

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.292 of 2015

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Nagrik Adhikar Manch through its Settler namely Sheo Prakash Rai son of Late Nageshwar Rai resident of village - Gali No. 2, Dhobighat Charitarwan, Buxar, P.S. Town, P.S. Buxar, Distt. - Buxar

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Chief Secretary, Govt. of Bihar, Patna
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna
4. The Additional Secretary to the Government, General Administration Department, Government of Bihar, Patna
5. Arun Kumar Verma, State Information Commissioner, NY - 23, Deep Sadan, New Yarpur Road, Gardanibagh, Patna - 80001 and at Present State Information Commissioner, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Dinu Kr, Arvind Kr Sharma, Ritu Raj &
Ms Ritika Ram, Advocates

For the Respondent/s : Mr Lalit Kishore, PAAG I &
Mr Anjani Kumar, AAG IV

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 21-10-2016

By this Public Interest Litigation, the appointment of respondent No 5 Arun Kumar Verma as the State Information Commissioner under the provisions of the Right to Information Act, 2005 (for brevity, *RTI Act*), has been challenged. What has been submitted is that, there was no public advertisement calling for applications to be appointed as State Information Commissioner, there was no transparency by notifying the names so received for public



objections. There was no transparency in matter of selection and, hence, the selection and appointment, as made, is bad. It was also urged that the provisions of the RTI Act contemplates a person having wide knowledge of law to be appointed as State Information Commissioner but the respondent, though a Law Graduate and had practiced in the High Court for about a year and a half, has no other knowledge of law and, thus, was incompetent to be considered for such appointment.

2 On the other hand, learned Principal Additional Advocate General I, appearing for the State submits that the procedure, as provided by the RTI Act, has been followed. There is no infraction so far as the statutory procedure is concerned. He submits that it is wrong to suggest that it is only a person, who has wide knowledge of law, is to be appointed, inasmuch as there can be 10 Information Commissioners in the State coming from various fields. All do not have to be proficient in law. The concerned respondent was a senior Member of an All India Service that is “Indian Information Service” having wide experience in public administration and management who had superannuated as Director (Media and Communication) with additional charge as Director (News) of Press Information Bureau. He was, thus, competent to be selected and the procedure, as prescribed by the RTI Act having been followed, the same cannot be challenged.

3 On behalf of petitioner, it is submitted, as noted above, that the procedure has to be transparent. The first thing we would like to point out is that what procedure should be prescribed by the Legislature is their primary function. If the procedure does not meet the parameters of Article 14 of the Constitution, then the procedure, as prescribed by law, can be attacked but such is not an attack in the present case. Thus, we have to proceed on the basis that the procedure, as prescribed by the law, is adequate and not in violation of any constitutional norms. If that be so, the only enquiry that is open to the Court is, whether or not the person is competent or incompetent to be selected and whether the procedure, as prescribed by law, has been followed or not. The procedure in this regard is contained in Chapter IV, Section 15 of the RTI Act and, in particular Section 15 (2), 15 (3), 15 (5) and 15 (6) which is quoted hereunder:

15. Constitution of State Information Commission.- (1)

(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 recognized 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)

(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.*

4 Thus, there is nothing else either in the RTI Act or any provision having force of law. It is not in dispute that the Committee, as contemplated under sub-section (3) of Section 15 of the RTI Act

did meet and consider the case of the concerned respondent and took a conscious decision to recommend his name pursuant where to he was duly notified. Thus, statutorily, there is no infirmity in the process of selection and appointment.

5 We may now refer to his qualification. For that purpose, who can be appointed and who cannot be appointed, are both stated in Section 15 of the RTI Act itself being Sections 15 (5) and 15 (6) of the RTI Act, as quoted above. The submission on behalf of the petitioner that State Information Commissioner must have experience in law does not hold water inasmuch as a reference to sub-section (5) of Section 15 of the RTI Act gives various alternatives which includes journalism, mass media or administration and governance, social service, management etc. Having legal knowledge may be advantageous. Learned Principal AAG I points out that a retired senior District Judge has also been appointed as State Information Commissioner. He is from the Superior Judicial Service. As noted above, sub-section (2) (b) of Section 15 states that there can be upto 10 State Information Commissioners. If what was submitted by the petitioner is to be accepted then all have to be having legal background. That is not, because the selection is from different avocations/professions as mentioned in Section 15 (5) of the RTI Act. Undoubtedly the concerned respondent superannuated at the highest echelon of an All India Service which service i e, Indian Information



Service, deals with collection, dissemination of information and mass communication. Thus, the person so selected cannot be held to be incompetent. Thus seen, neither there is infraction of the statutory procedure nor ineligible person has been selected. It may be that there were better persons which debate can never end but that would not be an arena for the Court to interfere, for the Selection Committee consists of 3 senior public representatives. Of course, the Committee could have, on its own, evolved a more transparent procedure but not having done so, would not render its decision bad. It would always be advisable to make the procedure more transparent but that would be the job of the Legislature who provided the procedure. Where the law does provide a procedure, it would ordinarily not be open to the Court to lay down procedure, what it thinks proper. The position is created by a legislation, made by the Legislature and the Legislation provides as to how the post has to be filled up. If that is the prerogative of the Legislature then it is not for the Court to substitute its own notion of justice therein without having to declare the Statute in conflict with constitutional norms. That challenge is not there for the present.

6 However, keeping in view various recent judicial pronouncements, we would commend to the Union Government, that time has come where a more public and transparent procedure be prescribed for selection and appointment to such a post. It will go a long way to repose greater public confidence in the office and the

institution of Information Commission.

7 That being the position, we find no merit in this application. It is dismissed accordingly.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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