
(2014) 03 P&H CK 0166
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4340 of 2014

Munish Kumar Sharma

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Right to Information Act, 2005 — Section 15, 15(3), 15(5), 15(6)

Citation : (2014) 175 PLR 342

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Manish Kumar Sharma (Party-in-Person), Advocate for the Appellant

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—Petitioner has approached this Court, praying for issuance of a writ of certiorari for quashing the selection and appointment of respondent Nos. 3 to 5 as the State Information Commissioners. It is the grievance of the petitioner that selection and appointment of respondent Nos. 3 to 5 is in violation of the statutory provisions as pick and choose policy has been adopted by the Statutory Committee appointed u/s 15(3) of the Right to Information Act, 2005 (for short, "the RTI Act"). The contention is that the Selection Committee is required to appoint the State Information Commissioners through consensus and, therefore, the recommendation of the leader of opposition, who is one of the Member of the Selection Committee, is mandatory, whereas consent of the said member has not been obtained. He contends that as the leader of opposition did not attend the meeting of the Selection Committee constituted u/s 15(3) of the RTI Act and, thus, the recommendations of the said Committee, which have been accepted by the Governor of Haryana, cannot be said to be in accordance with law and, thus, the selection and appointment of respondent Nos. 3 to 5 deserves to be set-aside. It has further been stated that the petitioner is better qualified and is an eligible candidate as he fulfills all the

requisite qualifications mentioned in Section 15 of the RTI Act and, therefore, the respondents were bound to appoint him over and above the selected respondent Nos. 3 to 5.

2. Petitioner, who appears in person and is a Law Graduate, has made submissions on the above lines and prayed for setting-aside of selection of respondent Nos. 3 to 5 and to issue a direction to the official respondents to appoint him as a State Information Commissioner.

3. I have considered the submissions made by the petitioner and have gone through the records of the case.

4. Section 15 of the RTI Act, on which the petitioner has based his claim, reads as under:-

"15. Constitution of State Information Commission.-

(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the.....(name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of -

(a) the State. Chief Information Commissioner; and

(b) such number of State Information Commissioners, not exceeding ten, as may, be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting 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.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act

(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.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State."

5. A perusal of the above Section would show that the qualifications prescribed for consideration for appointment as a State Information Commissioner is mentioned in sub-section (5) of Section 15 of the RTI Act. It is not the case of the petitioner that respondent Nos. 3 to 5 are not eligible as per the qualifications laid down under the RTI Act but what has been asserted by him is that he is better qualified both academically and professionally and, therefore, should have been appointed over and above respondent Nos. 3 to 5.

6. This contention of the petitioner cannot be accepted as it is for the Committee constituted under the provisions of the RTI Act to finally select the candidates who have been recommended by the Search Committee, which has been constituted as per the notification dated 23.07.2013 issued by the Government of Haryana, which finds mentioned in the order dated 05.08.2013 passed by the Division Bench of this Court in Civil Writ Petition No. 7656 of 2012 (Sanjay Tyagi v. State of Haryana and others,) which order reads as follows:-

"The Learned Advocate General for the State of Haryana has placed on record a notification dated 23.07.2013, which incorporates para. (viii) as under:-

"The Government shall finalize a panel of names, after considering the names submitted by the Search Committee for consideration of the Statutory Committee. The names, along with bio-data and other relevant information of the persons on the panel shall form part of the agenda forwarded to the members of the Statutory Committee, not less than 7 days, in advance of its meeting."

The aforesaid inclusion would, thus, take care to ensure that in future, such issue does not arise as in this petition.

We accordingly, by consent dispose of this writ petition in view of the aforesaid."

7. It is an admitted position that the Search Committee was constituted as per the above referred to notification of the Government of Haryana. The

proceedings of the meeting of the said Committee have been placed on record as Annexure P-10. The same reads as under:-

"The Search Committee met today and observed that the State Government, vide Notification No. 5/7/2012-1AR dated 23.7.2013, has decided to appoint three State Information Commissioners in the State Information Commission, Haryana and the Search Committee, constituted vide Notification No. 5/7/2012-1AR dated 11.5.2012, would remain the same for the time being.

2. The Committee further observed that Notification No. 5/7/2012-1 AR dated 11.5.2012, in respect of functions of the Search Committee, has also been substituted by adding a para at Sr. No. viii vide Notification No. 5/7/2012-1AR dated 23.7.2013.

3. The Committee further observed that the Administrative Reforms Department, vide its Public Notice No. 5/4/2002-1AR dated 6.8.2013, sought applications in the prescribed format by 3.9.2013 from the persons fulfilling the criteria for appointment as Information Commissioner and interested for appointment to the post. Detailed instructions along with application proforma was put on the website of the Chief Secretary, Haryana by the Administrative Reforms Department and news item in this regard appeared in the newspapers also.

4. The Committee noted the decision of Hon"ble Supreme Court dated 3.9.2013 in the Review Petition No. 2309 of 2012 in which it has been ruled that the posts of Information Commissioners can be offered to eminent persons in the fields of law, science and technology, social service, management, journalism, administration and governance.

5. The Committee further observed that in response to the above mentioned public notice dated 6.8.2013, a total 110 applications have been received, out of which 12 have been received after the due date of receipt.

6. The Committee further considered the directions given by the Hon"ble High Court of Punjab and Haryana vide order dated 17.8.2011 in C.W.P. No. 11846 of 2011 and Hon"ble Supreme Court of India vide order dated 3.3.2011 in Centre for PIL's case (W.P. (C) No. 348 of 2010) and after detailed discussions and deliberations, the Committee decided to consider all the names which come to its notice or are forwarded by any person or by any aspirant for appointment as Information Commissioners keeping in view fairness, rational criteria and transparency.

7. The Committee has also gone through the following Section 15(5) and Section 15(6) of the Right to Information Act, 2005:-

"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 administrator and governance.

15(6) The State Chief Information Commissioner and a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession."

8. The matter regarding vigilance clearance of serving officers came up for discussion. The Committee was of the considered view that it is outside the mandate of the Committee to look into this aspect which would be looked at by the appointing authority, if deemed necessary. The Committee considered all the names which came to its notice including 110 candidates whose applications were received till the date of this meeting. The Committee after detailed deliberations and considering the integrity, relative merit, eminence, competence and experience of the candidates, recommends that the following candidates may be considered for appointment as State Information Commissioners;-

1. Shri Krishna Mohan, IAS
2. Shri S.C. Choudhary, IAS
3. Shri Samir Mathur, IAS (Retired)
4. Shri Yoginder Paul Gupta
5. Shri Hemant Atri "
6. Dr. Madan Mohan Goel
7. Maj. Gen. (Retd.) Yashwant Sangra
8. Shri Narender Paul Dewett
9. Smt. Shyama Dogra

9. The Committee while recommending the names has kept in mind that recommended candidates do not have connection with any political party or are involved in a criminal or civil litigation which may have a bearing on the integrity and character of the candidates. However, the Committee is of the view that an undertaking may be obtained from the candidates finally selected for appointment as Information Commissioners in respect of any court litigation, civil or criminal, conviction or otherwise in a criminal court or civil court decree or any other proceedings that may have a bearing on the integrity and character of the candidates. Further, the candidates selected by the Statutory Committee should also give an undertaking that they are not holding any office of profit or carrying on any business or pursuing any profession.

Sd/- Sarban Singh, PS PHE Sd/- Lt. Gen. (Retd.) Dr. D.D.S. Sandhu) VC, KUK
Sd/- P.K. Chaudhary, CS"

8. A perusal of the above would show that 110 applications, in response to the public notice dated 06.08.2013, were received, out of which 12 have been

received after the last date fixed for receipt of applications. The Committee considered all the names, which came to its notice, including 110 candidates, whose applications were received till the date of the meeting.

9. The Committee, after detailed deliberations, having considered the integrity, relative merit, immense competence and experience of the candidates, recommended 9 names for consideration for appointment as State Information Commissioners to the Search Committee constituted u/s 15(3) of the R.T.I. Act. While recommending the names, it was taken care of that none of the candidates have any connection with any political party or involved in criminal or civil litigation, which may have a bearing on the character and integrity of the candidate. It further recommended that an undertaking may be obtained from the candidates finally selected with regard to any Court litigation i.e. criminal or civil or conviction or otherwise in a Criminal Court or civil Court decree or any other proceedings that may have a bearing on the integrity and character of the candidates, apart from an undertaking that they are not holding any office of profit or carrying on any business or pursuing any profession. The proceedings clearly indicate that the Committee has consensually considered the candidature of all the candidates who had applied for the posts and has taken due care and caution that only the right persons get appointed to the posts of State Information Commissioners. The mandate of the statute and the Government instructions have been duly complied with and, therefore, the recommendations made by the Search Committee cannot be faulted with.

10. Merely because the petitioner asserts that he is more qualified than the selected respondent Nos. 3 to 5 cannot be a ground to set-aside the recommendations made by the Search Committee, especially when it is not merit alone, which would be the determinative factor but there are other considerations as well. The petitioner has also not given the comparative merit of three selected candidates, which would have given an opportunity to the Court to assess that aspect as well. In any case, the mandate of the statute having been duly complied with and there being no violation of any statute/instructions, the Court, in exercise of its writ jurisdiction under Article 227 of the Constitution of India, would not go into the comparative assessment of merit of the candidates and scrutinize the same. The power of judicial review in such matters is limited and has to be exercised by the Court with due care and caution and not merely on the asking of the candidate without there being supportive material to substantiate such contention.

11. The assertion of the petitioner that consent of the leader of opposition is mandatory, without which no recommendation of the Committee constituted u/s 15(3) of the RTI Act would be in accordance with law, cannot be accepted as there is no such mandate under the statute. The leader of opposition in the legislative assembly is only one of the three Members of the Committee constituted u/s 15(3) of the RTI Act. The general principle is that the majority view, in case of even a dissent, would have to be treated as a recommendation

of the Committee, on the basis of which the Governor has to proceed further in accordance with law. Thus, this ground of the petitioner also fails.

12. It needs to be mentioned here that the petitioner had earlier filed Civil Writ Petition No. 1208 of 2014 (Munish Kumar Sharma v. State of Haryana and others) which was withdrawn by the counsel, after some arguments on 23.01.2014. The order passed on said date reads as under:-

"Counsel for the petitioner, after arguing for some time, prays for withdrawal of the present writ petition. Prayer granted. Dismissed as withdrawn."

13. Even an application i.e. C.M. No. 3347 of 2014 preferred by the petitioner for recall of the said order was dismissed by this Court vide order dated 22.03.2014, which reads as under:-

"Prayer in this application is for recall of the order dated 23.01.2014.

A perusal of the order dated 23.01.2014 indicates that the matter was argued by the counsel for the petitioner and thereafter keeping in view the facts and circumstances of the case, the counsel had no option but to withdraw the writ petition to avoid adverse orders which would have adversely affected the interest of the petitioner. Now in the present application for recall of the said order, the counsel has stated that the petitioner has already filed another writ petition, i.e. C.W.P. No. 4340 of 2014 in person, which is now pending for 25.03.2014.

In the light of the above facts, prayer in the present application cannot be accepted.

The application, therefore, stands dismissed."

In the light of the above, the present writ petition is not maintainable and deserves to be dismissed with heavy costs. However, a lenient view is being taken and the writ petition is dismissed in limine as not maintainable as also on merits.