

(2017) 04 GUJ CK 0095
In the Gujarat High Court
Case No : 267 of 2016

JAGATE RAHO PARTY (REGISTERED)

APPELLANT

Vs

D P THAKAR & ORS.

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Right to Information Act, 2005, Section 12(5), Section 15(3) - Constitution of Central Information Commission - Constitution of State Information Commission

Citation : (2017) 04 GUJ CK 0095

Hon'ble Judges : R.Subhash Reddy, VIPUL M. PANCHOLI

Bench : Division Bench

Advocate : G H VIRK, KAMAL TRIVEDI, SANGITA VISHEN

Final Decision : Disposed

Judgement

1. The petitioner has filed the present petition in the nature of public interest litigation praying for the following reliefs:

"(1) To declare appointment of Shri Dilip Purushottamdas Thakar as illegal in terms of Section 12(5) of the Act and Judgment dtad 12.02.2015 of this Hon"ble Court read with citations (2013)10 SCC 359. (2) To appoint Screening Committee as mentioned in para 4 above as and when required to scrutinized applications of eligible candidate. (3) To issue advertisement in News paper as mentioned in para 4 inviting applications for the post of Information Commissioner. (4) To consider appointment of person of eminence as Information Commissioner from the candidates besides retired IAS Officers in terms of eligibility criteria as per Section 12(5) of the Act. (5) To appoint within one month of the order third Additional Information Commissioner in place of Shri Thakar, if his appointment is set aside. (6) To take punitive action against concerned official(s), keeping in view para 4. (7) To direct Respondent No.2 to fill up the post of Chief Information Commissioner on his retirement.

(8) Keeping in view para 4, direct Respondent No.2 to submit clarification so

that Hon"ble Court may give Direction as it deems fit."

2. This public interest litigation has been filed by one Jagte Raho party registered by the Election Commission of India and Gujarat Election Commission through its President. The President Mr.Praful K Desai appeared in person. The petitioner has submitted that initially the petitioner filed Writ Petition (PIL) No.65 of 2012 for appointment of two Additional Information Commissioners. In the petition, this Court passed an order on 14.8.2012 directing the respondent to appoint two Additional Information Commissioners. However, thereafter another Writ Petition (PIL) Nos.143 and 271 of 2014 came to be filed challenging the appointment of the said two Information Commissioners. This Court set aside the appointment of the Information Commissioners, by an order dated 12.2.2015. It is further contended that the petitioners filed another Writ Petition (PIL) No.118 of 2015 for appointment of Additional Information Commissioners and this Court passed an order on 21.12.2015 in the said petition. It is submitted that after passing of the order by this Court, two Additional Information Commissioners namely Mr.H.V.Patel, IAS (Retd.) and Mr.R.R.Vasani, IAS (Retd.) were appointed with effect from 13.4.2016. However, in the meantime, by notification dated 24.8.2016, the third Information Commissioner Mr.D.P.Thakar is appointed by the respondent-government. However, it is alleged that though respondent no.1 herein-Mr.D.P.Thakar is not eligible for the appointment on the post of Information Commissioner, he is appointed by the respondent- State. The petitioner asked for information under the Right to Information Act whereby the General Administrative Department was to give inspection of all the processing papers for appointment as well as the bio-data of respondent no.1- Mr.D.P.Thakar. Ultimately, on receipt of necessary information, it is found that the respondent no.1-Mr.D.P.Thakar is not eligible as per the criteria prescribed in Section 12(5) of the Right to Information Act of 2005. (hereinafter referred to as ` RTI Act ").

3. The petitioner referred to the provision contained in Section 12(5) of the RTI Act and contended that from the bio data of respondent no.1-Mr.Thakar, it is revealed that in item no.1, two columns namely field and details, in column field, it is mentioned that "Science and Technology, Social Service, Management, Journalism and Mass Media. These columns are blank-unanswered. In "law", it is stated that Mr.Thakar has dealt with Pre-conception and Pre-

natal Diagnostics Technique (Prohibition of Sex Detection) Act (hereinafter referred to as `the PC & PNDT Act"). So far as "administrative and governance" is concerned, it is alleged by the petitioner that Mr.Thakar does not possess "basic qualification" such as degree in administration. It is further pointed out that the respondent no.1 has worked as a Clerk for fifteen years, six years as Deputy Section Officer, seven years as Section Officer, three and half years as Under Secretary and one and half years as Deputy Secretary. Thus, respondent no.1 has no experience in higher cadre post above the Deputy Secretary such

as Joint Secretary, Additional Secretary, Secretary, Principal Additional Secretary and Chief Secretary.

4. The petitioner at this stage has placed reliance upon the decision rendered by the Hon''ble Supreme Court in the case of Union of India V/s Namit Sharma reported in (2013)10 SCC 359.

5. The petitioner has placed reliance upon the order dated 12.2.2015 passed by the Division Bench of this Court in Writ Petition (PIL) No.143 of 2014 and allied matters.

6. The petitioner further contended that the respondent-State be directed to issue advertisement in prominent Gujarati and English newspapers inviting applications for the post of Information Commissioner. Such request was made in the earlier petition also. In spite of that, the respondent-State has published the advertisement on the website. It is further contended that in the past, the Division Bench of this Court quashed and set aside the appointment of Information Commissioners made by the Selection Committee. In spite of that, this time also the Selection Committee has appointed the respondent no.1 who is not eligible for the post in question. Therefore, in the public interest, necessary direction be issued to the respondent- State to appoint the Screening Committee consisting of retired High Court Judge who will scrutinize and recommend the eligible candidate to the Selection Committee. The petitioner, has therefore, requested that the reliefs prayed for in the present petition be granted.

7. On the other hand, learned Advocate General Mr.Kamal Trivedi assisted by learned AGP Ms.Sangita Vishen appearing for the respondent nos.2 and 3 submitted at the outset that the then Chief Information Commissioner was due to retire on 5.12.2016. Immediately thereafter, the State Government issued the notification dated 3.2.2017

in exercise of powers conferred under Section 15(3) of the RTI Act appointed Mr.V.S.Gadhvi IAS (retd.) as the State Chief Information Commissioner in the Gujarat Information Commission. His appointment was made after following the procedure i.e. after issuance of notice inviting applications from all the eligible candidates and placing the application before the duly constituted committee constituted under Section 15(3) of the RTI Act.

8. Learned Advocate General thereafter submitted that for appointment of the Information Commissioner, the respondent-State uploaded the notice on the concerned website on 5.5.2016 inviting applications from all the eligible candidates. Pursuant to the said notice, General Administrative Department received 15 applications, out of which the applications of the eligible candidates were placed before the Committee constituted vide Government Resolution dated 10.8.2016. At this stage, learned Advocate General has referred to the provision contained in Section 15(5) of RTI Act and submitted that a person of eminence in public life with wide knowledge in administration

and governance can be said to be eligible for the appointment for the post of State Information Commissioner. The respondent no.1 possesses the said eligibility

criteria because he was working as Deputy Secretary in the Health and Family Welfare Department of the State Government. During his tenure, the respondent no.1 has worked with the office of the Hon"ble Chief Minister and has gained a wide experience considering the fact that the person attached to the office of the Hon"ble Chief Minister has to deal with not only public at large but also various Departments of the State Government and has to act as a link between the public and department. It is further submitted that respondent no.1 has also undertaken the work of public oriented projects and schemes and also had occasion to act as the appellate authority under the provisions of the PC & PNDT Act.

9. Learned Advocate General thereafter, would contend that when the aforesaid bio-data of the respondent no.1 was placed before the Committee constituted under Section 15(3) of the RTI Act, the said Committee considered the same and formulated the opinion about respondent no.1 looking to the larger experience of implementation of RTI Act at higher level and policy level, experience in various departments and experience as quasi-judicial authority, respondent no.1 is a person of eminence in public life in the field of administration and

governance and therefore name of respondent no.1 may be recommended for being appointed to the post of State Information Commissioner. Learned Advocate General has referred to the minutes of the meeting which was held on 22.8.2016. It is submitted that said opinion and recommendation of the Committee were thereafter placed before the Hon"ble Governor and the Hon"ble Governor accepted the recommendation of the Committee and therefore notification dated 24.8.2016 appointing the respondent no.1 to the post of State Information Commissioner was issued. Thus, the respondent-State has followed the procedure prescribed under the RTI Act and no illegality is committed. Learned Advocate General submitted that necessary papers demanded by the petitioner were supplied to him during the pendency of the petition.

10. Learned Advocate General thereafter submitted that the State Government has been putting the notice on the website inviting applications from eligible candidates for being appointed to the respective posts. The State Government has been effecting appointment strictly in accordance with Section 15(5) of the RTI Act and also following the principles laid down by the Hon"ble Supreme Court in the case of Namit Sharma (supra).

11. Learned Advocate General would contend that the decision rendered by the Division Bench of this Court in Writ Petition (PIL) No. 143 of 2014 would not be applicable to the facts of the present case. Learned Advocate General referred

to the relevant observation made by the Division Bench in the said order and submitted that the appointments of the concerned candidates were quashed and set aside by this Court on the ground that the direction issued by the Hon"ble Supreme Court in paragraph 39.5 of its judgment rendered in the case of Namit Sharma (supra) were not observed. The said appointments were not quashed on merits but because there were certain procedural infirmities in effecting the appointments.

12. Learned Advocate General further contended that there is no provision in the RTI Act for appointment of Screening Committee consisting of retired High Court Judge as prayed for by the petitioner for scrutinizing and recommending eligible candidates to the Selection Committee. Thus, in absence of any provision, the said request made by the petitioner may not be entertained. Learned Advocate General therefore requested that this petition be dismissed.

13. Having considered the submissions canvassed by the party-in-person and learned Advocate General and having gone through the material produced on record, it has emerged that the respondent-State has appointed the respondent no.1 as State Information Commissioner while exercising powers under Section 15(3) of the RTI Act in the notification dated 24.8.2016. The appointment of respondent no.1 has been challenged mainly on the ground that the respondent no.1 is not eligible for the post in question. The petitioner has placed reliance upon the provisions contained in Section 15(3) and 15(5) of the RTI Act as well as the decision rendered by the Hon"ble Supreme Court in the case of Namit Sharma (supra) and the decision rendered by Division Bench of this Court on 12.2.2105 in Writ Petition (PIL) No.143 of 2014 in support of his contention.

14. To appreciate the contention of the petitioner, the relevant provisions of the Act and the aforesaid decisions are required to be referred to.

15. Section 15(3) and Section 15(5) of the RTI Act read as under:

"15(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee comprising of-

- (i) the Chief Minister, who shall be the Chairperson of the committee;
- (ii) the Leader of Opposition in the Legislative Assembly; and
- (iii) a Cabinet Minister to be nominated by the Chief Minister.

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

15(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge

and experience in law, science and technology, social service, management, journalism, mass media or administration and governance."

16. Thus, Section 15(3) provides for constitution of the committee consisting of the Chief Minister, the Leader of Opposition in the Legislative Assembly and the Cabinet Minister to be nominated by the Chief Minister. The said Committee is required to recommend the eligible candidate for the post of State Chief Information Commissioner and the State information Commissioner to the Hon''ble Governor and on such recommendation, the Hon''ble Governor will appoint such Information Commissioners. Sub-section 5 of Section 15 of RTI Act provides for eligibility

criteria for the post of State Chief Information Commissioner and the State Information Commissioners.

17. The Hon''ble Supreme Court in the case of Namit Sharma (supra) observed in paragraphs 39 to 39.6 as under:

"39. Under Order XL of the Supreme Court Rules, 1966 this Court can review its judgment or order on the ground of error apparent on the face of record and on an application for review can reverse or modify its decision on the ground of mistake of law or fact. As the judgment under review suffers from mistake of law, we allow the Review Petitions, recall the directions and declarations in the judgment under review and dispose of Writ Petition (C) No. 210 of 2012 with the following declarations and directions:

39.1 We declare that Sections 12(5) and 15(5) of the Act are not ultra vires the Constitution. 39.2 We declare that Sections 12(6) and 15(6) of the Act do not debar a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession from being considered for appointment as Chief Information Commissioner or Information Commissioner, but after such person is appointed as Chief Information Commissioner or Information Commissioner, he has to discontinue as Member of Parliament or Member of the Legislature of any State or

Union Territory, or discontinue to hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession during the period he functions as Chief Information Commissioner or Information Commissioner. 39.3 We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Sections 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner. 39.4 We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the

Committees under Sections 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners. 39.5 We further direct that the Committees under Sections 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made. 39.6 We also direct that wherever Chief Information Commissioner is of the opinion

that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law."

18. Thus, from the aforesaid decision rendered by the Hon'ble Supreme Court, it is clear that the Hon'ble Supreme Court has directed the committees constituted under Section 12(3) and 15(3) of the Act, as the case may be, for appointment of the Chief Information Commissioner and the Information Commissioners that such committee 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 assessable to the citizens as part of their right to information under the RTI Act after appointment is made.

19. The respondent-State has issued the notice for appointment pursuant to which, 15 applications were received and after considering all the applications, eligible applications were forwarded to the Committee constituted under Section 15(3) of the RTI Act.

20. From the record, it appears that in the present case, the Committee constituted under

Section 15(3) of the RTI Act has considered the available material produced before it and thereafter has observed as under:

"The Committee, keeping in view eligibility
criteria in terms of section 15(5) of the RTI
Act, and direction given by the Apex Court
deliberated and unanimously decided to
appoint following candidate on the basis of
his knowledge and experience in the field
stipulated against his name:-

Sr.N o. Name The field in which the person is reputed

1 Shri Dilip P Thaker Possessing wide experience of implementing the provisions of the Right to Information Act, 2005 at a higher level as well as possessing experience relating to policy matters in the various Departments of the State Government as well as considering the successful working and experience as a quasijudicial authority and is possessing wide experience in the field of administration and governance and is a person of eminence in the public life and therefore, his name is recommended for being appointed to the post of State Information Commissioner.

21. Thus, from the aforesaid, it is clear that the Committee has considered the directions given by the Hon"ble Supreme Court and also considered the provision contained in Section 15(5) of RTI Act and thereafter found respondent no.1 as eligible for the post in question and therefore his name is recommended to the Hon"ble Governor.

22. Thus, in the facts and circumstances of the present case, we are of the view that no illegality is committed by the respondent-State while appointing respondent no.1 on the post of State Information Commissioner. At this stage, it is relevant to note that this Court cannot sit in appeal over the decision taken by the Committee constituted under the RTI Act . The scope of judicial review is very limited.

23. So far as the request of the petitioner to appoint Screening Committee is concerned, we are of the view that no such provision is made by the Parliament in the RTI Act and in absence of such provision in the Act, it would not be proper for this Court to appoint such Screening

Committee as prayed for by the petitioner and therefore the petitioner is not entitled to claim the said relief.

24. In view of the above, this petition is dismissed. As the petition is dismissed, no orders are required to be passed on the Civil Application. Hence, the same is disposed off.