

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 8154 of 2014 (O&M)

Date of decision : 19.5.2016

...

Pardeep Kumar Garg

.....Petitioner

vs.

Union of India and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Rohit Seth, Advocate for the petitioner.

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Harkesh Manuja and
Mr. Raghav Goel, Advocate for U.T. Administration

Mr. R.S. Bains, Advocate for respondent No.6.

...

- | | |
|--|-------|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | / |
| | / Yes |
| 2. To be referred to the Reporters or not? | / |
| 3. Whether the judgment should be reported in the Digest? | / |

P.B. Bajanthri, J.

In the instant writ petition the petitioner has questioned the validity of the order of appointment of 6th respondent to the post of Director of Punjab Engineering College, (for short 'PEC'), Chandigarh dated 3.6.2013 (Annexure P-10).

2) The Post of Director in the PEC, Chandigarh is governed by the bye laws called Punjab Engineering College Chandigarh Bye Laws, 2001. Clause 8 provides for **Selection Committee(s)**, Clause 9 relates to

Director. An extract of Clause 9 - Director is reproduced herein:-

9. Director

(A)

(1) The Director shall be a whole time salaried officer of the Institute.

(2) **The Director shall be an eminent person from the field of Technical Education, preferably from the IIT system.** He shall be appointed by the Chandigarh Administration on contractual basis on recommendation of a Search cum Selection Committee constituted for the purpose. The Search cum Selection Committee shall be headed by the Advisor to the Administrator and shall consist of the Secretary Technical Education, the Finance Secretary and shall have a representative each of the Central Government and the UGC. The Director shall hold office for a term of 5 years. His term shall be subject to renewal for further periods provided that every such appointment and terms thereof shall be subject to prior approval of the Chandigarh Administration. Provided that notwithstanding the expiry of the said period of 5 years, he can continue in office till his successor is appointed and assumes office, but not beyond six months. Provided further that a person appointed as Director shall retire from office during the tenure of his office or of extension, if any, when he completes the age of 62 years.”

3) Clause 12 relates to appointment. Extract of Clause 12 is reproduced herein:-

“12. Appointments

(1) All appointment of the staff of the Institute, except that of the Director and the Registrar, shall be made in accordance with the procedure as may be laid down in the Rules to be framed by the Board in this regard.

(2) The appointing authority for different categories of employees shall be as follows :

(a) All Professors.....

.....Board

(b) Lecturers, Assistant Professors, Associate Professors and other non-academic posts of the level of Group ‘A’ and ‘B’.....Director

(c) All posts of the level of Group ‘C’ and ‘D’.....

.....Registrar”

4) On 25.6.2012 Search-cum-Selection Committee was constituted to fill up the post of Director of PEC, Chandigarh. The process of selection to the post of Director commenced by the office of the 4th respondent – Finance Secretary-cum-Secretary, Technical Education, U.T., Chandigarh on 11.12.2012, directing the Directors (by name) of IITs, NITs, DTU, BITS, CSIO and IMTECH (30 Institutions). By the said communication, the Directors of the above mentioned institutions were requested to send names with recommendation for the post of Director, PEC, Chandigarh. Amongst others, petitioner's name was forwarded by communication dated

28.1.2013. Thereafter, on 1.3.2013, amongst others, petitioner was

intimated to attend before Search-cum-Selection Committee for interaction on 12.3.2013 at 11.00 A.M. in the office of Advisor to the Administrator, U.T., Chandigarh. Simultaneously, emails were also sent. Interaction meeting was held on 12.3.2013 at Chandigarh.

5) Petitioner came to know that second interaction meeting was held at Delhi on 2.5.2013, wherein petitioner was not called for. It is learnt that in the first interaction meeting short listing was done selecting 2 candidates. Amongst two candidates to select one, second interaction meeting was held on 2.5.2013. On the said date, one Prof. Radhey Sham Mishra was invited for the first time in the second interaction meeting as he had not appeared in the first interaction meeting due to delay in communication. Therefore, at the behest of Administrator, he was allowed to participate in the second interaction meeting held on 2.5.2013. Thereby in the process of selection, the petitioner has suffered injustice and he had requested to look into the matter to the Advisor, U.T. Petitioner, has also sent fax communication on 23.5.2013 and the same was brought to the notice of the then Hon'ble Prime Minister.

6) On 3.6.2013, the 4th respondent communicated offer of appointment to the post of Director, PEC, Chandigarh to the 6th respondent – Professor Manoj Kumar Arora (Annexure P-10).

7) Petitioner submitted a detailed complaint to the Central Vigilance Commissioner, New Delhi on 3.6.2013 (Annexure P-11). In the complaint, petitioner has pointed out various errors committed in the process of selection and appointment to the post of Director, PEC, Chandigarh by the Search-cum-Selection Committee. Since there was no

response, the petitioner through his well wisher sought certain information

under RTI. During pendency of the RTI application, petitioner approached the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'CAT'), questioning the selection and appointment of 6th respondent to the post of Director, PEC, Chandigarh. In view of pendency of original application before CAT, information sought under RTI by the well wisher of the petitioner, was not furnished.

8) On 6.1.2014, the petitioner's OA No.862/CH/2013 was dismissed by the CAT, for want of jurisdiction. Thus, the petitioner has filed the present writ petition on 25.4.2014.

9) Learned counsel for the petitioner contended that criteria for selection to the post of Director, PEC, Chandigarh, is unwritten. Search-cum-Selection Committee was constituted and Search-cum-Selection Committee proceeded with selection to the post of Director by inviting 9 candidates on 12.3.2013 for interaction. The petitioner is one of the candidate amongst others. It was contended that 7 persons attended interaction meeting held on 12.3.2013. 5 names were rejected. 2 names were selected for further process of selection by orally and proceedings were not drawn, which is un-disputed fact. On 2.5.2013, Search-cum-Selection Committee held one more interaction meeting at Delhi for three candidates, namely, Prof. Manoj Kumar Arora, Prof. S.M. Ishtiaque and Prof. R.S. Mishra, copy of the communication dated 3.4.2013 is reproduced herein:-

**“ Subject : Selection for the post of Director, PEC
University of Technology, Chandigarh. Second
round of inter-action.**

The Search-cum-Selection Committee has desired a second round of interaction with yourself. In continuation of the telephonic message conveyed to you by the office of the Joint Secretary Technical Education, Union Territory of Chandigarh, you are requested to make yourself available for the second round of interaction with the Selection Committee on **2.5.2013 between 11.00 A.M. To 1.00 P.M. at the following venue:-**

U.T. Guest House,
21-B, Telegraph Lane,
Harish Chandra Mathur Lane,
Kasturba Gandhi Marg,
New Delhi 110 001(Tel.No.011-23353359)
(Near Max Mueller Bhawan)

2. For any other details you may contact on phone No. 0172-2748211 between 9.30 A.M. To 5.30 P.M. or at e-mail i.e. harmail_10@yahoo.in.

JSTE
30.4.2013

1. VC, JNU – (sopory@mail.jnu.ac.in, vc@mail.jnu.ac.in)
2. Prof. Manoj Kumar Arora – (manojfee@iitr.ernet.in and manoj.arora@gmail.com)
3. Prof. S.M. Ishtiaque – (ishtiaque@textile.iitd.ac.in)
4. Prof.R.S. Mishra –(Professor_rsmisl.ra@yahoo.co.in)”

- 10) The petitioner contended that in the absence of unwritten criteria for selection to the post of Director, PEC, Chandigarh, the Search-cum-Selection Committee cannot process the selection arbitrarily for the reasons that Selection Committee did not intimate prior to first interaction meeting that there will be two interaction meetings. The first one is for

short listing and second one is for selection. Secondly, it was contended that Prof. Radhey Sham Mishra who did not participate in the 1st interaction meeting, he was allowed directly to participate in the second interaction meeting held on 2.5.2013. Therefore, the process of selection and appointment of the 6th respondent is highly arbitrary. It was submitted that during the process of selection there is an element of change in criteria of selection, namely, holding of second interaction meeting and allowing Prof. Radhey Sham Mishra directly participating in the second interaction meeting. When Prof. Radhey Sham Mishra did not compete in the first interaction meeting among 7 other candidates, entertaining his candidature after short listing, directly in the final selection indicates that there is a flaw in the process of selection and appointment. Even though Prof. Radhey Sham Mishra was not selected, still the process of selection is held to be arbitrary and illegal.

11) It was further contended that petitioner is stated to have vested right on the ground that he was one of the selected candidates as per the news reports after completion of first interaction meeting. In this regard, petitioner has produced news items published by the Tribune and Indian Express (Annexure P-6). Source of information furnished to the news publishers is through one of the U.T. Official. Therefore, denial of considering name of the petitioner is violative of Articles 14 and 16 of Constitution of India. It was further contended as follows :-

“(vi) Because right of fair consideration for a public post and for equal treatment is a fundamental guaranteed under Articles 14 and 16 of the Constitution of India which cannot be

snatched by the respondents on whims and fancies. Second interaction meeting by secretly calling only three candidates out of 7 short listed candidates amounts to review of the selection already done hence is illegal, not bona fide, bereft of logic and reasoning.

(vii) Because the petitioner had fought the respondent No.6 from 1984-86 and that he was much junior to petitioner in the wake of experience gathered by the petitioner over the years. Hence, there is no point in giving second opportunity to appear for second interaction meeting having already appeared before the same selection committee especially in absence of any such criteria which provided for the same, ignoring the petitioner.

That thus the impugned action of the respondents are harsh, void ab initio, illegal, arbitrary, discriminatory, violative of Articles 14 and 16 of the Constitution of India and cannot be sustained in the eye of law.”

12) With reference to above submission on 5.5.2016 this Court directed U.T. Administration to file an affidavit in respect of the following questions posed:-

1. Constitution of Selection Committee- Name of the members their qualification.

2. Reasons for not giving wide publication while making appointment to the post of Director and why it was restricted to only various IIT institutions in the country.
 3. Whether, post of Director is a public post or not, if it is a public post Article 14 and 16 of Constitution is applicable or not.
 4. Power and functions of the committee, and how they assessed candidate's performance in two interaction meetings.
 5. How the committee has assessed the candidate's performance in the two interaction meetings held in Chandigarh and New Delhi, whether any comparative assessment has been made or not (performance with reference to qualification as well as interaction? One of the candidate who failed to appear in the first round of interaction was allowed to participate.
 6. Provision of law under which the interaction meetings were held with the candidates.
- 13) The U.T. Administration filed their affidavit alongwith certain documents on 13.5.2016. Learned counsel for U.T. submitted that members of the Search-cum-Selection Committee need not have technical qualification for the reasons that the powers and functions of post in question, namely, Director, is only of administrative nature. Therefore, members of the Selection Committee need not be experts in technical

education. The Director post need not be advertised. It is not a public post. It is a post in the deemed University (PEC, Chandigarh).

14) The Director shall be an eminent person from the field of technical education, preferably from the IIT system. In view of the (Clause 9 (2) of bye law), qualification prescribed for the post of Director U.T., Administration, decided to have the candidates from the IITs and other premier institutions only. Since one of the qualification to the post of Director shall be preferably from the IIT system, therefore, question of advertising the post of Director, PEC, Chandigarh, for the general public may not require, the selecting authority therefore chosen to restrict the selection from the premier institutions only. (Annexure P-2 dated 11.12.2012).

15) The PEC, Chandigarh institution was declared as deemed university w.e.f. 16.10.2003. Consequently, it is one of the premier institution for filling up the post of Director was restricted to IITs and other institutions. Hence there is no flaw in the initiation of selection process and appointment of 6th respondent as the Director of PEC, Chandigarh. Admittedly, it is an unwritten criteria for selection to the post of Director. Therefore, Search-cum-Selection Committee have exercised discretion to adopt their own method. They have adopted method of interaction meeting with the recommended names by the IIT and other institutions. After first interaction held on 12.3.2013, short listing was done. 2 names have been selected viz., 6th respondent and Prof. S.M. Ishtiaque. Thereafter one more interaction was held on 2.5.2013 in which 6th respondent has been selected. Therefore, there is no infirmity.

participated in first interaction meeting was allowed to participate in second interaction meeting is concerned, it was done on the request of the Advisor to U.T. allowing him to participate. Net result is that process of selection would not vitiate for the reasons that he was not a successful candidate. Therefore, petitioner's contention that there are flaws in process of selection is not tenable. Since there is no written criteria for selection, only eligibility criteria has been notified in the bye laws namely, "the Director shall be an eminent person from the field of technical education, preferably from IIT system". Criteria of selection by the Search-cum-Selection Committee has not laid down in the bye laws. Therefore, selection committee have adopted their own criteria. Before selection process committee should have made known the criteria to the candidates. Short listing of candidates was orally done. Thus there is a serious flaw in the process of selection.

16) The Search-cum-Selection Committee after holding first interaction meeting on 12.3.2013 short listed candidates. Thereafter they have proceeded for second interaction meeting with the three candidates and selected 6th respondent's name. The proceedings were drawn and the same has been forwarded to the competent authority to appoint 6th respondent as Director. Thus the competent authority issued appointment order to the 6th respondent. This Court cannot re-appreciate the candidature assessment made by the selection committee. Hence the petitioner has not made out a case, so as to interfere with the 6th respondent's appointment.

17) Learned counsel for U.T. Administration cited decisions, namely:-

Supreme Court Cases 651 (Paragraphs No.73, 74, 75, 77, 79, 80, 81, 82, 152, 154); and

2. **State of U.P. and another vs. Johri Mal 2004 (4) SCC 714** (Paragraphs No. 22 to 28 & 30).

18) The 6th respondent counsel vehemently contended that in a technical institution to fill up the Director post, technical qualification has been prescribed and preference should be given to IIT system. There is no flaw in the process of selection and appointment of the 6th respondent as is evident from the records, the selection committee constituted in accordance with law and then process of selection by inviting candidates for interaction meeting on 12.3.2013. The selection authority on their own short listed candidates and proceed for selection and appointment. Thereafter second interaction meeting was held on 2.5.2013. In the absence of process of selection criteria, selection committee can adopt their own method. In the present case, they have adopted method of short listing and thereafter selection and appointment of the 6th respondent has been made. For no fault of the 6th respondent, his selection and appointment cannot be interfered by this Court. Learned counsel for the 6th respondent relied on the following decisions of the Apex Court:-

1. **The University of Mysore vs. C.D. Govinda Rao and another 1965 0 AIR (SC) 491** (Paragraph

13)

2. **Dr. M.D. Tiwari vs. Union of India and others 2014 4 ADJ 92** (Paragraphs 3 and 4)

3. **Kantilal Chaturbhai Patel vs. Chancellor, North Gujarat University 1993 0 Supreme (Guj)**

381 (Paragraphs 8, 9 and 10)

4. *Vijendra Kumar Verma vs. Public Service*

Commission, Uttarakhand and others 2010 11

JT 111 (Paragraph 26)

19) Heard learned counsel for the parties.

20) The PEC, Chandigarh, institution's status as on 16.10.2003 was declared as deemed university. The office of the University official i.e. Director is a public office. Mode of selection and appointment is reflected in bye laws of PEC, Chandigarh. **The post of Director “shall be an eminent person from the field of technical education, preferably from IIT system.** He shall be appointed by the Chandigarh Administration on contractual basis, based on the recommendation of a Search-cum-Selection Committee constituted for the purpose. The Search-cum-Selection Committee shall be headed by the Advisor to the Administrator and shall consist of Secretary Technical Education, Finance Secretary and shall have a representative each of the Central Government and the UGC. To fill up the post of Director, Search-cum-Selection Committee was constituted and thereafter, 4th respondent proceeded with the selection process to the post of Director, PEC, Chandigarh. The petitioner contended that in the process of selection, the selection committee changed the criteria i.e. short listing and final selection. In the final selection, one Prof. Radhey Sham Mishra, who had not participated in the process of selection before short listing, his name was entertained on the recommendation of Advisor to U.T., in the final selection. Therefore, process of selection to the post of Director, PEC, Chandigarh, is unfair and highly arbitrary and violative of Articles 14 and

contended that petitioner had taught the 6th respondent in the year 1984 and 1986 and therefore, so far as qualification and experience is concerned, petitioner is more merited than the 6th respondent.

21) This Court cannot sit over the decision/assessment made by the selecting authority, therefore, the above contention of the petitioner is liable to be rejected. The other contention of the petitioner that “right of fair consideration for a public post for equal treatment is a fundamental right guaranteed under Articles 14 and 16 of the Constitution of India, which cannot be snatched by the respondent on whims and fancies”, is concerned, it was noticed that powers and functions of the selection committee is not laid down. In other words, they have to laid down some criteria before process of selection and the same shall be made known to the eligible candidates. In the absence of invoking criteria of selection by the Search-cum-Selection Committee and resorting to short listing orally and entertaining a candidate who had not participated before short listing the candidates, is an arbitrary exercise of power by the committee. Therefore, Search-cum-Selection Committee before inviting the candidates names from the reputed IIT institutions should have informed the candidates that the process of selection to the post of Director, PEC, Chandigarh, would be interaction meeting followed by short listing and again interaction meeting for final selection. To that extent, there is a flaw in the process of selection.

22) Learned counsel for U.T. Administration, as well as 6th respondent submitted that the process of selection and appointment to the post of Director, PEC, Chandigarh, is in terms of bye laws. There is no error in the process of selection and appointment of the 6th respondent. The

petitioner had participated in the process of selection. He was not selected. His grievance that candidature of Prof. Radhey Sham Mishra was entertained by the selection authority after short listing the candidates. Prof. Radhey Sham Mishra was not selected despite he being candidate after the process of short listing. Therefore, the above contention is not tenable. Irrespective of selection of Prof. Radhey Sham Mishra, the selection committee would not have entertained name of Prof. Radhey Sham Mishra, after short listing names of the candidates on 12.3.2013. Entertaining his candidature on the request made by the then Advisor to U.T., to that extent there is an element of arbitrariness in the process of selection. For short listing candidates, as well as final selection, committee has not recorded its decision. Decision to eliminate 5 candidates including petitioner is verbal. Second interaction proceedings (Annexure A-40) is reproduced herein :-

“Proceedings of the meeting of Search-cum-Selection Committee for short-listing for appointment of Director, PEC University of Technology.

The following were present :-

1. Adviser to the Administrator, Chairman
UT Chandigarh.
2. Vice Chancellor, JNU, Delhi Member
3. Home Secretary, UT, Chandigarh Member
4. Finance Secretary, UT, Chandigarh Member

The Search-cum-Selection Committee headed by Adviser to the Administrator, UT, Chandigarh met under the chairmanship of Sh. K.K. Sharma, IAS, Adviser to the Administrator,

UT, Chandigarh on 12th March, and on May 2, 2013 in Delhi. Details of candidate interviewed on both days are as per Annexure.

The Search-cum-Selection Committee scrutinized the letter of recommendation, CV and details received from the applicants and the nominating institutions. The Members and Chairman of the Committee developed a list of questions for the candidates. These questions were related to educational qualification, education from eminent educational institutions of India and abroad, teaching experience in the eminent institutions, publications, guidance of Ph D students and sponsored research contribution by the individual. The Committee further asked each of the candidates to explain their vision of a good technical University and their vision for the PEC, if they are selected.

The whole interaction process continued for over three hours on first day and another 2 hours on 2nd May in Delhi. The candidates at serial number 2 & 3 of those called on May 2, 2013 were called for the second time as the committee felt need for further interaction with them to assess the suitability of their candidature. After detailed deliberation on the basis of the

parameters explained above, the Committee has short-listed following two candidates in order of merit for the post of Director, PEC University of Technology:-

1. Prof. Manoj Kumar Arora, Department of Civil Engineering, IIT, Roorkee
2. Prof. SM Ishtiaque, Department of Textile Engineering, IIT, Delhi

The first candidate is accordingly recommended for selection and the 2nd will remain on the waiting list.

(V.K. Singh) Finance Secretary-cum- Secretary Technical Education	(Anil Kumar) HS,UT, Chd.	(Prof.S.K. Sopory) VC, JNU, Delhi
	(K.K. Sharma) Adviser to the Administrator, UT, Chandigarh.”	

23) Reading of the above proceeding do not reveal assessment of merits and demerits of the candidates. Reasons are not forthcoming as to why 6th respondent has been chosen for selection and appointment to the post of Director. It has not sanctity as it is undated.

24) The selection and appointment to the post of Director, PEC, Chandigarh would go to the root of the matter. Director post is an office under the deemed university, which is a public office/public post. Therefore, the process of selection should have been inviting applications from the eligible candidates through advertisements by wide publication.

that it is a technical institution, therefore, requirement of advertisement may not necessary. It is sufficient, names were recommended by the IIT institutions. Reading of the eligibility criteria, namely “the Director shall be an eminent person from the field of technical education, preferably from the IIT system”. Eminent person from the field of technical education could not be only from IIT system and 2nd qualification, preferably from IIT system, in other words, preference should be given to the candidates from IIT system. That does not mean that process of selection to the post of Director, PEC, Chandigarh, should be restricted to IIT and other premier institutions only, bye laws do not make such restrictions. There are large persons with technical qualification through out the country and who are eminent persons other than IIT system also. Therefore, without resorting to advertisement and wide publication would go to the root of the matter of selection and appointment to the post of Director. It is an admitted fact that post of Director was not notified in the Employment News or in two leading news papers. It was only made known to premier institutions like IITs etc., by internal communication.

25) Basic law comprises both a guarantee of equal access to public office and a guarantee of equality. Equal access to public office is a device of modern constitutional law. It is well settled principle that whenever an instrumentality filling up a public post, authority cannot act arbitrarily on its sweet will, but must act in accordance with constitution law and the process of selection and appointment should not give the smack of arbitrariness. Process of selection and appointment must be founded on a sound, transparent and well-defined policy which shall be made known to the public at large, so that eligible candidates would participate in the

process of recruitment. A rational policy of selection and appointment on the basis of recommendations by some authority cannot be de hors an invitation or advertisement by instrumentalities of the Government, bringing it in the knowledge of public at large so that the eligible persons are not be excluded from lodging their claim for selection and appointment.

26) In the present case, the issue which requires consideration is whether filling up the post of Director, PEC, Chandigarh, without advertisement and restricting selection process only from about 30 institutions who have been informed to recommend names of eminent persons with technical qualification. In the absence of advertisement/invitation by instrumentalities to the Government, process of selection restricted to certain institutions, is in violation of Articles 14 and 16 of the Constitution. Therefore, very root of the question that the U.T. Administration failed to give advertisement inviting applications from the eligible candidates by wide publication to the post of Director PEC, is in violation of Articles 14 and 16 of the Constitution.

27) Division Bench of this Court in the case of **Amresh Upadhyay vs. Union of India and others**, in CWP No. 16469 of 2014 decided on 29.4.2016, held that selection and appointment to a public post cannot be restricted to particular institution, while relying on decision of the Supreme Court reported as **Radhey Sham Singh vs. Union of India 1997 (1) S.C.T. 627**, paragraph 11 of which reads as under:-

“11. Supreme Court in the case titled as ***Radhey Sham Singh vs. Union of India*** reported in 1997

(1) S.C.T. 627 held as follows:-

“8. It is needless to emphasis that the purpose and object behind holding a recruitment examination is to select suitable and candidates out of the lot and such an object can only be achieved by making a common select list of the successful candidates belonging to all the zones. On the other hand if zone-wise selection is made then various candidates who appeared in some of the zones and secured more marks than those who are selected from other zones would be deprived of their selection resulting in great injustice and consequent discrimination. Thus there can be said to exist no nexus between the aforesaid process of zone-wise selection and the object to be achieved, that is, the selection of the best candidates.

*..... xxx xxx
xxx*

The rule of equality of opportunity for every individual in the country is an inalienable part of our constitutional guarantee and that being so a candidate who secures more marks than another is definitely entitled to get preference for the job as the merit must be the test when selecting a candidate for recruitment for the posts which are advertised. In the present case admittedly the process of selection as envisaged in paragraph 16 of the advertisement in question is violative of [Article 14](#) and [16](#) of the Constitution of India as it has been demonstrated from the marks st of the appellants placed before us at the Bar during the

course of arguments that they had secured more marks than those secured by some of the selected candidates.”

This court in Full Bench decision titled as **Abhishek Rishi vs.State of Punjab** reported in (2013)3 SCT 1 held as follows:-

“80. In the same theme territorial reservation based district-wise without indicating any connection between such reservation with the object sought to be achieved was held constitutionally bad and violative of Article 14 of the Constitution in Govind A Mane and others v. State of Maharashtra and others; (2000) 4 SCC 200. The Supreme Court applied its earlier dicta in Minor P. Rajendran and (Minor) A. Periakaruppan cases”.

The Supreme Court in the case of **Renu and others vs. District and Sessions Judge, Tis Hazari and another 2014 (3) JT 1**, held as follows :-

“8. As Article 14 is an integral part of our system, each and every state action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in Delhi Development Horticulture Employees’ Union v. Delhi Administration,

Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors. etc.etc., AIR 1992 SC 2130; Prabhat Kumar Sharma & Ors. v. State of U.P. & Ors., AIR 1996 SC 2638; J.A.S. Inter College, Khurja, U.P. & Ors. v. State of U.P. & Ors., AIR 1996 SC 3420; M.P. Housing Board & Anr. v. Manoj Shrivastava, AIR 2006 SC 3499; M.P. State Agro Industries Development Corporation Ltd. & Anr. v. S.C. Pandey, (2006) 2 SCC 716; and State of Madhya Pradesh & Ors. v. Ku. Sandhya Tomar & Anr., JT 2013 (9) SC 139.

9. In Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216, a larger Bench of this Court reconsidered its earlier judgment in Union of India & Ors. v. N. Hargopal & Ors., AIR 1987 SC 1227, wherein it had been held that insistence of requisition through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. However, due to the possibility of non sponsoring of names by the employment exchange, this Court held that any appointment even on temporary or ad hoc basis

without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from Employment Exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open market as merely calling the names from the Employment Exchange does not meet the requirement of the said Articles of the Constitution. The Court further observed (K.B.N. Visweshwara Rao Case, SCC p.218 para 6):

“6. ...In addition, the appropriate department..... should call for the names by publication in the newspapers having wider circulation and also display on their office notice ...and employment news bulletins; and then consider the case of all candidates who have applied. If this procedure is adopted, fair play would be sub served. The equality of opportunity in the matter of employment would be available to all eligible candidates.”

(Emphasis added)

(See also: [Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors.](#), AIR 1998 SC 331; and [Kishore K. Pati v. Distt. Inspector of](#)

Schools, Midnapore & Ors., (2000) 9 SCC 405).

10. In [Suresh Kumar & Ors. v. State of Haryana & Ors.](#), (2003) 10 SCC 276, this Court upheld the judgment of the Punjab & Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.

11. In [Union Public Service Commission v. Girish Jayanti Lal Vaghela & Ors.](#), AIR 2006 SC 1165, this Court held:

“12.The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of

candidates who have applied in response to the advertisement made..... Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under [Article 16](#) of the Constitution....”

(Emphasis added)

12. The principles to be adopted in the matter of public appointments have been formulated by this Court in [M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav & Ors.](#), (2007) 8 SCC 264 as under:

“(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

- (2)

XXX

XXX

XXX
- (3)

XXX

XXX

XXX
- (4)

XXX

XXX

XXX
- (5)

XXX

XXX

XXX

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside.”

13. A similar view has been reiterated by the Constitution Bench of this Court in [Secretary, State of Karnataka & Ors. v. Umadevi & Ors.](#), AIR 2006 SC 1806, observing that any appointment made in violation of the Statutory Rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. “Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment”. XXX XXX XXX

14. In [State of Orissa & Anr. v. Mamata Mohanty](#), (2011) 3 SCC 436, this Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates; thereby the right of equal opportunity is effectuated. The Court held as under:-

“36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal

appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in [Article 16](#) requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.”

28) The Supreme Court in the aforesaid case elaborately discussed Articles 14, 16, 226, 229 (5) and 235 of the Constitution of India. One of the issue considered is that for a public post/office, names are to be obtained not only from employment exchange, but also wide publication in two news papers is mandatory, so as to comply Articles 14 and 16 of the Constitution. In other words eligible candidate who is sitting in a remote place must be made known the process of selection. Ultimate direction is that the post shall be filled up by issuing an advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab initio and would remain unenforceable and un-executable except such appointments which are permissible to be filled up without advertisement, for example appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all the candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc. if any.

29) In view of the above principles laid down by the Supreme

Court, in the present case the selection authority should have resorted to advertised the post by various methods throughout the country. Restricting the candidates only from reputed premier institutions like IITs etc. do not comply Articles 14 and 16 of the Constitution. Thus the very process of selection itself is in violation of constitutional provisions.

30) Perused selection process record. Selection authority while short listing candidates no assessment of candidates was made. Verbal decision was taken to eliminate five candidates. During second interaction meeting also there is no recording of assessment of candidates. Proceedings have been drawn without indicating the date of proceedings and it has no sanctity in the eye of law. Assuming proceedings are accepted, there is no decision for selection of 6th respondent on par with two others. In other words merits and demerits has not been assessed and recorded. Thus the proceedings are arbitrary and illegal. Illegality express the idea that the decision maker must understand correctly the law that regulates his decision making power and give effect to it. Thus, the decision maker is expected to act for a purpose and for that end he must apply correct facts, must take into account relevant factors, and disregard irrelevant factors.

31) Learned senior counsel for U.T. argued that function of the Director is administrative one as he has to run the administration. Therefore, members of the Search-cum-Selection Committee need not be Technically qualified. Whereas eligibility criteria for the post of Director stipulated is eminent person from the field of Technical Education. Therefore, members should have technical qualification.

32) The learned senior counsel for U.T. Relied on Supreme Court

decisions viz. *Tata Cellular's case (Supra)* and *Johri Mal's case (Supra)*.

In these cases, scope of judicial review in an administrative decision/action was the subject matter. This Court is not sitting over the decision of the selection committee. Firstly, the selection committee has not made any assessment of each candidate's performance in the interaction meetings held on 12.3.2013 and 2.5.2013 as is evident from record. Hence question of sitting over the decision of selection committee does not arise.

33) The learned counsel for the respondent relied on *C.D. Govinda Rao's case (Supra)*, *Dr. M.D. Tiwari's case (Supra)*, *Kantilal Chaturbhai Patel's case (Supra)* and *Vijendra Kumar Verma's case (Supra)*. Even the aforesaid decisions relates to scope of judicial review. This Court's limitation is to not to sit over the decision of the selection authority. This Court is not making any assessment of merit and demerits of the petitioner and other candidates who have participated in the process of selection.

34) Judicial review of administrative action under Article 226 of the Constitution. Extract of Article 226 of Constitution is reproduced herein:-

“226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus,

mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and **for any other purpose**

XXX

XXX

XXX

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32”

The broad contour of judicial review of administrative actions was clarified by Lord Diplock in *Council of Civil Service Union v. Minister for the Civil Service* in the following words:

... one can conveniently clarify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds.

It means that judicial review of administrative actions will be based on the grounds of 1) illegality, 2) irrationality, and 3) procedural impropriety, having chances of further addition according to the need of hour. Illegality covers the main substantive areas of ultra vires; irrationality may be equated with the Wednesbury unreasonableness; and procedural

follow the prescribed statutory procedure or the rules of natural justice.

From another point of view there are three standards of review:

1. Wednesbury test.
2. Heightened scrutiny test, when fundamental rights are in issue.
3. “Proportionality test”, where European community or European Human Rights law is in issue.

It is to be emphasised that these grounds of judicial review in the UK have been evolved against the backdrop of the concept of British parliamentary sovereignty or supremacy, which does not accommodate constitutional review, and is applicable to the cases of executive action and administrative discretion. Thus, in countries with written Constitutions, like the US and India, in the judicial review of constitutional actions, the courts may travel beyond the Wednesbury test. Judicial review has also added dimension in view of the Bill of Rights. Judicial review of both the legislative and administrative action is permissible.

35) Procedure to issue writs is now governed by the civil procedure Rules relating to judicial review. The power of High Court is wide. High Courts can pass orders, while exercising their discretion in the interest of safeguarding public interest and equity. Ultimately Courts have to decide illegalities. Now a days, administrative authorities are taking decisions affecting civil rights of citizens in abundance and in a large number of cases. And any authority which takes a decision, therefore, is required to act judiciously. It is inherent in the exercise of power and need

not accountable to courts for the choice made but the authorities is accountable to the courts in respect of the lawfulness/legality of the decisions when the impugned under the judicial review jurisdiction.

36) The Supreme court in the case of *E.P. Royappa vs. State of Tamil Nadu and another (1974) 4 SCC 3*, held as follows:-

“85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of 14 and 16. Article 16 embodies the fundamental guarantee that Arts. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species, Article 16 gives effect to the doctrine of equality in all matters relating to

public employment. The basic principle which, therefore, informs both Articles. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any ;attempt to truncate its all-embracing scope and meaning, for to do so Would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require

that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the matter comprehends the former. Both are inhibited by Articles 14 and 16.”

37) In the present case, authorities have violated Constitutional provisions viz. Articles 14 and 16 of Constitution of India, while initiating process of selection. The decision of an administrative authority is also bad where it is so perverse that no reasonable decision maker could have made such a decision. Perusal of proceedings of selection that verbal short listing and no assessment of candidates performance in the interaction meetings is recorded. Hence decision to select respondent No. 6 is highly arbitrary.

38) For non-compliance of Articles 14 and 16 of the Constitution, that apart there is element of arbitrariness, illegality and irrationality, procedural impropriety, in the process of selection and appointment to the

post of Director, PEC, Chandigarh i.e. appointment of 6th respondent as a Director, PEC, Chandigarh, vide memo No. 11/23/152-1H(10) 2013/10284 dated 3.6.2013 is held as void ab initio and nullity, Annexure P-10 dated 3.6.2013 is set aside.

39) The official respondents may proceed with the selection process to the post of Director, PEC, Chandigarh, by following due procedure of law within a period of 4 months from today in the interest of PEC deemed university.

40) Civil Writ Petition is allowed.

41) No order as to costs.

May 19, 2016

chugh

(P.B. Bajanthri)
Judge