chief Minister for Health & Family Welfare Department.
3. Dr. Prem Singh Attached to Revenue Minister for Rural Development and Panchayati Raj Department.
4. Shri Tek Chand Attached to Chief Minister for PWD.
5. Shri Harsh Wardhan Chauhan Attached to Chief Minister for Pri- mary Education Department.
6. Shri Mukesh Agnihotri Attached to Chief Minister for Infor- mation & Public Relations Depart- ment and attached to I&PH Minister for Irrigation & Public Health Depart- ment.
7. Shri Lajja Ram Attached to Horticulture Minister for Food, Civil Supplies and Consumer Affairs Department.
8. Shri Harbhajan Singh Bhajji Attached to Chief Minister for Tech- nical Education, Vocational and In- dustrial Training Department.

PARLIAMENTARY SECRETARIES

1. Shri Jagat Singh Negi Attached to Chief Minister for Tribu- nal Development

Department and attached to Forest Minister for Youth Services and Sports Department.

2. Shri Surinder Kumar Attached to Excise and Taxation Minister for Social Justice and Empowerment Department.

3. Shri Sudhir Sharma Attached to MPP & Power Minister for MPP & Power Department.

4. Shri Raghbir Singh Attached to Chief Minister for Ayurveda Department and attached to Excise and Taxation Minister for Town & Country Planning Department.

8. As the opening part of the Notification is amply clear, the use of the expression "consequent upon the appointment of..." clearly suggests that 12 persons mentioned in this Notification had been appointed or must have been appointed as Chief Parliamentary Secretaries and Parliamentary Secretaries prior to the issuance of this Notification because this Notification actually only records and conveys the approval of the Chief Minister with respect to the attachment of these persons with either the Chief Minister himself or some Ministers, also specifying in the attachment column the Departments and Institutions with which they shall be dealing. The Notification dated 18th April, 2005 (supra), therefore, is not an Instrument which can be called as the source of appointment of these persons. When specifically asked by us to show and place before us the document which is or can be called the source of appointment of these persons, learned Counsel for respondent No. 2 expressed his total inability to do so except to rely upon and refer to an order, albeit a file Noting (N-44 & N-45) contained in file No. GAD (PA)-4 (D)-20/87. This Noting dated 21st April/ 2005 reads as under:

Dated Shimla-171002, the 21st April, 2005.

The proposal regarding "Ex-post-facto approval to create 7 posts of Chief Parliamentary Secretaries and 4 posts of Parliamentary Secretaries w.e.f. 18.4.2005" was placed before the Cabinet, by circulation and the same was approved.

The implementation report of the above decision may please be sent to this department within a fortnight from the receipt of this communication.

9. Again, as is clearly evident and manifestly clear, this Noting bears the date of 21st April, 2005, an event three days after even the allocation of business to respondents No. 3 to 14 was made vide Notification dated 18th April, 2005 (supra). Since the entire file was produced before us for our perusal, we came across two Notes, one dated 18th April, 2005 (N-36) and the other dated 19th April, 2005 (N-37 & N-38). These Notes do require to be noted and reproduced in this judgment so that their entire text is understood in proper perspective. The Note dated 18th April, 2005 (N-36) reads thus:

Since the attachment of the Chief Parliamentary Secretaries/Parliamentary Secretaries has been approved by the Hon''ble Chief Minister as per Flag-A, we may, therefore, issue orders in this behalf as per DFA placed below for favour of approval/signatures, please.

Notes 37 and 38 dated 19th April, 2005 read thus:

S/Shri/Smt. Thakur Singh Bharmouri, Anita Verma, Dr. Prem Singh, Tek Chand, Harsh Wardhan Chauhan, Lajja Ram and Harbhajan Singh Bhajji and S/Shri Jagat Singh Negi, Surinder Kumar, Sudhir Sharma and Raghubir Singh MLAs, have been appointed as Chief Parliamentary Secretaries and Parliamentary Secretaries respectively. They have subscribed to the oath of office in the forenoon on 18.4.2005 and have entered upon their duties.

If approved, we may, request the Finance Department to kindly concur in the proposal to create seven posts of Chief Parliamentary Secretary and four posts of Parliamentary Secretary w.e.f. 18.4.2005 (FN) as per terms and conditions placed below at flag "A" & "B".

10. Two things emerge from a reading of the aforesaid Notes as well as the Note dated 21st April, 2005 and the Notification dated 18th April, 2005. First and foremost, the Chief Parliamentary Secretaries and Parliamentary Secretaries appear to have been appointed on 18th April, 2005 and it is on this very date that they "subscribed to the oath of office" and also "entered upon their duties". No order, not even a Note on any file, neither formal in nature nor otherwise was produced before us or shown to us by which it could be gathered or even inferred that these persons were appointed as Chief Parliamentary Secretaries and Parliamentary Secretaries by any order of the Government, by any order in the name of the Governor, or the Government or in the name of any Competent Authority. The second thing which emerges from the aforesaid, is that the State Government also understood that the concurrence of the Competent Authority of the State Government was required to be obtained which in other words means that without obtaining such concurrence these persons had been appointed as Chief Parliamentary Secretaries and Parliamentary Secretaries. It is in this background that Note No. 38 clearly suggests that the Finance Department may be approached to convey its concurrence with respect to the proposal for the "creation" of 7 posts of Chief Parliamentary Secretaries and 4 posts of Parliamentary Secretaries with effect from 18th April, 2005. Unfortunately, however, no file or no document or paper has been shown to us which even contains any proposal for the creation of these posts. Apparently, it appears that respondents No. 3 to 14 have been appointed as Chief Parliamentary Secretaries and Parliamentary Secretaries without any proposal having been mooted for such appointment in any Government file at any level by any functionary at any point of time.

11. Then follow another important development. Order No. GAD (PA)-4 (D)-20/87 dated 21st April, 2005 was issued by the Government of Himachal

Pradesh, General Administration Department (Confidential and Cabinet). The text of this order reads thus:

ORDER

The Governor, Himachal Pradesh has been pleased to accord sanction to the creation of 7 posts of Chief Parliamentary Secretaries and to the appointment thereto of S/Shri/Smt. Thakur Singh Bharmouri, Anita Verma, Dr. Prem Singh, Tek Chand, Harsh Wardhan Chauhan, Lajja Ram and Harbhajan Singh Bhajji with effect from the forenoon of 18th April, 2005 on the following terms and conditions:

(i) He/She shall draw salary Rs. 11,000/-, Compensatory allowance Rs. 5,000/- per month with effect from the forenoon of 18th April, 2005 and an allowance for each day during the whole of his term at the same rates as are specified in Clause (ii) of Sub-section (1) of Section 4 of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971 with respect to Members of the State Legislative Assembly. He/She shall not be entitled to draw salary and compensatory allowance as a Member of the Legislative Assembly.

(ii) He/She shall be entitled to the use of a Motor Car, the expenses on the maintenance and propulsion of which shall be borne by the State Government or in lieu thereof to a Conveyance allowance of Rs. 500/- per mensem. The maintenance and propulsion expenses of the State Car shall not be subject to the limit of Rs. 500 per month. He/She may opt for the services of a Chauffeur on Government expenses in lieu of Conveyance Allowance, if he uses his own Car.

(iii) He/She shall be paid by way of repayable advance such sum of money and subject to such conditions, as may be determined under the provision of The Salaries and Allowances of Ministers (Himachal Pradesh) Act, 2000 and the rules framed thereunder.

(iv) He/She shall be provided with a furnished house, the maintenance charges of which shall be borne by the State Government or in lieu of such house shall be paid an allowance not exceeding Rs. 3,000/- per mensem, as the Government may fix. The State Government may also allow him to continue in occupation of the house provided to him for period not exceeding fifteen day from the date of his ceasing to be a Chief Parliamentary Secretary. The Chief Parliamentary Secretary shall be liable to pay licence fee @ 10% of his salary in respect of the furnished house allotted to him and the same shall be recoverable from his/her salary. The Chief Parliamentary Secretary shall not become personally liable for any payment in case the standard rent of the house allotted to him/her for residence exceeds the amount mentioned above.

(v) The Salary and Allowances payable to the Chief Parliamentary Secretary and furnished house and other perquisites admissible to him/her shall be exclusive of income tax which shall be payable by the State Government. For this purpose the amount of income tax payable by the State would be the first slab of the income

assessed for Income Tax i.e. in assessing this amount, the other source of income of the Chief Parliamentary Secretary shall not be taken into consideration.

(vi) He shall be entitled to claim travelling and daily allowances and telephone facilities on the scale and subject to the condition as determined in The Salaries and Allowances of Ministers (Himachal Pradesh) Act, 2000 and the rules framed thereunder.

(vii) He shall be entitled to medical facilities as provided under the HP State Legislative Officers, Ministers and Members Medical Facilities Act, 1971 and Rules framed thereunder.

This issues with the prior concurrence of the Finance Department obtained vide their Dy. No. 50049527 dated 19.4.2005.

12. The aforesaid Notification dated 21st April, 2005 on the face of it reveals that the appointment of Chief Parliamentary Secretaries and Parliamentary Secretaries was to be effective from the forenoon of 18th April, 2005. That means the Government also knew and understood that the appointment was to be retrospective in effect and operation.

13. A very important aspect which is revealed from a reading of this Notification is that it says that it was issued with the prior concurrence of the Finance Department obtained vide their Diary No. 50049527 dated 19th April, 2005. When we perused the original files, we found that indeed against the aforesaid Diary Number, on 19th April, 2005 a Deputy Secretary in the Finance (Regulations) Department vide N-39 and N--40 recorded as under:

Examined in Finance Department. F/D concurs in the proposal of A/D. (This has the approval of ACS (Finance)).

Sd/- Deputy Secretary (Fin.Reg.)

14. This Note does not bear any date even though against the aforesaid Diary number the date shown is 19th April, 2005. When we insisted yesterday on being shown the approval of ACS (Finance) (ACS stands for Additional Chief Secretary), the file shown to us today reveals that ACS (Finance) recorded his approval on 20th April, 2005. Actually the file moved itself on 20th April, 2005 and after being routed through the Deputy Secretary and the Additional Secretary same day it was put up before the ACS on 20th April, 2005 and it is on this date that he has recorded his approval.

15. Based on the aforesaid facts what irrefutably becomes amply clear is that the aforesaid Notification dated 21st April, 2005 was issued in derogation of the principles of fair play in as much as it wrongly records that the prior concurrence of the Finance Department had been obtained on 19th April, 2005. The facts which we have narrated above on the contrary suggest that the ACS (Finance) had recorded his approval not on 19th April, 2005, as has wrongly, incorrectly and falsely been mentioned by the Deputy Secretary (Finance Regulations). The

ACS (Finance) actually and in fact recorded his approval only on 20th April, 2005. The file rather curiously itself suggests that the aforesaid approval of ACS could not have been conveyed to the Government before 21st April, 2005.

16. The Chief Minister is shown to have appointed the Chief Parliamentary Secretaries and Parliamentary Secretaries. He is also shown to have administered the oath of office and secrecy to these persons. From where does the Chief Minister derive the power to appoint these persons? Under which law does he have the power to administer the oath of office and secrecy to these persons? Who authorized the Chief Minister to administer oath of office and secrecy to these persons? Similarly, under which law and based on whose authority did these persons subscribe to the oath of office and secrecy before the Chief Minister. These three questions have not been answered by the learned Counsel appearing either for respondent No. 2 or for any of the private respondents. The omission to answer these three questions leads us to only one inescapable and inevitable conclusion and the conclusion is that these persons were appointed without there being any authority of law vested in any person.

17. Article 154 relates to the exercise of the executive power of the State and it clearly says that the executive power of the State shall vest in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the provisions of the Constitution. Article 154 has to be read jointly alongwith Articles 162 and 163 of the Constitution because, whereas Article 162 defines the extent of the executive power of the State, it is in Article 163 that there is a binding and mandatory provision that the Governor has to act upon the aid and advise of his Council of Ministers. For ready reference, we reproduce hereinbelow these three Articles:

Article 154 :

Executive power of State.--(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall--

(a) by deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) Prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Article 162 :

Extent of executive power of State.--Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive, power of the State shall be

subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

Article 163 :

Council of Ministers to aid and advise Governor.--(1) There shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court.

18. Even though it is a well settled principle of constitutional law that the Governor while exercising his executive power does so on the aid and advice of his Council of Ministers, yet the Constitution also specifically provides that the exercise of the executive power by the State has to be carried out only in the name of the Governor. Not being unmindful of the constitutional provisions, we find that in the present case no order, notification or action of the Government has been shown to us whereby we could be persuaded to infer or presume that the appointment of respondents No. 3 to 14 was made by the. State Government in exercise of the executive power of the State in the name of the Governor of the State. The only reference to the Governor finds a mention in Order No. GAD(PA)-4(D)-20/87 dated 21st April, 2005 (*supra*), which even while referring to the Governor with respect to the accord of sanction to the creation of 7 posts of Chief Parliamentary Secretaries and to the appointment of 7 persons mentioned therein, does not contain any stipulation nor lays down any provision as to the manner of appointment of these persons, who would be the appointing authority and what would be the terms and conditions of their appointment except to prescribe the salary and other perquisites to be received by them.

19. We have already discarded the aforesaid notification based on our conclusion that it was perhaps fraudulent in nature in as much as before its issuance the prior approval of the Finance Department had not been obtained (but it was falsely mentioned to the contrary) but de hors the aforesaid conclusion what we are trying to highlight is that even this Notification does not at all suggest that the Governor had conferred upon the Chief Minister the power to appoint the Chief Parliamentary Secretaries or the Parliamentary Secretaries, The creation of posts is one thing but the power to appoint is quite another. Even though the Notification dated 21st April, 2005 does mention about the Governor according sanction to the creation of posts as well as according sanction to the

appointment of the persons mentioned therein, an important fact which cannot be lost sight of is that these persons had been appointed much prior to the issuance of this Notification. This Notification does not at all mention that the sanction was accorded by the Governor ex-post-facto either with respect to the creation of the posts or the appointment of seven persons mentioned therein. The fact remains that whether the Chief Minister appointed these persons or they were appointed by someone else, we have not been shown any order or Instrument of the Government, which could trace the source of appointment to the Chief Minister or to any such other person. On this ground alone the appointment of respondents No. 3 to 14 can be held to be patently unconstitutional. The vesting of the authority in the person seeking to appoint Chief Parliamentary Secretaries and Parliamentary Secretaries is a sine qua non to the validity and legality attached to the appointment and if the person appointing lacks inherently or otherwise the authority to appoint, the appointment order issued by such person or in his name becomes void ab initio, tainting the appointment and rendering the appointees as holders of public office without any authority of law.

20. What stares at us is the stark reality that respondents No. 3 to 14 were appointed perhaps by the Chief Minister, or in his name, or by his order but respondent No. 2 has not shown to us how and in what manner did the Chief Minister have any authority to appoint these persons.

21. Now, comes the issue of a far greater importance, touching gravely upon very basic fabric and edifice of constitutional law. This relates to the administering of oath of office and secrecy to respondents No. 3 to 14 by the Chief Minister and these persons subscribing oath before the Chief Minister. This issue cannot be viewed in isolation. It is to be viewed in the context of Chief Parliamentary Secretaries and Parliamentary Secretaries being privy to official information, all of them having access to official files, official documents in the course of decision making process by the Government. Their being privy to official information and their having access to official records exposes them to the corresponding obligation and duty of maintaining secrecy and not disclosing unauthorisedly to any one secret official information. It is in this backdrop that administering oath to them by a person duly authorized by law to do so becomes important. To repeat the question, did any law empower the Chief Minister to administer oath to these persons? He have not been shown any law, not even a law in the nature of subordinate or delegated Legislation which either prescribes the form of oath or the person before whom respondents No. 3 to 14 were to subscribe oath or the person who would administer oath to them. Respondents No. 3 to 14 being the holders of public office, it is not open to any individual to evolve a private arrangement whereby, by his whims he would administer oath because any such private arrangement not having the sanction of law would not cast upon respondents No. 3 to 14 the corresponding obligation of maintaining secrecy as well as the resultant legal consequences of their being exposed to the rigors in the realm of penal law if the oath is ever violated. We, therefore, hold

that the act of the Chief Minister in administering oath to respondents No. 3 to 14 and respondents No. 3 to 14 subscribing oath before the Chief Minister is without any sanction of law on the simple ground that no law empowers the Chief Minister to administer oath to them nor does any law prescribe the form of any such oath.

22. As we are in the midst of the aforesaid discussion with respect to the impugned action of respondent No. 2 suffering from the vice of patent unconstitutionality and blatant illegality and as we have unhesitatingly declared the appointment of respondents No. 3 to 14 as void ab initio, we wish to observe that this patent illegality has not been cured or rectified because the order dated 21st April, 2005 has not been shown to have been issued in terms of Article 166 of the Constitution of India. Even though this order does, on the face of it, suggest that the action of creation of the posts of Chief Parliamentary Secretaries/Parliamentary Secretaries and appointing seven persons has been expressed to be taken in the name of the Governor, we have not been shown any file or any document or order by seeing which we could say that the issuance of this order was in accordance with the rules of business of the Government framed and issued as per Clauses (2) and (3) of Article 166. Article 166 reads thus:

166. Conduct of business of the Government of a State.--(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is as authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

23. Whether rules of business were framed by the Government or not, with respect to the creation of the posts of Chief Parliamentary Secretaries/Parliamentary Secretaries and the appointment of persons concerned and if so whether the impugned action was taken in accordance with these rules, has not been at all shown to us. Respondent No. 2 did not come forward before this Court to demonstrate to us that this was done in accordance with the rules of business framed under Article 166 or for that matter whether any rules of business have been framed at all or not for this purpose. This is one aspect of the matter.

24. The other aspect, even though interesting from the probity point of view also deserves to be taken note of much as though the respondents may contend that

it has no direct bearing with the issue which we are deciding in this case. Yes, we may agree that this aspect which we now propose to notice may not have a direct bearing to the limited issue which we are deciding in this case, but since the aspect is interesting and may sometime or the other have an indirect bearing and it also surely reflects the style of functioning of the Government, we should not fail to take its due notice.

25. The aspect relates to the tearing hurry with which respondent No. 2 appears to have acted in appointing respondents No. 3 to 14 as Chief Parliamentary Secretaries/Parliamentary Secretaries in total disregard to the norms of fair play as well as the due observance of the rules of business of the Government. As has been extracted in the earlier part of this judgment, respondents No. 3 to 14 were appointed on or before 18th April, 2005 when admittedly on the own showing of respondent No. 2 neither the creation of the posts had been sanctioned nor any sanction for appointment had been obtained from the competent authority. The record extracted above also clearly shows that within a day or two of respondents No. 3 to 14 having been appointed and having been administered the oath of office and secrecy by the Chief minister, the Government machinery swung into action for obtaining ex post facto sanction to the aforesaid action of respondent No. 2. Why were respondents No. 3 to 14 appointed in such a tearing hurry? What was the compelling, urgent need to appoint them on or before 18th April, 2005 even when on this date proper sanction was not in existence? Could the Government not have waited for obtaining the proper sanction first and then to appoint these persons? None of these questions has been answered by respondent No. 2. We put repeated queries to Mr. Mattewal, learned senior Counsel appearing for respondent No. 2 to explain to us as to why at all did respondent No. 2 act in such a compelling hurry to appoint respondents No. 3 to 14 and then after appointing them and their assumption of charge to initiate action to validate their appointment. Yes, there are situations where compelling circumstances can dictate taking such an urgent action and then to move for rectification and validation but no such compelling circumstance was brought to our notice by respondent No. 2. At the risk of reiteration, we wish to observe that even though this aspect has no direct bearing to the issue upon which we are deciding this case yet, it did deserve to be noticed because it perhaps reflects the way the Government acted in this case.

26. Based on the aforesaid reasoning, therefore, we have no manner of doubt that respondents No. 3 to 14 are usurpers of public office since their appointments did not owe their origin to any constitutional or legal provision, they having been appointed by person not vested with the power of appointment. Consequently, appointments of respondents No. 3 to 14 are quashed and set aside with all the consequences.

27. Resultantly, based on the aforesaid discussion, we have no hesitation also in holding that appointments of respondents No. 3 to 14, right from the threshold were void ab initio. We, therefore, hold and declare that their continuance in

office based on their illegal and unconstitutional appointment is wholly impermissible in law.

28. We accordingly direct that from now onwards respondents No. 3 to 14 shall cease to be the holders of the offices of Chief Parliamentary Secretaries and Parliamentary Secretaries with all the consequences.

29. Mr. Y.K. Thakur, Advocate, appears for respondent No. 2, apart from his appearing For other respondents as well. We direct him to convey to the Chief Secretary, Government of Himachal Pradesh immediately and forthwith the gist of this order as well as the operative parts hereof, with directions to the Chief Secretary to ensure that immediately and forthwith this order shall be implemented in letter and spirit. Mr. Thakur has actually noted down the gist of this order and assured us that he will indeed convey the same to the Chief Secretary for its immediate implementation.

The petition is allowed but without any order as to costs.