

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4708 of 2016 (O&M)

Date of decision: 03.08.2016

Sachida Nand and others

----Petitioners

Versus

State of Punjab and others

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Anand Chhibbar, Sr. Advocate with
Mr. Deepanjay Sharma, Advocate
for the petitioners.

Mr. Inder Pal Goyat, Addl. A.G., Punjab.

Mr. A.K. Chopra, Sr. Advocate with
Mr. Akshit Chaudhary, Advocate
for respondents No.2 and 3.

HARINDER SINGH SIDHU, J.

This writ petition has been filed praying for quashing the Punjab State Electricity Regulatory Commission (Appointment & Service Conditions of Employees) Regulations 2015 notified on 24.12.2015 (Annexure P-10) (for short '2015 Regulations') to the extent it is specified in Regulation 4(a) read with Sr. No. 18 of Annexure B and footnote of Sr. No. 24 of Annexure 'C' that the services of Drivers are to be outsourced as per rates approved by the Deputy Commissioner.

It is also prayed that the respondents be directed to consider the claim of the petitioners for regularization of their services on the post of drivers.

2. The respondent Punjab State Electricity Regulatory Commission (for short 'the Commission') was initially constituted under the Electricity Regulatory Commission Act, 1998. Thereafter, it has been continued as per the provisions of Section 82 of the Electricity Act, 2003.

3. The Government sanctioned various posts for its functioning. It decided to engage ex-servicemen on the posts of driver. In this regard it entered

into an agreement with the Punjab Ex-Servicemen Corporation (for short 'PESCO') to provide drivers to the Commission.

4. The petitioners are ex-servicemen who have retired after putting in about 17 to 20 years of military service. It is their case that initially they were appointed as drivers between the years 2002 to 2004 on contract basis through PESCO. Later they were given appointment on re-employment basis considering the fact that they had retired from the Indian Army. They filed CWP No 20749 of 2014 Sachidanada and others Vs. State of Punjab and others and CWP No. 20233 of 2015 Jinder Singh and another Vs. State of Punjab and others praying for regularization of their services in view of their having rendered twelve to thirteen years of service. During the pendency of the petition the impugned Regulations were notified where-under the posts of drivers and peons are required to be filled up on contract through outsourcing agency. Accordingly the petitions were dismissed as withdrawn with liberty to challenge the impugned Regulations.

5. Hence the present petition.

6. The impugned Regulations have been framed in exercise of the powers conferred under sub-section (2) (zk) of Section 181 read with sub-section (2) and (3) of Section 91 of the Electricity Act, 2003 (for short '2003 Act'). These Regulations are applicable to all employees of the Commission whether regular, contractual or on deputation. Even the staff appointed in the Commission before the commencement of the Regulations would be governed as per the provisions of these Regulations.

7. The challenge to the Regulations is primarily on the ground of alleged non-compliance with the procedural pre-requisites for framing of the Regulations as mandated under the 2003 Act and the Rules framed thereunder.

8. Assailing the notification Sh. Anand Chibber Ld. Senior Counsel for

the petitioners has raised the following arguments.

- i. The Regulations have been notified by the Secretary of the Commission who does not have the power to do so under the 2003 Act.
- ii. The previous publication procedure as required under the Electricity (Procedure for Previous Publication) Rules, 2005 (for short '2005 Rules') has not been followed.

9. Elaborating his arguments Ld. Counsel stated that as per sub-section (3) of Section 181 of the 2003 Act all the Regulations made by the State Commission are subject to the condition of previous publication. The 2005 Rules prescribe the procedure for previous publication for framing Regulations under sub-section (3) of Section 177, sub-section (3) of Section 178 and sub-section (3) of Section 181. Hence, for framing of the impugned Regulations the procedure of previous publication specified in the 2005 Rules was to be complied with. The 2005 Rules require that before making the regulations the Commission shall publish a draft of the regulations for the information of persons likely to be affected thereby. Along with the draft regulations a notice is required to be published specifying the date on or after which the draft regulations will be taken into consideration. The Commission is required to consider any objection or suggestion received before the specified date.

10. Ld. Counsel argued that draft regulations were initially finalized by Commission after inviting and considering the objections received. These were sent to the Government for approval. The Government made significant changes in the draft. These changes included changes in the 'Appointing Authority' and the 'Mode of Appointment'. In the draft forwarded to the Government the 'Appointing Authority' was to be:

(i) Commission in respect of Group A posts

(ii) Chairperson in respect of all other posts.

While approving the Regulations the Government changed the Appointing Authority to :

(i) Chairperson in respect of Group A posts

(ii) Secretary in respect of all other posts.

In the draft Regulations forwarded for approval the mode of appointment was:

(a) deputation (b) re-employment (c) contract.

The Government changed it to :

(a) Direct appointment (b) Promotion (c) Deputation.

A proviso was also added stating that direct appointments shall be only on contract or service can be outsourced.

11. Sh. Chibber stressed that the draft as approved by the Government was not published for information of the public but was straightaway notified by the Secretary without even seeking approval of the Commission. He argued that as per Section 91(3) of the 2003 Act, the salaries, allowances and other terms and conditions of service of the Secretary and other employees are to be specified by the Commission with the approval of the appropriate Government. Thus, the Secretary, had no power, without the approval of the Commission, to direct on his own, that the regulations as approved by the Government be notified. Heavy reliance has been placed on letter dated 11/19.01.2016 (Annexure P-12) of a Member of the Commission wherein he states that the notification has been issued by the Secretary of the Commission without approval by the Commission. In the said communication the Member has also raised the issue of non-compliance with the requirement of previous publication as per the 2005 Rules.

Commission on the other hand argued that there is no illegality in the framing of the impugned Regulations and that the prescribed procedure has been followed before their notification.

13. Referring to the written statement he stated that the draft PSERC (Appointment and Service Conditions of Employees) Regulations, were drafted after following due procedure of inviting public comments/ objections and considering the same. The issue of their approval remained under correspondence/ discussions with the State Government. The finalized draft PSERC (Appointment and Service Conditions of Employees) Regulations 2014 were forwarded to the State Government for approval vide letter dated 05.06.2014. The Government of Punjab, Department of Power (Power Reforms Wing) vide its memo dated 22.12.2015 returned the Punjab State Electricity Regulatory Commission (Appointment and Service Conditions of Employees) Regulations, 2015 duly approved with the request that these Regulations be published in the Official Gazette. Accordingly the approved Regulations were published vide notification dated 24.12.2015. He argues that there is no provision in Section 91 or Section 181 of the 2003 Act which requires the Commission to once again approve the Regulations after their approval by the State Government.

14. Denying that it was on the authority of the Secretary of the Commission that the Regulations came to be notified, he stated that the letter of the State Government approving the Regulations and requesting that they be notified was submitted to the Chairperson, who is the Chief Executive of the State Commission as per Section 84 of the 2003 Act and after his approval the Regulations were sent for publication. He also pointed out that at the time of notifying the Regulations, the Commission consisted only of one Member, besides the Chairperson, and as per Regulation 92(3) the Chairperson has a second or

casting vote. As such the Chairperson was competent to direct the notification of the Regulations as approved by the State Government. His approval is to be taken as approval of the Commission.

15. Rebutting the argument that after the approval of the Government, the approved regulations ought to have been published once again for inviting objections from the affected persons, he argued that there is no such provision in the 2003 Act or the 2005 Rules. He argued that if this requirement is to be imported, it would result in a never ending cycle of inviting objections, their consideration and then again inviting objections on the finalized and approved draft.

16. Mr. Chopra, learned Senior Counsel further argued that the objections of the Member of the Commission in his communication Annexure P-12, are totally untenable. He further stated that vide order dated 12.02.2016 passed in CWP No. 20729 of 2014 and CWP No. 20233 of 2015, the respondent Commission was required to give its views on the comments. He states that the observations of the Member in the letters were overruled by the then Chairperson.

17. Explaining the factual background of the appointment of the petitioners he states that initially, at the time of creation and establishment of the Commission, the State Government sanctioned 111 posts of various categories of officers and staff vide its letter dated December 21, 2000. However, while allocating budget grant to the Commission in the year 2001-2002, the Department of Finance vide letter dated January 25, 2001 proposed that the organization of the Commission must be left to be worked out by the Chairman and members after they take charge. Accordingly, the Commission in its meeting held on September 23, 2002, approved strength of 84 officers and staff for the Commission and vide letter dated September 27, 2002 sought approval thereof from the State Government as envisaged under Section 91(2) of the Act of 2003. Later on vide memo dated

02.11.2012 while submitting the Commission's Draft Service Regulations to the State Government for approval, the proposed staff strength was increased to 93 posts instead of 84 posts earlier intimated. Thus, as no sanctioned permanent posts were available, the Commission, since its very inception, had employed staff on deputation basis, re-employment basis, contract basis or through agreement with outside service provider agencies such as 'PESCO and/or private service providers.

18. It has been pointed out that the services of the petitioners No.1, 2, 3, 5 and 6 were initially hired by the Commission through PESCO on the terms and conditions agreed with PESCO and the Commission. The petitioners joined the Commission through PESCO in 12/2002, 02/2003, 01/2004, 06/2006 and 05/2004, respectively. Petitioner No.4 had joined the Commission on re-employment in 05/2001 against his application dated May 21, 2001. The petitioners No.1, 2, 3, 5 and 6 requested that they were being paid meager salaries by the service provider i.e. PESCO and to mitigate their financial problems they be employed by the Commission on re-employment basis. Thereafter, on purely compassionate considerations the petitioners were appointed on re-employment basis, for a period of one year. They joined on February 25, 2004, September 01, 2005, September 9, 2004, May 23, 2001, December 1, 2010 and August 1, 2005, respectively. Since the sanction of the competent authority for the permanent posts was still awaited, the re-employment period of the petitioners was extended from time to time, pending proper selection against duly sanctioned posts. It was clearly stipulated in their appointment letters that their appointment is purely temporary and their services could be terminated at any time. Meanwhile, the pay of the petitioners was regulated as per the Government of Punjab, Department of Finance instructions dated January 23, 1992 by fixing their initial pay at the minimum of the pay scale of Drivers and allowing them a normal increment thereafter.

19. Learned Counsel emphasized that the respondents have never been averse to the continuance of the petitioners and other similarly situated employees. After the notification of the Service Regulations on 24.12.2015 the petitioners were issued letters dated 22.1.2016 to the effect that the Commission is bound to comply with the provisions of the Staff Regulations and as per Regulations 4 (a) read with Sr. No. 18 of Annexure-B and foot note of Sr. No.24 of Annexure-C of the said Regulations, the appointment of the Drivers are to be outsourced at the rates approved by the Deputy Commissioners from the outsourcing agency PESCO w.e.f. 16.2.2016 meaning thereby that their services could not be continued as such. However, on compassionate grounds they were given time till 15.2.2016 to approach the outsourcing agency PESCO which was requested to outsource the Drivers w.e.f. 16.2.2016. After disposal of their Writ Petitions on 16.02.2016 the letters dated 22.1.2016 issued to the petitioners for discontinuing their services on re-employment were given effect to and they were relieved from duties w.e.f. 16.2.2016.

20. It is also pointed out that through a representation dated 16.2.2016 addressed to another outsourcing agency named as TDS Management Consultant Pvt. Ltd., the Petitioners offered for appointment in the Commission on outsourcing basis as per the terms and conditions of the Regulations with further request to the outsourcing agency to sponsor their names to PSERC so that they may serve the Commission on outsourcing basis as per the provisions of the new Regulations. The TDS Management Consultant Pvt. Ltd., which is another outsourcing agency and under an agreement provides manpower to the Commission was also requested by the Commission vide Memo dated 16.2.2016 to provide six drivers on urgent basis. The agency after collecting the formal documents from the petitioners (except Sr. No.2) issued offer-cum-appointment letters dated 18.2.2016 to the petitioners with

the instructions that their assignment with them will be from 18.2.2016. Simultaneously, the agency through a separate letter dated 18.2.2016 addressed to the Commission intimated that five drivers have been sponsored with the instructions to report for duty to the Commission on 18.2.2016. Accordingly, as per the instructions of the Service Provider Agency five of the petitioners who were sponsored for the Commission reported for duty on 18.2.2016. The Commission, deployed them on duty on outsourcing basis without raising any issue.

21. As per the procedure of the outsourcing agency, one copy of offer-cum-appointment letter duly signed by the concerned employee as a token of having accepted the terms and conditions of the appointment letter, was to be returned to the agency. The petitioners however, requested the agency that instead of basic salary, the appointment letter should show the exact emoluments which they are to receive on outsourcing basis. The agency, after consultation with the Commission acceded to their request and issued revised offer-cum-appointment letters to them. Thereafter they requested that they did not want to get their EPF deducted and the EPF deduction shown in the offer letter should be deleted from the appointment letter. The agency again obliged them by issuing further revised offer-cum-appointment letters of the same date without any mention of EPF deductions. They agreed to the terms and conditions of the further revised offer-cum-appointment letters but requested that they will sign and return the copy of offer-cum-appointment letter by showing it to their advocate. Being old drivers of the Commission, the service provider agency believed them and requested them to return the copy of the offer letter duly signed by them for completion of their record. But instead of returning the said signed copy of appointment letters they informed the Service Provider that they have filed a case in the High Court, as such, they will not sign any paper in this regard. The Agency thereafter brought the

matter to the notice of the Commission vide letter dated 16.03.2016 and requested the Commission not to allow the drivers to work until they provide the signed and accepted letter of appointment. Accordingly, as desired by the Agency the drivers were disallowed to operate the Commission's vehicles w.e.f., 16.03.2016 and the agency was informed in this regard.

22. Learned Counsel stated that the Commission is not averse to retaining the petitioners but only as per the provisions of the Regulations.

23. Regarding the issue of regularisation it has been stated that claim of the petitioners from Sr. No.1 to 3 for regularization of their service had been duly considered by the answering respondents in compliance of the directions dated January 21, 2014 in CWP No.23072 of 2011 and a speaking order dated July 17, 2014 passed declining their claim. Petitioner No.4 to 6 in the present petition were not petitioners in CWP No.23072 of 2011 but their case is similar. It is argued that as the petitioners have not challenged the order dated July 17, 2014 in the present writ petition and so they are estopped in law to claim regularization.

24. Heard Learned Counsel for the parties.

25. The following questions arise for consideration:

(i) Whether the service regulations after approval by the State Government are again required to be published for inviting objections? In other words, is the procedure for previous publication as per the 2005 Rules required to be undergone once again after the approval of the draft regulations by the State Government?

(ii) Whether after approval of the Regulations by the Government, the Regulations are to be once again got approved from the Commission ?

At the outset the relevant provisions may be noted.

26. The Regulatory Commission is constituted under Section 82 of the

including the Chairperson. Section 82 is as under:

“82. Constitution of State Commission.—*(1) Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:*

Provided that the State Electricity Regulatory Commission, established by a State Government under Section 17 of the Electricity Regulatory Commissions Act 14 of 1998 and the enactments specified in the Schedule, and functioning as such immediately before the appointed date, shall be the State Commission for the purposes of this Act and the Chairperson, Members, Secretary, and officers and other employees thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts:

Provided further that the Chairperson and other Members of the State Commission appointed, before the commencement of this Act, under the Electricity Regulatory Commissions Act 14 of 1998 or under the enactments specified in the Schedule may, on the recommendations of the Selection Committee constituted under sub-section (1) of Section 85, be allowed to opt for the terms and conditions under this Act by the concerned State Government.

(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify.

(4) The State Commission shall consist of not more than three Members, including the Chairperson.

(5) The Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in Section 85.”

27. Section 91 deals with the officers and other employees of the Commission. As per sub-section (1) of Section 91 the Commission may appoint a Secretary to perform such powers and duties as may be specified. As per sub-section (2) the Commission may, with the approval of the Government, specify the numbers, nature and categories of other officers and employees. As per sub-section (3) the salaries and allowances payable to, and other terms and conditions of service of the Secretary, officers and other employees shall be such as may be specified with the approval of the Appropriate Government:

“Section 91. Secretary, officers and other employees of Appropriate Commission

91. Secretary, officers and other employees of Appropriate Commission.—(1) The Appropriate Commission may appoint a Secretary to exercise such powers and perform such duties as may be specified.

(2) The Appropriate Commission may, with the approval of the Appropriate Government, specify the numbers, nature and categories of other officers and employees.

(3) The salaries and allowances payable to, and other terms and conditions of service of, the Secretary, officers and other employees shall be such as may be specified with the approval of the Appropriate Government.

(4) The Appropriate Commission may appoint consultants required to assist that Commission in the discharge of its functions on the terms and conditions as may be specified.”

28. Section 92 deals with the conduct of proceedings by the Commission. As per Section 92(3) all questions which come up before the Appropriate Commission shall be decided by a majority of votes of the Members present and voting. In the event of equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

Section 92 is as under:

“Section 92. Proceedings of Appropriate Commission

92. Proceedings of Appropriate Commission.—(1) *The Appropriate Commission shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.*

(2) *The Chairperson, or if he is unable to attend a meeting of the Appropriate Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting.*

(3) *All questions which come up before any meeting of the Appropriate Commission shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.*

(4) *Save as otherwise provided in sub-section (3), every Member shall have one vote.*

(5) *All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorised by the Chairperson in this behalf.”*

29. Section 181 empowers the Commission to make regulations consistent with the Act and the Rules generally to carry out the provisions of the Act. Sub-section 2 (zk) specifically enables framing of regulations relating to the terms and conditions of service of the Secretary, officers and other employees of the State Commission under sub-section (2) of Section 91. As per Section 181(3) all the regulations made by the State Commission under the Act are subject to the condition of previous publication.

The relevant part of Section 181 is as under:

“Section 181. Powers of State Commissions to make

regulations

181. Powers of State Commissions to make regulations.—(1)

The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:—

xx

(zk) the terms and conditions of service of the Secretary, officers and other employees of the State Commission under sub-section (2) of Section 91

xx

(3) All regulations made by the State Commission under this Act shall be subject to the condition of previous publication.”

30. The impugned Regulations have been framed in exercise of powers u/s 181(2)(zk) read with sub-sections (2) and (3) of Section 91 of the 2003 Act. Section 91 (3) requires the previous approval of the appropriate government while specifying the salaries and allowances payable to, and other terms and conditions of service of, the Secretary, officers and other employees of the Commission. Section 181(3) requires that all regulations made by the Commission shall be subject to the condition of previous publication. Hence, these regulations in addition to requiring the previous approval of the Government are also subject to the condition of previous publication.

31. The Electricity (Procedure of Previous Publication) Rules, 2005 have been framed by the Central Government in exercise of the powers under Section 176 which empowers the Central Government to make Rules for carrying out the provisions of the Act. These Rules prescribe the procedure for the purpose of previous publication of regulations under sub-section (3) of section 177, sub-section

(3) of section 178 and sub-section (3) of section 181 of the Act. Rules 3 and 4 are relevant and are as under:

“3. Procedure of Previous Publication .— For the purpose of previous publication of regulations under sub-section (3) of section 177, sub-section (3) of section 178 and the sub-section (3) of section 181 of the Act, the following procedure shall apply:-

(1) the Authority or the Appropriate Commission shall, before making regulations, publish a draft of the regulations for the information of persons likely to be affected thereby;

(2) the publication shall be made in such manner as the Authority or the Appropriate Commission deems to be sufficient;

(3) there shall be published with the draft regulations, a notice specifying a date on or after which the draft regulations will be taken into consideration;

(4) the Authority or the Appropriate Commission having powers to make regulations shall consider any objection or suggestion which may be received by the Authority or the Appropriate Commission from any person with respect to the draft before the date so specified.

(4) The publication in the Official Gazette of the regulations made in exercise of a power to make regulations after previous publication shall be conclusive proof that the regulations have been duly made.”

32. As per the procedure prescribed in Rule 3, before making regulations the Authority or Appropriate Commission is required to publish a draft of the regulations for the information of persons likely to be affected thereby. Along with the draft regulations, a notice is also required to be published specifying the date on or after which the draft regulations will be taken into consideration. Thereafter the Authority or Appropriate Commission having powers to make the regulations is required to consider any objection or suggestion which is received from any person with respect to the draft before the specified date.

33. Plainly, as per this Rule there is a single uniform procedure of previous publication, irrespective of whether the Authority or the Commission itself has the power to make regulations or it is subject to approval of the Government.

34. There is no dispute on behalf of the petitioners that the procedure had been followed by the Commission before the draft regulations were sent to the Government for approval. The grievance only is, that as the Government while according approval made significant changes in the draft as forwarded by the Commission, before notifying the Regulations with the changes as approved by the Government, the procedure of previous publication for inviting objections should have been resorted to once again. This argument seems to be posited on the premise that if any change is made in the draft as originally published, then before notification, the changed draft should again be published for inviting objections/ suggestions.

35. The question is, is this the requirement of the 2005 Rules?

36. A plain reading of the Rules negatives such a requirement. The only requirement is of publication of the draft notification for information of those likely to be affected thereby, for inviting objections/ suggestions from them and consideration of the objections or suggestions received. There is no stipulation that on consideration of the objections/ suggestions no change can be made in the draft regulations as published and that if any change is made the changed draft be again got published for inviting objections and suggestions on the changed draft. In fact, a meaningful consideration of the suggestions/ objections necessarily implies that changes in the draft regulations may be made in the light thereof. This, in fact is the rationale and objective of the previous publication requirement that the suggestion/ objections of those affected may be considered and if deemed

necessary be incorporated in the regulations. There is no additional requirement of once again resorting to previous publication procedure, whether the changes are made by the Commission itself or where the draft requiring approval of the Government is approved by the Government with changes. Learned Counsel for the petitioner has not been able to point to any provision in this regard.

37. Thus, learned Counsel for the respondent appears to be correct in his submission, that if the argument of the petitioners were to be accepted, it would result in a never ending circle of inviting objections consequent on any change being made in the regulations on consideration of the earlier objections/suggestions. Such cannot be and is not the intention of the 2005 Rules.

38. In ***Assn. of Residents of Mhow (ROM) v. Delimitation Commission of India, (2009) 5 SCC 404***, Hon'ble the Supreme Court was considering the provisions of Section 9(2) of the Delimitation Act, 2002. This Section required the Delimitation Commission to publish its proposals for the delimitation of constituencies in the Official Gazette, specify a date on or after which the proposals shall be taken up for consideration, consider all objections and suggestions received by it before the date so specified by holding one or more public sittings for such consideration, and thereafter by one or more orders determine the delimitation of Parliamentary and Assembly constituencies.

Section 9(2) is reproduced below:

“(2) The Commission shall—

(a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Gazette of India and in the Official Gazettes of all the States concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which the proposals shall be further considered by it;

(c) consider all objections and suggestions which may have been

received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places in each State as it thinks fit; and

(d) thereafter by one or more orders determine—

(i) the delimitation of parliamentary constituencies; and

(ii) the delimitation of assembly constituencies, of each State.”

39. The Commission published its proposals under sub-section (2) of Section 9 of the Act for the delimitation of parliamentary and assembly constituencies in the State of Madhya Pradesh whereby it proposed to include Mhow Assembly Constituency in Indore Parliamentary Constituency by deleting it from Dhar Parliamentary Constituency. The suggestions and objections raised were considered by the Commission in its public sittings. In the final determination the Commission included Mhow Assembly Constituency in the Dhar Parliamentary Constituency by deleting it from Indore Parliamentary Constituency as originally proposed.

40. The question for consideration before the Supreme Court was whether the Commission had complied with the mandatory requirements as provided for in Section 9(2) of the Act, insofar as it concerned the shifting of Mhow Assembly Constituency from Indore Parliamentary Constituency and including the same into Dhar Parliamentary Constituency. It was argued that there was no proposal by the Commission for shifting Mhow Assembly Constituency from Indore Parliamentary Constituency to Dhar Parliamentary Constituency. On the other hand the Commission in its proposals indicated Mhow Assembly Constituency to be a part of Indore Parliamentary Constituency regarding which no objections were received.

41. Rejecting the contentions, the Supreme Court held that Section 9(2) mandates the Commission to publish its proposals for the delimitation of the constituencies in the manner provided thereunder. Further the determination of the

delimitation of parliamentary and assembly constituencies, shall be only after

consideration of all the objections and suggestions which may have been received by the Commission before the specified date. But every suggestion or objection cannot ultimately result in any fresh proposal by the Commission. The Commission is not under any legal or constitutional obligation to go on issuing any revised proposals depending upon every objection and suggestion as may be received by it in response to its proposals. It was observed as under:

“24. Determining the delimitation of parliamentary constituencies and assembly constituencies is a very complex and lengthy process. Section 9(1) of the Act mandates the Commission as to what are the factors apart from the provisions of the Constitution and provisions of the Act required to be taken into consideration which are noticed hereinabove. Section 9(2) mandates the Commission to publish its proposals for the delimitation of the constituencies in the manner provided thereunder.

25. It is true, determination of the delimitation of parliamentary constituencies and assembly constituencies, as the case may be, shall be only after consideration of all the objections and suggestions which may have been received by the Commission before the specified date for which purposes the Commission may hold one or more public sittings at such place or places in each State as it thinks fit. The Commission is not required to hold public meeting in each and every parliamentary constituency. What the Commission required is to consider the objections and suggestions for its proposals before determining the delimitation of the constituencies in the entire State.

26. The proposals cannot emanate from any interested person. The distinction between the Commission's proposals and the objections and suggestions in response to such proposals is to be borne in mind. Every suggestion or objection cannot ultimately result in any fresh proposal by the Commission. The Commission is not under any legal or constitutional obligation to go on issuing any revised proposals depending upon every objection and

suggestion as may be received by it in response to its proposals. Since the exercise of the delimitation is not with reference to any particular constituency, the suggestions or objections, as the case may be, in respect of one constituency may have their impact at least on one or more of the adjoining constituencies.”

The Supreme Court negated the requirement of publishing revised proposals again after every revision. This decision lends support to our conclusion that there is no requirement under the 2005 Rules to again resort to the previous publication procedure because the draft regulations have been approved by the Government with changes.

43. Thus, there is no merit in the contention of the learned Counsel for the petitioners that the regulations be declared to be illegal for non compliance with the requirement of previous publication.

44. The other contention of the learned Counsel for the petitioners that the regulations are illegal for having been notified by the Secretary without the approval of the Commission is also without substance.

45. There is no denial that the draft regulations were forwarded to the Government after being duly approved by the Commission. It has been asserted in the written statement that the letter of the State Government approving the Regulations and requesting that they be notified was submitted to the Chairperson, who is the Chief Executive of the State Commission as per Section 84 of the 2003 Act and after his approval the Regulations were sent for publication. Further, at the time of notifying the Regulations, the Commission consisted only of one Member, besides the Chairperson, and as per Regulation 92(3) the Chairperson has a second or casting vote. As such the Chairperson was competent to direct the notification of the Regulations as approved by the State Government. Thus, it was on the direction of the Chairperson of the Commission that the Regulations were notified by the

authenticated by its Secretary or any other officer duly authorised by the Chairperson. The notification has thus only been authenticated by the Secretary in accordance with this provision after its notification was directed by the Chairperson of the Commission. Thus, there is no irregularity on this count as well.

46. As regards, the prayer for regularization, as the petitioners have not challenged the order dated July 17, 2014 whereby their claim for regularization has been declined this Court is not opining on that.

47. Thus, there is no merit in the petition and the same is dismissed.

Before concluding, we deem it appropriate to take note of the repeated assertions of the learned Senior Counsel Sh. Chopra for the respondents, that even though the services of the petitioners have been discontinued, but taking into consideration their past services the Commission neither was nor is averse to employing them on outsourcing basis in accordance with the regulations. It is hoped that the respondents would sympathetically consider their case in line with these assertions.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 03, 2016
Atul

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No