

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA  
PRADESH**

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**WRIT PETITION No.14299 of 2016**

Between:

J. Prasad Babu, S/o.Veeraiah,  
and others

...Petitioners

and

The State of Andhra Pradesh,  
rep. by its Principal Secretary,  
Department of Social Welfare,  
A.P. Secretariat Buildings, Hyderabad,  
and others

...Respondents

Judgment pronounced on : 04-11-2016

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

1. Whether Reporters of Local newspapers  
may be allowed to see the judgments? : No
2. Whether the copies of judgment may be marked  
to Law Reporters/Journals? : **Yes**
3. Whether their Lordship wish to see the fair copy  
of the Judgment? : No

**THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO****WRIT PETITION No.14299 of 2016**

% 04-11-2016

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Versus

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rep. by its Principal Secretary,  
Department of Social Welfare,  
A.P. Secretariat Buildings, Hyderabad,  
and others

...Respondents

**< GIST:**

**> HEAD NOTE:**

!Counsel for petitioners : Sri V.V.Narayana Rao, learned counsel  
appearing on behalf of Sri V.Y.Prabhuvu.

^ Counsel for respondent  
nos.1 to 3 : Learned Advocate General for Andhra  
Pradesh.

^ Counsel for 4<sup>th</sup> respondent : Sri V.Venkata Ramana, learned Senior  
Counsel appearing on behalf of Sri  
K.Sarvabhuma Rao.

**? Cases referred**

1. (2016) 5 SCC 1
2. (2006) 11 SCC 731 (II)
3. 1995(3) ALT 695
4. (2009) 5 SCC 65, para 33 onwards
5. (2007) 6 SCC 276
6. <https://indiankanoon.org/doc/992022716/>
7. MANU/GJ/0419/1995
8. 1992 Supp (1) SCC 548
9. (2013) 5 SCC 1
10. MANU/UP/1300/2015
11. (2014) 1 SCC 161
12. (2015) 3 SCC 251
13. Associated Provincial Picture Houses ltd. v. Wednesbury Corpn ...  
1948 (1) KB 223
14. (1994) 6 SCC 651

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WRIT PETITION No.14299 of 2016**

**ORDER:**

This Writ Petition raises an important issue relating to the appointment of Chairman of the A.P. State Commission for Scheduled Castes and the Scheduled Tribes constituted under the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes Act, 2003 (for short, 'the Act').

2. The 1<sup>st</sup> respondent is the State of Andhra Pradesh represented by the Principal Secretary, Department of Social welfare; the 2<sup>nd</sup> respondent is the Commissioner and Director of Social Welfare of the 1<sup>st</sup> respondent; the 3<sup>rd</sup> respondent is the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes (for short, 'the Commission'); and the 4<sup>th</sup> respondent is the individual appointed as the Chairman of the said Commission.

3. The petitioners, who are members of the Scheduled Caste community, of whom the 1<sup>st</sup> petitioner is an Advocate, petitioner Nos.2 and 3 are Journalists, and petitioner Nos.4 and 5 are members of political organization by name Madiga Reservation Porata Samiti (MRPS) assail the appointment of 4<sup>th</sup> respondent as Chairman of the 3<sup>rd</sup> respondent Commission.

**THE BACKGROUND FACTS :**

4. The background facts are that under the above statute, vide G.O.Ms.No.44 Social Welfare (CV.PCR) Department dt.13-04-2016, the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes was constituted after the bifurcation on 2.6.2014 of the erstwhile composite State of Andhra Pradesh into the new State of Telangana and the residuary State of Andhra Pradesh, and the 4<sup>th</sup> respondent was appointed as Chairman of the said Commission vide G.O.Ms.No.45 Social Welfare (CV.PCR) Department dt.13-04-2016, i.e., on the very day the Commission was constituted.

5. It is an admitted fact that no applications were invited from eligible candidates seeking appointment for the post of Chairman and no Search Committee was also constituted to shortlist the names of the persons who could be considered by the 1<sup>st</sup> respondent for appointment as Chairman of the said Commission.

6. It is also an admitted fact that the 1<sup>st</sup> petitioner had sent a representation dt.14.7.2015 to the Chief Secretary of the State of A.P. along with his bio-data seeking consideration of his candidature for the post of Chairman of the Commission. Along with the counter-affidavit of respondent Nos.1 and 2, copy of the application dt.14-07-2015 made by 1<sup>st</sup> petitioner to the Chief Secretary of the then 1<sup>st</sup> respondent for consideration of his candidature for the said post, has been filed.

**THE PRAYER OF THE PETITIONERS**

7. Petitioners seek a Writ of Mandamus to declare the action of the 1<sup>st</sup> respondent in issuing G.O.Ms.No.45 Social Welfare (CV.PCR) Department dt.13-04-2016 appointing the 4<sup>th</sup> respondent as the Chairman of the Commission as illegal, arbitrary and violative of Art.14 of the Constitution of India and consequently to set it aside.

**CONTENTIONS OF PETITIONERS**

8. The petitioners raise the following grounds :

(a) Clause (a) of sub-Section (1) of Section 5 of the Act requires that a person who is *eminent* and *belonging to Scheduled Caste or Scheduled Tribe* shall be appointed by the 1<sup>st</sup> respondent as Chairman of the said Commission; though the Act contains a provision for making Rules under Section 18, no Rules have been framed till date by the 1<sup>st</sup> respondent prescribing objective standards for assessing the 'eminence' of persons to be considered for appointment as Chairman; and without laying down any objective standards for determining the suitability of a person to be appointed to the post of Chairman, the 1<sup>st</sup> respondent had appointed the 4<sup>th</sup> respondent in arbitrary manner on the very day the Commission was notified/constituted;

(b) The fact that the 4<sup>th</sup> respondent was appointed as Chairman of the 3<sup>rd</sup> respondent Commission *on the same day* when the Commission itself was constituted by 1<sup>st</sup> respondent for

the residuary State of Andhra Pradesh suggests that there was no transparent mode adopted by the 1<sup>st</sup> respondent in selecting the 4<sup>th</sup> respondent for appointment to the post of Chairman; applications were not invited from suitable and eligible persons for being considered for appointment as Chairman; and no Select Committee had been constituted by 1<sup>st</sup> respondent to suggest names of various eligible candidates or to evaluate the eminence of 4<sup>th</sup> respondent to be considered for appointment to the post of Chairman;

(c) The 4<sup>th</sup> respondent cannot be said to be an 'eminent' person by any standard since he does not possess even the qualification of Graduation and he is only a Diploma Holder. It is contended that there is no contribution by 4<sup>th</sup> respondent to the protection of the rights of people belonging to the Scheduled Castes and Schedule Tribes and in fact he was responsible for creating inimical feelings among various sub-castes notified under Scheduled Caste category particularly against the Madiga community since he had registered an Association by name A.P. Mala Mahanadu allegedly to protect the provisions of reservations under separate quota in favour of Mala Community. It is alleged that he was issuing frequent paper statements against the Schedule caste Madiga Community people *and* also extended full support and cooperation for the agitation by Kapu community leaders seeking reservations in educational institutions and in employment under the 1<sup>st</sup> respondent for the

said community. It is contended that on the recommendations of the senior political leaders belonging to Kapu community of East Godavari District, the 1<sup>st</sup> respondent appointed the 4<sup>th</sup> respondent without any evaluation of his candidature;

(d) It is contended that even the antecedents of the 4<sup>th</sup> respondent were not got verified by the 1<sup>st</sup> respondent from the Superintendent of Police, East Godavari District. Petitioners allege that the 4<sup>th</sup> respondent is having criminal back ground and number of cases are pending in Courts against him; and that the 4<sup>th</sup> respondent was habituated to conducting agitations against the people belonging to other castes and frequently announced hartals, bands and strikes disrupting public life;

(e) It is contended that a person such as 4<sup>th</sup> respondent, who has such prejudice against Scheduled Caste Madiga community, could not be said to have the 'eminence' required for appointment as Chairman of the Commission;

(f) It is stated that the 4<sup>th</sup> respondent had no legal background although, under the provisions of the Act, he is required to discharge his functions and exercise some of the powers conferred on the Civil Courts for trying a suit. It is pointed out that in the past, a former Judge of the High Court was appointed as Chairman of the 3<sup>rd</sup> respondent Commission. It is contended that the 1<sup>st</sup> respondent ought to have first collected information of all eligible persons in the entire State of Andhra

Pradesh before appointing persons such as 4<sup>th</sup> respondent to the post of Chairman of the Commission;

(g) Petitioners assert that the 1<sup>st</sup> petitioner is equally eligible to be considered for the said post as Chairman of the 3<sup>rd</sup> respondent Commission, but no procedure was followed for considering the 1<sup>st</sup> petitioner and other similarly placed persons for being considered for appointment as Chairman of the 3<sup>rd</sup> respondent Commission.

9. Sri V.V.Narayana Rao, learned counsel appearing for Sri V.Y.Prabhuvu, learned counsel for petitioners reiterated the said submissions and relied upon the judgment of the Supreme Court in **Supreme Court Advocates-on-Record Association Vs. Union of India**<sup>1</sup> wherein the Supreme Court has considered the *vires* of the Constitution (Ninety –ninth Amendment) Act, 2014 and the National Judicial Appointments Commission Act, 2014 which contained a provision for appointment of two ‘eminent persons’ to be nominated to the said Commission which was to select and recommend names of persons for appointment as Judges of the High Court and the Supreme Court of India. Art.124-A inserted by the Constitution (Ninety–Ninth Amendment) Act, 2014 provided for constitution of a Commission consisting of the Chief Justice of India, two senior Judges of the Supreme Court, the Union Minister in charge of Law and Justice, and two ‘eminent’ persons. Counsel for petitioner contended that the

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<sup>1</sup>(2016) 5 SCC 1

Supreme Court emphasized the need for laying down qualifications and disqualifications of a person to be appointed as ‘eminent person’ in the Commission and held that their appointment cannot be left to the free will and choice of the nominating authorities and had struck down Article 124-A(1)(d) of the Constitution on the ground that the qualifications of eligibility for being nominated as “eminent persons” were left vague and undefined.

#### **CONTENTIONS OF THE RESPONDENTS**

10. Respondent Nos.1 and 2 filed a counter-affidavit refuting the above contentions. According to them, the appointment of 4<sup>th</sup> respondent as Chairman of the 3<sup>rd</sup> respondent Commission is a purely administrative decision, and it lies within the absolute discretion of the Government under Section 5 of the Act, and is ‘at the pleasure’ of the 1<sup>st</sup> respondent. It is admitted that though the word “eminent” has several synonyms, there is no objective parameter for defining ‘eminence’. They contend that the Government in its wisdom, appointed the 4<sup>th</sup> respondent as Chairman to the Commission and if the challenge to the same by persons like the petitioners is accepted, the search for appointment of a Chairman will become unending, that the Office will remain under vacuum and the very objective of the Act would be defeated. It is contended that it is the prerogative of the 1<sup>st</sup> respondent to nominate or appoint a Chairman for the 3<sup>rd</sup> respondent Commission and the choice of 1<sup>st</sup> respondent cannot be questioned by persons like the petitioners who have

doubtful credentials. It is stated that Article 14 of the Constitution would not apply in respect of appointments which could be made on political considerations such as the Chairman and Members of the Commission, that it is part of the 'spoils system' and Article 16 of the Constitution has also no application. It is stated that after bifurcation of the combined State of Andhra Pradesh, the file for constitution of the Commission and for appointment of Chairman and Members was circulated on 01-03-2016 and 19-03-2016, and that after following the procedure prescribed in the Act and the instructions issued by G.A. (SR) Department for institutions listed in the 10<sup>th</sup> Schedule of the A.P. Reorganization Act, 2014 such as the Commission, it was reconstituted on 13.4.2016 and the 4<sup>th</sup> respondent was appointed as its Chairman on the same day.

11. Learned Advocate General supported the said contentions and argued that there is no challenge to the provisions of the Act by petitioners on the ground that parameters for deciding the eminence of a candidate to be considered for appointment to the post of Chairman of the 3<sup>rd</sup> respondent Commission were not laid down; that Section 18 of the Act, which provides for framing of Rules is not mandatory, and even in the absence of any Rules framed under the Act, the 1<sup>st</sup> respondent is entitled to make appointment to the post of Chairman of the Commission. He contended that the legislature did not prescribe any method of appointment in the statute and had left it entirely to the discretion of the Executive. According to him, no judicial and quasi-judicial powers were given to the Commission, that it can only make

recommendations to the 1<sup>st</sup> respondent, and that the Chairman is liable to be appointed and removed 'at the pleasure' of the Government. Even if he is a public functionary, since appointment of the Chairman is a political appointment, no case has been made out for setting aside the appointment of 4<sup>th</sup> respondent as Chairman of the 3<sup>rd</sup> respondent Commission.

12. He also relied upon the judgment of the Supreme Court in **B. Srinivas Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn and others**<sup>2</sup>, and contended that when the statute does not lay down the method of appointment or term of appointment and has left it to the discretion of the Government by the Act and the Rules, the High Court cannot read into the statute any restriction or prohibition. He contended that the appointing authority, who has the power to appoint, has absolute discretion in the matter. He also cited the decision of a Division Bench of this Court in **B. Issac Prabhakar Vs. Government of Andhra Pradesh**<sup>3</sup>.

13. Sri V.Venkata Ramana, learned Senior Counsel appearing for Sri K.Sarvabhousma Rao, learned counsel for 4<sup>th</sup> respondent supported the stand of the learned Advocate General. He contended that petitioners have no *locus standi* to challenge the appointment of 4<sup>th</sup> respondent as Chairman of the 3<sup>rd</sup> respondent Commission. He stated that there is no requirement prescribed by the Act that a notification shall be issued by 1<sup>st</sup> respondent for consideration of

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<sup>2</sup> (2006) 11 SCC 731 (II)

<sup>3</sup> 1995(3) ALT 695

candidates to be appointed as Chairman of the Commission or to constitute a Select Committee to evaluate the eminence of the candidates or consider several persons for the said post. He refuted the contentions of the petitioners that the 4<sup>th</sup> respondent had created inimical feelings among various sub-castes of the Schedule Caste community or that his client had supported the agitation by the Kapu community people for providing reservation to them and with their support, he was appointed as Chairman. According to him, the appointment of the 4<sup>th</sup> respondent as Chairman of the 3<sup>rd</sup> respondent Commission is not justiciable and is purely 'subjective' and is within the sole and absolute 'discretion' of the 1<sup>st</sup> respondent.

14. I have noted the rival contentions.

#### **THE POINTS FOR CONSIDERATION**

15. On the basis of the above contentions, the following points arise for consideration:

- (A) *Whether, as contended by the respondents, the appointment of the Chairman under Sec.5(1)(a) of the Act can be based upon the general principle of 'spoils system' (i.e., the 'pleasure doctrine') or whether prescription of fixed term in Sec.6 makes the above principle inapplicable?*
- (B) *Whether the absence of Rules under Sec.18 of the Act gives the 1<sup>st</sup> respondent the power to make appointment to the post of Chairman as per its free will and choice?*

- (C) (i) *Whether the selection of an 'eminent person' in clause (a) of subsection (1) of Sec.5 of the Act should be based on objective criteria as held by the Courts and*
- (ii) *whether they should at least satisfy the minimum criteria mentioned in clause (b) of the said subsection meant for appointing ordinary Members of the Commission?*
- (D) *Whether the petitioners have locus standi to file the present Writ Petition?*
- (E) *Whether the appointment of 4<sup>th</sup> respondent as Chairman of the Commission requires reconsideration in the light of the provisions of the Act?*

**THE CONSIDERATION BY THE COURT :**

16. Before going into the points mentioned above, it is necessary to refer to the relevant provisions of the Act.

**THE PROVISIONS OF THE ACT**

17. The Act was enacted to provide for a Commission for the Scheduled Castes and Scheduled Tribes to safeguard their interests in the State, and in particular, to advance the cause of eradication of untouchability, and prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes on the lines of the A.P. State Minorities Commission constituted under the A.P. State Minorities Commission Act, 1998.

18. Section 3 of the Act directs the State Government to issue notification constituting a body to be known as the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes to

exercise the powers conferred on, and to perform functions assigned to it under the Act.

19. Section 5 of the Act deals with Members of the Commission and envisages that the Commission shall consist of Chairman and that not more than five members be appointed by the Government. The said Section states :

*“5. Composition of the Commissioner: (1) The Commission shall consist of the following members:*

*(a) a Chairman shall be an eminent person belonging to Scheduled Caste or Scheduled Tribe to be appointed by the Government; and*

*(b) not more than five members to be appointed by the Government from amongst persons of ability, integrity and having outstanding record of selfless service to the cause of justice for the Scheduled Castes and Scheduled Tribes belonging to Scheduled Castes and Scheduled Tribes out of which one woman member shall be appointed by the Government.*

*(2) The Secretary shall convene the meetings of the Commission from time to time.”(emphasis supplied)*

20. Section 6 of the Act states that the term of the Chairman or the members shall, unless otherwise disqualified for continuing as such under the rules, hold office for a term of **three years** from the date he assumes office and shall be eligible for re-appointment only for one more term only.

21. Section 11 of the Act enumerates the powers of the Commission in respect of various matters and states:

*“11. Powers of the Commission :- (1) The Commission shall, while performing its functions under Section 12, have the powers of a Civil Court trying a suit ...”*

The section enumerates various powers (i) to (vi).

22. Section 12 of the Act sets out the functions of the Commission. In clauses (a) to (d) it refers to taking action for violation of the provisions of Protection of Civil Rights Act, 1955 (Central Act 22 of 1955) and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989) and rules thereon or abetment thereof by way of inquiry, investigation, evaluation of safeguards and making recommendations.

23. Sub-clauses (e) and (q) of Sec.12 relate to reviewing the implementation of policies pursued by the Central and State Governments in regard to these castes and tribes, looking into complaints, inquiring into unfair practices, spreading literacy, conducting studies, research and analysis of avoiding discrimination, suggesting appropriate legal and welfare measures, monitoring working of laws in force relating to Schedule Castes and Tribes, encouraging NGOs, sending periodical reports to Government, making recommendations to the National Commission for Scheduled Castes and Tribes etc.

24. Section 17 of the Act states that the Chairman, Members and employees of the Commission would be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860.

**CHAIRMAN OF THE COMMISSION DISCHARGES PUBLIC FUNCTIONS**

25. A perusal of Section 12 of the Act shows that wide range of functions have to be performed by the Commission to protect the rights of the Scheduled Castes and Scheduled Tribes including the power to make inquiries, investigations, conducting evaluation and give recommendations to the State Government to prevent such atrocities and to safeguard their interests. No doubt, it's recommendations are not made binding on the 1<sup>st</sup> respondent under the Act, but the nature of the functions of the Commission delineated in Sec.12 of the Act show clearly and without doubt that they are public functions of great importance. This is reinforced by Section 15 of the Act, which provides that grants would be released by the 1<sup>st</sup> respondent for functioning of the Commission and by making the Chairman, Members and employees of the Commission as deemed public servants within the meaning of Section 21 of the Indian Penal Code under Sec.17 of the Act.

**DISCUSSION ON THE POINTS****Point (A) :**

26. The point is whether, as contended by the respondents, the appointment of the Chairman under Sec.5(1)(a) of the Act can be based upon the general principle of 'spoils system' (i.e., the 'pleasure doctrine') or whether the prescription of a fixed term makes the above principle inapplicable?

27. Normally, when Ministers are appointed, it is true that it is the prerogative of the Chief Minister to appoint them. These appointments are made on the basis of the 'pleasure doctrine' or 'spoils system' and it is also the prerogative of the Chief Minister to recommend their removal from the cabinet at any time.

28. In regard to the position of Prime Ministers (which equally applies to Chief Ministers of a State), there is some interesting literature to which I shall refer.

29. Lord Morley described the Prime Minister as *primus inter pares* first among the equals but Sir William Vernor Harcourt described the Prime Minister as *inter Stellas luna minores* -- a moon among lesser stars. Sir Ivor Jennings stated that the Prime Minister is not merely the first among equals, he is not merely a moon among lesser stars ....., "*He is rather a sun around which planets revolve*" (Sir Ivor Jennings in "the Cabinet Government").

30. The spoils system (pleasure doctrine) originated in the United States where the party in power would appoint various persons of its choice to various offices at its pleasure and could also remove them at its pleasure even during its term. The successor Government, which comes into office after an election, could simply remove them and appoint its own party people in those offices. In England also, this method of appointment was there and such appointments were referred to as those made under the 'pleasure doctrine'. The history of

the 'pleasure doctrine' has been set out by the Supreme Court in the judgment of **State of Bihar v. Upendra Narain Singh**.<sup>4</sup>

31. But decided cases by the Supreme Court show that there are two exceptions to the 'pleasure doctrine' namely,

(a) where the person is protected by the provisions of Art.310 and 311 of the Constitution of India; or

(b) where the tenure of an appointment is statutory for a certain fixed period and the manner in which the person stands disqualified is specified in the statute or in the Rules.

32. As we are concerned with the 2<sup>nd</sup> exception mentioned above, I shall first refer to the direct judgment of Supreme Court in **Union of India v. Shardindu**<sup>5</sup> which states that where the statute fixes a term for the appointee, the 'pleasure doctrine' does not apply. (See Sec.6 of the Act in our case which prescribes a term of 3 years for a Chairman)

33. In **Shardindu** (5 Supra), a person was appointed as Chairman of the National Council for Teacher Education (NCTE) for four years. The contention of the Writ Petitioner therein/ respondent in the Supreme Court was that the appointment was for a fixed term and the 'pleasure doctrine' did not apply. It was also contended that none of the circumstances mentioned in Sec.4 of the National Council for Teacher education Act, 1997 for disqualifying him have occurred. In reply, it was contended by the Union of India that the appointment

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<sup>4</sup> (2009) 5 SCC 65, para 33 onwards

<sup>5</sup> (2007) 6 SCC 276

was based on the ‘pleasure doctrine’ and could be terminated at any time.

34. Rejecting the said contention, the Supreme Court observed in **Shardindu** (5 Supra), that the ‘pleasure doctrine’ was not applicable to cases where the statute provided a specific period of tenure and as to how the person would stand disqualified during that tenure. It therefore held that the summary termination of the appointment of the Writ Petitioner was illegal as the ‘pleasure doctrine’ did not apply and that the circumstances mentioned in Sec.5 and Sec.6 for his disqualification did not admittedly occur. The Supreme Court held:

*“ 16. Now, the position that emerges is that the respondent was appointed for a fixed tenure of four years or till he attains the age of sixty years whichever is earlier under Section 4 of the Act and while discharging his duties he did not incur any of the disqualifications as mentioned in Sections 5 and 6.”*

35. Adverting to the non-applicability of the ‘pleasure doctrine’ in the case of appointments for a fixed term, the Supreme Court observed:

*“17. Learned Additional Solicitor General tried to support his submission on pleasure doctrine under Article 310 of the Constitution and submitted that the respondent has been appointed by the Central Government and therefore, it is the pleasure of the President to cut short his appointment.... The distinction between statutory appointment and pleasure appointment has to be kept in mind. The pleasure appointments are such where the incumbents are appointed at the pleasure of the President, like Governors, etc. As against this, statutory appointments are made under the statute and the service conditions of the incumbents are governed by the statute. They are not pleasure appointments. Governor appointed under the*

*Constitution is purely pleasure appointment or appointment of such nature which the incumbent holds at the pleasure of the President or the Governors as the case may be. Such appointments may be cut short. ... .. Therefore, the distinction has to be borne in mind, the doctrine of pleasure appointment as it existed in feudal set-up and in the democratic set-up... ..*

*... .. Therefore, the concept of pleasure doctrine cannot be invoked in the present case. ... ..In the present case, the appointment made was of statutory appointment and the service conditions of the Chairperson and members have been laid down, likewise their removal has also been laid down on incurring certain disqualifications. Therefore, the submissions of learned Additional Solicitor General have no legs to stand.”*

36. A case decided by the Rajasthan High Court in which the Government, which came into power, removed the persons who had been previously appointed as members of the Agricultural Market Committee is very instructive. That is the case reported in **Shri Banshdhar v. State of Rajasthan**<sup>6</sup> where the tenure of the persons nominated as members of the Agricultural Market Committee was 5 years and the termination orders were passed within the said period soon after the change in the Government. The Court rejected reliance on the pleasure doctrine, as the statute provided a fixed tenure. It referred to the circumstances mentioned in the statute under which a person would stand disqualified and since admittedly no such circumstances existed when the termination order was passed, the termination orders were set aside.

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<sup>6</sup> <https://indiankanoon.org/doc/992022716/>

37. In identical circumstances, where persons nominated to Senate of a University were removed soon after the change in the Government, the Gujarat High Court in **Harshadrai Shantilal Shah v. State of Gujarat**<sup>7</sup>, held that the statute provided for a term of 5 years and therefore the termination of the nomination under the pleasure doctrine was impermissible.

38. Having regard to the above decision of the Supreme Court and the Rajasthan and the Gujarat High Courts referred to above, I am of the opinion that when Sec.6 (1) of the present Act specifically provides for a period of 3 years as the tenure of the Chairman of the Commission unless he is otherwise disqualified from continuing as such under the Rules, and as admittedly no such disqualification Rules had been framed, and there was therefore no scope for disqualification, the present case of appointment of the 4<sup>th</sup> respondent cannot be brought within the spoils system/pleasure doctrine.

39. The learned Advocate General relied upon the decision of the Division bench of the High Court of Andhra Pradesh in **B.Issac Prabhakar** (3 supra) decided in 1995 long before the judgment of the Supreme Court in **Shardindu** (5 Supra) in 2007.

40. The judgment in **B.Issac Prabhakar** (3 supra) is distinguishable. In that case, this High Court considered the question of termination of appointments of persons as Directors of the Board of the A.P. State Road Transport Corporation under Sec. 8(2) of the

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<sup>7</sup> MANU/GJ/0419/1995

Road Transport Corporation Act, 1950. Rule 4 of the Rules framed under the Act stated that '*Save as otherwise provided in these Rules, the term of office of a Director shall be two years from the date of his appointment.*' But the distinguishing feature is that sub-section (2) of Sec.8 of the Road Transport Corporation Act, 1950 empowered the State to terminate the appointments of Directors by giving one month notice.

41. While dealing with the said issue, the High Court held that the posts of Director of the said Corporation are not akin to civil posts under Art.309 and 310 of the Constitution and protection of Art.311 was not available to them and under Rule 4, the service could be summarily terminated. The High Court held that when persons are appointed as Chairmen of different public Corporations, political considerations would weigh to a very large extent and such incumbents cannot be compared with holders of civil posts, in the matter of qualifications, method of appointment and conduct in office.

42. In the above case, the second exception mentioned in the judgment of the Supreme Court in **Shardindu** (5 supra) did not fall for consideration by the A.P. High Court.

43. The said decision of 1995, in my opinion, is distinguishable at least on three counts :

(i) Though in **B.Issac Prabhakar** (3 supra), Rule 4 of the Andhra Pradesh Road Transport Corporation Rules, 1958 provided for a

tenure of two years, the statute in sub-section (2) of Sec. 8 permitted termination by giving one month's notice, thus, taking the case out of the purview of the principle laid down in **Shardindu** ( 5 Supra).

Be it noted that in the present case, there is no provision in the Act or any Rule for simple termination of a person nominated as Chairman as in the case in **B.Issac Prabhakar** (3 supra) where Sec.8(2) existed. Nor indeed, can a Rule be made for simple termination without notice, as Sec.6 of the Act only permits the grounds of disqualification to be enumerated in the Rules.

(ii) Secondly, the present statute is a piece of social legislation. The Preamble of the Act states that it is an Act to safeguard the interests of Schedule Castes and Schedule Tribes and matters connected therewith and incidental thereto. It was the result of the recommendations of a former Judge of the Andhra Pradesh, Mr.Justice K.Punnaiah, who was appointed as a Single Member Commission of Enquiry. Sec.12 of the Act enumerates various social obligations to alleviate the plight of Schedule Castes and Schedule Tribes. In my opinion, the Act seeks to implement the provisions of Art.17 of the Constitution relating to untouchability; it is in furtherance of Art.38 of the Constitution dealing with Directive Principles relating to securing a social order for the promotion of welfare of all the people; for achieving equal justice under Art.39A; and promotion of education and economic interest of Schedule Castes and Schedule Tribes under Art.46. *Therefore the appointment of Members and Chairman of the present Commission*

*performing a variety of functions and exercising various powers in order to safeguard the interests of the Schedule Castes and Schedule Tribes under the provisions of the Chapter on Fundamental rights and Directive Principles of the Constitution cannot be compared with the appointments of Directors of the Board of the State Road Transport Corporation as in **Isaac Prabhakar** (3 Supra), who merely perform ordinary administrative functions and have no constitutional social obligations. Indeed, there is no scope for any comparison. That is another reason as to why the appointments or termination of members of the Commission cannot fall under the observations of the Division bench in **B.Issac Prabhakar** (3 supra).*

(iii) Thirdly, the further observation in **B.Issac Prabhakar** (3 supra) that political considerations would come into picture in matter of appointment of Directors, cannot be made applicable to appointments of Chairman of the Commission under the Act which require an 'eminent person' to be appointed and, as will be shown herein below under Point C, such an appointment has to be made on the basis of objective criteria/material in view of the language of Sec.5 of the Act.

44. Point (A) is answered accordingly that the appointment of the Chairman under sec.5(1)(a) of the Act cannot be based upon the general principle of 'spoils system' or 'pleasure doctrine', more so, when the Act prescribes a fixed term, but does not provide for disqualification or for summary termination such as Sec.8 (2) in **Isaac Prabhakar** (3 Supra) case.

**POINT (B)**

45. Under this point the question being considered is whether the absence of Rules under Sec.18 of the Act gives the 1<sup>st</sup> respondent the power to make appointment to the post of Chairman as per it's free will and choice.

46. Sec.18 of the Act states:

“ *Sec.18. Power to make Rules:-*

*a. The Government **may**, by notification, make rules for carrying out all or any of the purposes of this Act.*

... ..”

47. Sec.18 enables the 1<sup>st</sup> respondent to frame Rules to carry out the purposes of the Act. Therefore, it is certainly open to the 1<sup>st</sup> respondent to frame Rules relating to the method and manner of appointment to the post of Chairman. No doubt, a plain reading of this provision suggests that it may not be obligatory on the part of the 1<sup>st</sup> respondent to frame the rules since the word ‘may’ is used there, but that, in certain cases, is not conclusive as shown herein below.

48. In the present case a difficulty arises since the Sec.5(1) (a) of the Act does not prescribe any standard for judging whether the candidate being considered by 1<sup>st</sup> respondent for appointment as Chairman of the 3<sup>rd</sup> respondent Commission has the requisite ‘eminence’.

49. Likewise, Sec.6(1) of the Act states that a Chairman, unless otherwise disqualified for continuing as such under the rules, can hold

office for a term of three years from the date he assumes office. No such disqualifications are specified in the Rules since no rules are framed at all. Sec.7(2) of the Act states that salaries and allowances payable to and other terms and conditions of service of the Secretary, Officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed. Sec.7(3) of the Act states that the Secretary shall be the Chief Executive Officer of the Commission and shall exercise such powers and perform such functions as may be prescribed. Sub section (1) of Sec.14 of the Act directs the Commission shall maintain proper accounts and other relevant records and prepare annual statement of account in such form and in such manner as may be prescribed. Sub section (2) of Sec.14. These accounts of the Commission shall be audited by such authority at such times and in such manner as may be prescribed.

50. It is an admitted fact that no Rules have been framed under the Act till date since it's enactment in 2003. Absence of Rules on all the above referred aspects creates difficulties in the implementation of the Act.

51. I am aware that it is settled law that a Writ of Mandamus cannot be issued to the State Legislature or to the Executive Government to enact a law or frame rules. (See **State of J & K v. A.R.Zakki**<sup>8</sup>).

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<sup>8</sup> 1992 Supp (1) SCC 548

52. But from this, does it follow that in the absence of Rules framed under the Act, the 1<sup>st</sup> respondent can appoint any person as per it's will and choice to the important post of Chairman of the Commission? The answer is 'No' as I shall presently show.

53. The former is a restriction on the Court's power but the latter is a restriction on the power of the appointing authority. Both are different.

54. In **B.Srinivas Reddy** (2 supra), cited by the learned advocate General, which was decided in 2006, the Supreme Court no doubt observed that if the statute or the Rules made thereunder do not prescribe any mode of appointment and have left it to the discretion of the Government, the High Court cannot read into the statute a restriction or prohibition and the appointing authority has absolute discretion in matters of making appointments.

55. But the said view of 2006 therein was considered and explained in 2013 by the subsequent judgment of the Supreme Court in **State of Punjab v. Salil Sabhlok**<sup>9</sup>.

56. In **Salil Sabhlok** (9 Supra), the Supreme Court considered the question of validity of appointment of Chairman of Public Service Commission of State of Punjab. Art.316 of the Constitution merely provides for appointment and does not provide what qualification a person must have to be appointed as Chairman. *The Supreme Court*

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<sup>9</sup> (2013) 5 SCC 1

*held that, having regard to the nature of responsibility of the Service Commission, even in the absence of any procedure laid down under Article 316 of the Constitution of India empowering the Governor to appoint the Chairman and Members of the Public Service Commission, the State Government would not have an absolute discretion in selecting and appointing any person as Chairman of the said Commission. It held that the Government should select a person with integrity and competence for appointment as Chairman of the Public Service Commission.*

57. It held that the discretion vested in the State Government under Article 316 of the Constitution of India is impliedly limited by the purposes for which the discretion is vested and the purposes are discernable from the functions of the Public Service Commission enumerated in Article 320 of the Constitution of India. It held that if these relevant facts are not taken into consideration by the State Government while selecting and appointing the Chairman of the Public Service Commission, the Court can hold the selection and appointment of the Chairman as not in accordance with the Constitution. It held that the High Court can invoke its wide and extraordinary powers under Section 226 of the Constitution of India and quash the selection and appointment to ensure that the discretion of the State Government is exercised within of the bounds of the Constitution if it is shown that relevant factors implied by the very nature of duties entrusted to the Public Service Commission under

Art.320 of the Constitution have not been considered by the State Government in selecting and appointing the Chairman of such Commission. It observed:

*“ 45. I have already held that it is for the Governor who is the appointing authority under Article 316 of the Constitution to lay down the procedure for appointment of the Chairman and Members of the Public Service Commission, but this is not to say that in the absence of any procedure laid down by the Governor for appointment of Chairman and Members of the Public Service Commission under Article 316 of the Constitution, the State Government would have absolute discretion in selecting and appointing any person as the Chairman of the State Public Service Commission. Even where a procedure has not been laid down by the Governor for appointment of Chairman and Members of the Public Service Commission, the State Government has to select only persons with integrity and competence for appointment as Chairman of the Public Service Commission, because the discretion vested in the State Government under Article 316 of the Constitution is impliedly limited by the purposes for which the discretion is vested and the purposes are discernible from the functions of the Public Service Commissions enumerated in Article 320 of the Constitution. Under clause (1) of Article 320 of the Constitution, the State Public Service Commission has the duty to conduct examinations for appointments to the services of the State. Under clause (3) of Article 320, the State Public Service Commission has to be consulted by the State Government on matters relating to recruitment and appointment to the civil services and civil posts in the State; on disciplinary matters affecting a person serving under the Government of a State in a civil capacity; on claims by and in respect of a person who is serving under the State Government towards costs of defending a legal proceeding; on claims for award of pension in respect of injuries sustained by a person while serving under the State Government and other matters. In such matters, the State Public Service Commission is expected to act with independence from the State Government and with fairness, besides competence and maturity acquired through knowledge and experience of public administration.*

*46. I, therefore, hold that even though Article 316 does not specify the aforesaid qualities of the Chairman of a Public Service*

Commission, these qualities are amongst the implied relevant factors which have to be taken into consideration by the Government while determining the competency of the person to be selected and appointed as Chairman of the Public Service Commission under Article 316 of the Constitution. Accordingly, if these relevant factors are not taken into consideration by the State Government while selecting and appointing the Chairman of the Public Service Commission, the Court can hold the selection and appointment as not in accordance with the Constitution. To quote De Smith's Judicial Review, 6th Edn.:

*"If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account (expressly or impliedly), a court will normally hold that the power has not been validly exercised. (p. 280)*

*If the relevant factors are not specified (e.g. if the power is merely to grant or refuse a licence, or to attach such conditions as the competent authority thinks fit), it is for the courts to determine whether the permissible considerations are impliedly restricted, and, if so, to what extent. (p. 282)"*

... ..

99. While it is difficult to summarise the indicators laid down by this Court, it is possible to say that the two most important requirements are that personally the Chairperson of the Public Service Commission should be beyond reproach and his or her appointment should inspire confidence among the people in the institution. The first "quality" can be ascertained through **a meaningful deliberative process**, while the second "quality" can be determined by taking into account the constitutional, functional and institutional requirements necessary for the appointment." (emphasis supplied)

58. The Court categorically held in 2013 that relevant factors for appointment can be implied from the very nature of duties entrusted to a statutory body and the High Court can invoke its wide and extraordinary power under Section 226 of the Constitution of India and quash the selection or appointment to ensure that the discretion of

the State Government is exercised properly. This case gives a guidance as to how, even in the absence of prescription of parameters by the statute, *some parameters can be implied* in the process of selecting persons such a Chairman of the Commission.

59. It is pertinent to note that a Public Service Commission is a body which conducts recruitment tests for civil posts under the States and the Union and only *recommends* suitable persons for appointment to the States and the Union of India. Though the 3<sup>rd</sup> respondent Commission, in the present case before me, does not deal with appointments of persons to posts, it protects the interests of the Scheduled Castes and Scheduled Tribes, who are among the most marginalized people in the Country, by making appropriate *recommendations* to 1<sup>st</sup> respondent on the vital issues covered by Sec.12 of the Act. So questions as to 'eminence' and integrity of the person to be appointed as Chairman and his record of service to the Scheduled Castes and Scheduled Tribes are important factors which need to be considered before a person is appointed to the post of Chairman of the Commission. So the fact that the body in question merely recommends to the Government to do certain acts does not mean that it's functions are not important and persons can be appointed to it as per the whims and fancies of the Government.

60. On the question of absence of the Rules, as to who is an 'eminent' person under sec.5 (a)(i) , I shall now refer to the important decision of the larger Bench judgment of Supreme Court in **Supreme**

**Court Advocates-on-Record Association** (1 supra). The National Judicial Appointments Commission Act, 2014 (for short, 'NJAC'), envisaged the constitution of an NJAC consisting of Chief Justice of India, two senior most Judges of the Supreme Court, Union Minister of Law and Justice and two eminent persons. One of the contentions advanced therein was that since no qualification to be possessed by the eminent persons to be nominated as member of NJAC was stipulated either in the NJAC Act or by the Constitution (99<sup>th</sup> Amendment) Act, 2014 and since they did not even stipulate any negative disqualifications whether appointment can be made on the free will and choice of the nominating authority, the provisions are unconstitutional. The Supreme Court disagreed with the contention of the learned Attorney General that there is free will and choice to make appointments of such '*eminent persons*' to Commission since the persons to be nominated to the NJAC under this category were to be nominated by the Committee comprises of Hon'ble Prime Minister, the Chief Justice of India and the leader of the Opposition in the Lok Sabha. The Supreme Court held that the two eminent persons comprise 1/3<sup>rd</sup> strength of NJAC, and double that of the political-executive component. It highlighted the power of *veto* which would be exercised by the two eminent persons in the NJAC and observed that two eminent persons in the scheme of selection process can by themselves reject all recommendations even if they are unanimously approved by the remaining four members of the NJAC. It held that it is imperative that, having regard to the importance of their functions,

the qualifications and disqualifications of such eminent persons must be laid down and they cannot be left to the free will and choice of the nominating authorities even if they hold high constitutional positions. The Supreme Court held that *Article 124A(1)(d) of the Constitution of India was liable to be set aside and struck down for not laying down qualifications of eligibility for being nominated as eminent person and leaving the same vague and undefined.*

61. In the present case, it is true that there is no challenge to the provisions of the Act like in the above case on the ground that Rules are not framed. So the Court need not go into the validity of Sec.5(1)(a). It is sufficient to deal with the implied restrictions therein.

62. I may state that the absence of challenge to the provisions of the Act by petitioners is obviously because the petitioners do not want a situation where the whole Act becomes unworkable by striking down Sec.5(1)(a). So the absence of a challenge to the said provision does not give an excuse to the 1<sup>st</sup> respondent to contend that it can make appointments to posts of Chairman as per the sweet will and pleasure of the political executive.

63. I am of the view that, in the context of the responsibilities conferred by Sec.12 of the Act on the Chairman and Members of the Commission, if the guidance in the decisions of **Salil Sabhlok** (9 Supra) and **Supreme Court Advocates-on-Record Association** (1 supra) is followed, it is clear that parameters such as integrity of the

candidate and his record of service to the Scheduled Castes and Scheduled Tribes are implied by the very nature of duties entrusted to the Commission, and necessary guidance must have been provided by Rules as to make sec.5(1)(a) workable and meaningful.

64. Therefore it has to be held that plea of absence of Rules framed under the Act in respect of the qualification for appointment of a Chairman does not permit the 1<sup>st</sup> respondent to appoint a person to the post of Chairman of the Commission as per its free will and choice.

65. Point B is answered accordingly.

**POINT C - (i) and (ii)**

66. Now I will consider (i) whether the selection of an 'eminent person' in clause (a) of subsection (1) of Sec.5 of the Act should be based on objective criteria as held by the Courts, and (ii) whether they should at least satisfy the minimum criteria mentioned in clause (b) of the said sub-section meant for appointing ordinary Members of the Commission.

67. The first question is whether the selection of an 'eminent person' as the Chairman is 'subjective' as contended by the Leaned Advocate General and Mr Venkataramana *or* whether it should be based on 'objective' criteria?

68. Let us see what is meant by "*eminent person*" mentioned in Sec.5(1)(a) by applying principles of interpretation of statutory provisions.

69. I shall first refer to the ordinary meaning of the word as a principle of interpretation. According to the Concise Oxford English dictionary, the word '*eminent*' means "*respected and distinguished within a particular sphere; notable, outstanding*".

70. According to another dictionary this English word is based on the Classical Latin word '*eminentia*', meaning '*excellent, prominent*'. It refers a superior position or rank, character, achievement and greatness. ([www.yourdictionary.com/eminence](http://www.yourdictionary.com/eminence)). According to another, it means '*well known and respected, especially achievement in a field, outstanding or remarkable, towering among others*' ([www.thefreedictionary.com/eminence](http://www.thefreedictionary.com/eminence)). These definitions give us an idea of the ordinary meaning of the word '*eminent person*'.

71. So '*eminent persons*' are not ordinary persons. They ought to be far above the ordinary. They are even far above those who could be Members of the Commission, who are men of integrity. Then what are they? They stand tall and are those who can leave footprints in the sands of time. They ought to at least stand head and shoulders above persons who are eligible to be appointed as Members of the Commission.

72. Apart from the ordinary meaning, in my view, a purposive interpretation of the word '*eminent*' is necessary as this is a piece of social legislation meant for doing good and performing a vast number of social obligations to the Scheduled Castes and Scheduled Tribes. As already stated it is a legislation to further the fundamental right in Art 17 of the Constitution relating to abolition of untouchability, of the Directive Principles in Art.38 as to securing a social order for the promotion of welfare of all people, equal justice under Art 39 A, and Art 46 relating to promotion of educational and economic interests of Scheduled Castes and Scheduled Tribes.

73. Then the more important question whether the appointment of an 'eminent' person depends on 'subjective' satisfaction or should be based on objective criteria/material?

74. That the selection of a person as an "eminent person" is to be based on objective criteria was laid down recently by Chandrachud DY CJ (as he then was) in High Court at Allahabad in **Gorakhpur University Aff. College Teacher Association and Others Vs. State of U.P. and others**<sup>10</sup> in the context of appointment of Members of the UP Higher Education Selection Commission.

75. The High Court of Allahabad in that case considered the question whether appointments made of certain members to the U.P. Higher Education Services Commission are valid having regard to the provisions of the U.P. Higher Education Services Commission Act,

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<sup>10</sup> MANU/UP/1300/2015

1980, which empowered the State Government to appoint a person as Member of the said Commission, who in its opinion was an 'eminent person' having made valuable contribution in the field of education. The said Act was enacted by the State legislature to establish a Service Commission for the selection of teachers for appointment to colleges affiliated to or recognized by a University.

76. Speaking for the Bench, Justice Dr.D.Y Chandrachud (as he then was) stated as follows:

*“ 25. Now, it is in this background that it would be necessary to interpret clause (g) of sub-section (2-a) of Section 4. Clause (g) postulates the fulfillment of two conditions for the formation of opinion by the Government. The first condition is that a candidate must, in the opinion of the State, be an **eminent person**. The second requirement is that the candidate must have made a valuable contribution in the field of education. The first criterion is a criterion of eminence. The expression 'eminence' has not been defined by the state legislature and must, therefore, bear its ordinary connotation and meaning. The expression 'eminence' has been defined in the Shorter Oxford English Dictionary to mean "distinguished in character or attainments". The Random House Dictionary of the English language defines the expression 'eminent' to mean "high in station, rank, or repute; distinguished". Webster's New Twentieth Century Dictionary of the English language defines the expression 'eminent' to mean "standing high by comparison with others; renowned; exalted; distinguished". The meaning which is ascribed to the expression 'eminent' in these dictionaries bears a common sense understanding of the expression. The second requirement which is equally significant is that the person should have made a valuable contribution, not just a contribution, and that it should be in the field of education. The formation of the opinion by the State Government must be on the basis of objective material. Clause (g) of sub-section (2-a) cannot, in other words, be utilized as a catch-all remedy to bring in persons who are not otherwise eligible under clauses (d), (e) and (f). We do notice that it may well be that a*

*person who does not fall in one of the categories spelt out in clauses (a) to (f), may, nonetheless, be in the opinion of the State Government an eminent person with a valuable contribution in the field of education. Such an opinion must be founded on material and will not rest upon a subjective view unsubstantiated by demonstrable credentials. The point to note is that in the guise of making an appointment under clause (g), the State Government cannot obviate observance of the eligibility requirements which are specified in clauses (d), (e) and (f). Otherwise, it would be a very negation of the object and purpose of the statute. As the tabulated statement placed before the Court indicates, since 1 January 2012, appointments as members have been predominantly made by taking recourse to the provisions of clause (g). Persons who are not Professors or Principals fulfilling the requirement of clauses (d), (e) or (f) are sought to be appointed by taking recourse to the provisions of clause (g).” (emphasis supplied)*

77. The Allahabad Court further observed, in regard to ‘eminent persons’, that the object is not only to ensure that persons with appropriate qualifications hold the post but also that the process itself engenders public faith and confidence. The Court referred to the decision of the Supreme Court in **Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and others**<sup>11</sup> and held that the issue of ‘institutional integrity’ is of significant importance, that Article 14 of the Constitution of India requires procedures under law to be fair, just and reasonable and procedures in regard to appointments to public offices, cannot be an exception. It observed that transparency in matters of public appointment and good governance are structural issues which are of the highest concern and such powers to make appointments to public offices has to be wielded and exercised in a

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<sup>11</sup> (2014) 1 SCC 161

manner consistent with public interest. The Court emphasized the need for making the process leading up to the appointment fair and reasonable and for consideration of all persons eligible and qualified in that regard. It observed that there is a danger of the process of filling up important posts in the statutory Commissions becoming an avenue for conferment of political largesse, and such a state of affairs cannot be allowed to pass in a society which is founded on the rule of law.

78. The Allahabad High court observed that the State Government had not issued any notification furnishing an intimation that there are vacancies in the Commission or that it intends to fill up one or most posts of member in the Commission and there was no effort whatsoever made to follow a transparent or objective process by giving due publicity to the fact that the State Government is in the process of filling up of vacancies in the Commission. It held that the statutory Commissions such as U.P. Higher Education Services Commission are conceived in public interest and discharge public functions and their membership cannot be regarded as an instrument of conferring largesse on a chosen few. It held that there is, on the facts of that case, no competitive evaluation of the merits of various candidates and the modalities adopted by the State are arbitrary and violative of Article 14 of the Constitution.

79. *The Court emphasized the need for constituting a Select Committee comprising of persons with an objective track record,*

*which would scrutinize the credentials, standing and integrity of candidates under consideration.* It set aside the appointments of certain members of the said Commission on the ground that there is a clear breach of statutory requirement that the person must be 'eminent'. It directed the State Government to reconstitute the Commission after *laying down proper norms* consistent with the statute and by following a process, which is *objective*, fair and reasonable, in accordance with the mandate of Article 14 of the Constitution of India.

80. The reasoning of the Allahabad High Court in the above case, in my opinion, is directly on the point. So I hold on para C (i) that the question whether a person is an 'eminent' person is to be based on objective criteria and is not to be a subjective decision.

81. The next question is whether a person appointed as Chairman should at least satisfy the minimum criteria mentioned in clause (b) of the said subsection meant for appointing ordinary Members of the Commission?

82. Coming to the above point, the argument of the Advocate General and Sri V.Venkatramana is that Sec 5(b) enumerates certain criteria for appointment of Members such as integrity, ability and record of service to Scheduled Castes and Tribes, but not with reference to the Chairman, and therefore the said criteria mentioned by the statute in relation to Members, are not relevant. It is contended

that the absence of similar criteria for appointment of the Chairman, it is permissible for the Government to appoint a Chairman based on its subjective satisfaction. This contention has to be rejected straight away.

83. To accept such a contention would, in my opinion, mean that persons to be appointed as Chairman need not be a man of ability or integrity or having a record of service to Scheduled Castes and Tribes. That would be a very negation of the legislative intention. In my opinion, the appointment of the Chairman must, at the minimum level, satisfy the criteria mentioned by the legislature for appointment of Members to the Commission.

84. Therefore, the minimum requirements which are, *"ability, integrity, and having outstanding record of selfless service to the cause of justice for Scheduled Castes and Scheduled Tribes"* are applicable even to the post of Chairman.

85. In **Board of Control for Cricket in India Vs. Cricket Association of Bihar and Others**<sup>12</sup>, the Supreme Court accepted that the Board of Control for Cricket in India, which is a Society registered under the Madras Societies Registration Act, though not a 'State' under Article 12 of the Constitution of India, is amenable to Writ jurisdiction under Article 226 of the Constitution of India since the nature of its duties and functions suggest that it is carrying on public

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<sup>12</sup> (2015) 3 SCC 251

functions. It observed that demands of institutional integrity are heavy and need to be met suitably in larger public interest. It went to the extent of appointing a Committee of the retired Supreme Court Judges including the former Chief Justice of India to oversee the running of the affairs of the B.C.C.I. Thus the importance of institutional integrity needs to be kept in mind too for making appointment of persons to posts such as Chairman and Members of the 3<sup>rd</sup> respondent Commission.

86. If indeed the argument of the learned Advocate General is that the appointment of 4<sup>th</sup> Respondent need not have been or was made without reference to the above minimal criteria, I have no doubt, that the appointment of the 4<sup>th</sup> Respondent needs to be set aside straightaway.

87. Therefore, on point C (ii), having regard to the nature of functions being discharged by the 3<sup>rd</sup> respondent Commission, which are undoubtedly very important in the context of protection of the rights of the members of the Scheduled Castes and Scheduled Tribes in the State, it cannot be accepted that the State Government can fill up the posts of the Members of the said Commission as well as that of the Chairman without any norms, at its pleasure, and as part of spoils system wherein persons favored by the Party in power would be chosen without any reference to qualities such as their ability, integrity, track record of providing services to members of the Scheduled Castes and Scheduled Tribes, educational qualifications

etc. Therefore the contention of the learned Advocate General and Sri V.Venkata Ramana, learned Senior Counsel for 4<sup>th</sup> respondent that the appointment of the 4<sup>th</sup> respondent as Chairman of the 3<sup>rd</sup> respondent Commission is not justiciable since it is part of the spoils system, is rejected.

88. It is therefore held on point C (i) that the term 'eminent person' in clause (a) of subsection (1) of Sec.5 of the Act should be based on objective criteria, on point C(ii) that they should at least satisfy the minimum criteria mentioned in clause (b) of the said subsection meant for appointing ordinary Members of the Commission and it is possible to read into Sec.5(1)(a) of the Act the said minimum criteria in the light of the decisions of the Supreme Court including the requirement that the person must possess ability, very high integrity and a record of service to Scheduled Castes and Tribes. Further there ought to be transparent process of selection of person to the post of Chairman of the Commission.

89. Point C (i) (ii) are answered accordingly.

**Point (D) :**

90. The respondents also contended that the Writ petitioners have no *locus* to challenge the appointment of the 4<sup>th</sup> respondent as Chairman of the 3<sup>rd</sup> respondent Commission. This point need not detain us for the reason that the petitioners also belong to the Schedule Caste community and the 1<sup>st</sup> petitioner claims to have the credentials to be considered for appointment to the said post vis-à-vis credentials

of the 4<sup>th</sup> respondent. Along with the counter-affidavit of respondent Nos.1 and 2, copy of the application dt.14-07-2015 made by 1<sup>st</sup> petitioner to the Chief Secretary of the then 1<sup>st</sup> respondent for consideration of his candidature for the said post has been filed. Therefore on the ground of *locus*, the petitioners cannot be non-suited.

91. Point D is answered accordingly in favor of the petitioners and against the respondents.

**POINT E:**

92. Under this point I will deal with the question whether the appointment of 4<sup>th</sup> respondent as Chairman of the Commission requires reconsideration in the light of the provisions of the Act.

93. I am aware that normally this Court does not interfere with appointments made by the Government to certain posts, but as I have held, following the decision of the Supreme Court, that this appointment of 4<sup>th</sup> respondent cannot be made on the spoils system or 'pleasure doctrine', interference is permissible if the appointment is not legally valid.

94. The appointment to the post of Chairman of the Commission can certainly be tested on the touchstone of Art.14 and 16 of the Constitution of India as the Commission does come within the definition of the term "State" in Art.12. The powers of this Court are then wider than those under the **Wednesbury**<sup>13</sup> principles.

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<sup>13</sup> Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn ... 1948 (1) KB 223

95. But even assuming that I should apply the limited judicial review under the **Wednesbury** rules, the order of appointment of 4<sup>th</sup> respondent is liable to be set aside on the grounds of illegality, non application of relevant principles, and procedural irregularity followed by the Supreme Court in several cases such as **Tata Cellular**<sup>14</sup>.

96. As to illegality, the 1<sup>st</sup> respondent committed an illegality in presuming that appointment of the 4<sup>th</sup> respondent to the post of Chairman is an appointment under the 'spoils system'. It felt that the word 'eminent' was subjective and did not require any objective criteria. It felt that even the relevant minimal qualification prescribed for Members need not be applied. As to procedural irregularity, there is no evidence that the 1<sup>st</sup> respondent checked the antecedents of the 4<sup>th</sup> respondent through a process of police verification to check whether he is a person of integrity. This is because the appointment of 4<sup>th</sup> respondent was made on the same day the Commission was constituted. This is very important in the light of the allegations made by the petitioners that he is involved in certain criminal cases. No evidence is placed before me as to the scrutiny of the credentials of the 4<sup>th</sup> respondent in regard to the service done by him for the upliftment of the members of the Scheduled castes and Tribes. No evidence is placed before me to show if any other person's candidature has been considered, or that applications of other persons were invited and any search committee had been appointed to identify such persons and make a comparative assessment of their credentials.

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<sup>14</sup> (1994) 6 SCC 651

The need for a search committee as pointed out by the Allahabad High court in **Gorakhpur University Aff.College Teacher association and others** (11 Supra) has not been considered. Thus there is a clear procedural impropriety too.

97. It is not the case of the respondents that persons from the Schedule Castes and Tribes such as retired High Court or Supreme Court judges, bureaucrats, high ranking police officers, persons involved in social service particularly to the cause of upliftment of Schedule Castes and Tribes are unavailable for a detailed consideration of several names for appointment to the post of Chairman of the Commission.

98. Therefore, conclusion is inevitable that as respondents assumed that the post could be filled under the political spoils system, which it is not; that the appointment of 4<sup>th</sup> respondent could be and has been made as Chairman of the 3<sup>rd</sup> respondent Commission without reference to the requirements of the statute, without following any objective criteria for deciding the eminence of a person suitable to be appointed to the said post, and without following any transparent method to identify that the 4<sup>th</sup> respondent as the person suitable to be appointed to the said post. Such appointment of the 4<sup>th</sup> respondent is vitiated both on the ground of illegality as well as procedural irregularity.

99. Therefore, I hold that the appointment of the 4th respondent as Chairman of the 3<sup>rd</sup> respondent Commission is set aside.

100. Point E is answered accordingly.

### **CONCLUSION**

101. To sum up :

(i) The appointment of the 4<sup>th</sup> respondent, as Chairman of the 3<sup>rd</sup> respondent Commission made vide G.O.Ms. No.45 Social Welfare (CV.PCR) Department dt.13-04-2016, is set aside on the ground of both 'illegality' and 'procedural impropriety'.

(ii) The appointment of the Chairman under sec.5(1)(a) of the Act cannot be based upon the general principle of 'spoils system'. When Sec.6 (1) of the present Act specifically provides for a period of 3 years as the tenure of the Chairman of the Commission unless otherwise disqualified from continuing as such under the Rules, and as admittedly no such disqualification Rules had been framed, and there was no scope for disqualification, the present case of appointment of the 4<sup>th</sup> respondent cannot be brought within the spoils system/pleasure doctrine.

(iii) The appointment of Members and Chairman of the present Commission performing a variety of highly important functions and exercising various important powers in order to safeguard the interests of the Schedule Castes and Schedule

Tribes under the provisions of the Chapter on Fundamental rights and Directive Principles of the Constitution cannot be compared with the appointments of Directors of the Board of the State Road Transport Corporation as in **Isaac Prabhakar** (3 Supra), who merely perform ordinary administrative functions and have no constitutional social obligations.

(iv) Even in the absence of Rules framed under the Act, the 1<sup>st</sup> respondent cannot appoint any person as per its will and choice to the post of Chairman of the Commission. Parameters such as ability, integrity of the candidate and his record of service to the Scheduled Castes and Scheduled Tribes are implied by the very nature of duties entrusted to the Commission.

(v) 'Eminent persons' are not ordinary persons. They ought to be far above the ordinary. They are even far above those who could be Members of the Commission, who are men of integrity. They ought to at least stand head and shoulders above persons who are eligible to be appointed as Members of the Commission.

(vi) The formation of the opinion of the 1<sup>st</sup> respondent that a person is 'eminent' must be on objective material and will not rest upon a subjective view unsubstantiated by demonstrable credentials.

(vii) Article 14 of the Constitution of India requires procedures under law to be fair, just and reasonable and

procedures in regard to appointments to public offices, cannot be an exception. Such powers to make appointments to public offices, has to be wielded and exercised in a manner consistent with public interest. The process leading up to the appointment must be fair and reasonable and provide for consideration of all persons eligible and qualified in that regard.

(viii) The 1<sup>st</sup> respondent failed to follow a transparent or objective process by giving due publicity to the fact that the State Government is in the process of filling up of vacancies in the Commission since it is conceived in public interest and discharges public functions. It's membership/Chairmanship cannot be regarded as an instrument of conferring largesse on a chosen few.

102. For the aforesaid reasons, the Writ Petition is allowed; the appointment of the 4<sup>th</sup> respondent, as Chairman of the 3<sup>rd</sup> respondent Commission made vide G.O.Ms. No.45 Social Welfare (CV.PCR) Department dt.13-04-2016, is set aside. It is directed that the 1<sup>st</sup> respondent shall follow a transparent method such as inviting applications from interested persons through advertisement and/or constituting a search committee to suggest suitable candidates; keep in mind the parameters of integrity and track record of the applicants/ candidates and also whether they can be treated as 'eminent' persons; and then make appointment of a suitable person to the said post in accordance with law. It shall also consider persons from all walks of

life including individuals who have retired as Judges of Supreme Court or High Court or Civil Servants and whose contribution to the upliftment of the Scheduled Castes and Scheduled Tribes is well documented so that the Commission inspires the confidence of the public at large.

103. I make it clear that I have not expressed any opinion on the eligibility of the 1<sup>st</sup> petitioner or on the non-eligibility or suitability of the 4<sup>th</sup> respondent for being considered for the said post. No costs.

104. As a sequel, miscellaneous petitions, if any pending, shall stand closed.

**JUSTICE M.S.RAMACHANDRA RAO**

Date: 04-11-2016

LR copy to be marked : YES  
B/o.  
Vsv/\*

