

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 8678 of 2016 (O&M)

Date of decision : 19.7.2016

...

Jagmohan Singh

.....Petitioner

vs.

Union of India and others

.....Respondents

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

Present: Mr. Sudershan Goel, Advocate and
Ms. Rupinder Kaur, Advocate for the petitioner.

Mr. Satya Pal Jain, Senior Advocate,
Additional Solicitor General of India with
Mr. Dheeraj Jain, Senior Counsel, Government of India
for respondents No. 1 and 2.

Mr. Keshav Gupta, AAG, Haryana, for respondent No.3

Mr. Kuldeep Tiwari, Advocate for respondent No.4.

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| 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 this petition, the petitioner has prayed for quashing
impugned notification/communication dated 19.10.2015 (Annexure
P-1) issued by the 1st respondent – Union of India to fill up the post
of Chairman in Bhakra Beas Management Board (for short,
hereinafter referred as 'BBMB') and further sought for a direction to
the respondents No. 1 and 2 to permit the petitioner to appear in the
ongoing selection process of appointment of Chairman, BBMB.

2) Before adverting to the facts of the case, it is necessary to examine various provisions relating to issue involved in the matter. Article 14 and 16 (1), (2) & (3) of the Constitution of India reads as under:-

“14. Equality before law. - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

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16. Equality of opportunity in matters of public employment.-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence

within that State or Union territory prior to such employment or appointment.”

Parliament enacted Punjab Reorganisation Act, 1966 (hereinafter referred as 'PR Act, 1966'). The Act, 1966 came into force w.e.f. 1.11.1966. Section 79 of the Act, 1966 deals with “79. **Bhakra Management Board**”. Section 79 (1) reads as follows :-

“79. **Bhakra Management Board.-** (1) The Central Government shall constitute a Board to be called the Bhakra Management Board for the administration, maintenance and operation of the following works, namely:--

XXX XXX XXX”

Section 79. (2) reads as follows :

“79. (2) The Bhakra Management Board shall consist of--

(a) a whole- time Chairman and two whole- time members to be appointed by the Central Government;

(b) a representative each of the Governments of the States of Punjab, Haryana and Rajasthan and the Union territory of Himachal Pradesh to be nominated by the respective Governments or Administrator, as the case may be;

(c) two representatives of the Central Government to be nominated by that Government.”

Section 79 (5) to (9) reads as follows :-

“(5) The Governments of the successor States and of Rajasthan shall at all times provide the necessary funds to the Bhakra Management Board to meet all expenses (including the salaries and allowances of the staff) required for the discharge of its functions and such amounts shall be apportioned among the successor States, the State of Rajasthan and Electricity Boards of the said States in such proportion as the Central Government may, having regard to the benefits to each of the said States or Boards, specify.

(6) The Bhakra Management Board shall be under the control of the Central Government and shall comply with such directions, as may from time to time, be given to it by that Government.

(7) The Bhakra Management Board may with the approval of the Central Government delegate such of its powers, functions and duties as it may deem fit to the Chairman of the said Board or to any officer subordinate to the Board.

(8) The Central Government may, for the purpose of enabling the Bhakra Management Board to function effectively, issue such directions to the State Governments of Haryana, Punjab and Rajasthan and

the Administrator of the Union territory of Himachal Pradesh or any other authority, and the State Governments, Administrator or authority shall comply with such directions.

(9) The Bhakra Management Board may, with the previous approval of the Central Government and by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder, to provide for--

- (a) regulating the time and place of meetings of the Board and the procedure to be followed for the transaction of business at such meetings;**
- (b) delegation of powers and duties to the Chairman or any officer of the Board;**
- (c) the appointment, and the regulation of the conditions of service, of the officers and other staff of the Board;**
- (d) any other matter for which regulations are considered necessary by the Board.”**

Section 97 of the PR Act, 1966 deals with Power to make rules,
which reads as follows:-

“97. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the procedure to be followed by the Bhakra Management Board and the Beas Construction Board for the conduct of business and for the proper functioning of the Boards and the manner of filling casual vacancies among the members of the said Boards;

(b) the salaries and allowances to be paid to the whole- time Chairman and whole- time members of the Bhakra Management Board;

(c) the salaries and allowances and other conditions of service of the members of the staff of the Bhakra Management Board or the Beas Construction Board;

(d) the maintenance of records of all business transacted at the meetings of the Bhakra Management Board or the Beas Construction Board and the submission of copies of such records to the Central Government;

(e) the conditions subject to which, and the mode in which, contracts may be made on behalf of the successor States and the State of Rajasthan in relation to the functions of the Bhakra Management Board or

the Beas Construction Board;

(f) the preparation of the budget estimates of the receipts and expenditure of the said Boards and the authority by which such estimates shall be approved;

(g) the conditions subject to which the said Boards may incur expenditure or re- appropriate funds from any budget head to another such head;

(h) the preparation and submission of annual reports;

(i) the maintenance of accounts of the expenditure incurred by the said Boards;

(j) any other matter which is to be, or may be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or

annulment shall be without prejudice to the validity of anything previously done under that rule.”

3) Exercising Section 97 of the PR Act, 1966, rules have been framed called Bhakra Beas Management Board Rules (for short hereinafter referred as 'BBMB Rules, 1974'). These rules were notified on 11.12.1974.

4) On 19.10.2015, 1st respondent issued letter/communication addressing 7 authorities regarding appointment to the post of Chairman, BBMB. Extract of Annexure P-1 communication/letter dated 19.10.2015 is reproduced hereunder:-

“No.08/06/2015 – BBMB
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg
New Delhi, the 19 October ,2015

To

1. The Secretary, Ministry of Defence, New Delhi
2. The Secretary, Ministry of Water Resources, New Delhi
3. The Chairman-cum-Managing Directors;
All PSUs under the Administrative control of Ministry of Power;
4. The. Chairperson, Central Electricity Authority, New Delhi
5. The Chairman, Central Water Commission, New Delhi
6. All Chief Secretaries of State Governments
(except Partner States of BBMB)
7. All State Electricity Boards **(except Partner States of BBMB)**

Subject: **Appointment to the post of Chairman,
Bhakra Beas Management Board
(BBMB) – regarding.**

Sir,

I am directed to say that the post of Chairman, Bhakra Beas Management Board with its Headquarters at Chandigarh has fallen vacant w.e.f. 24.09.2015.

2. The post of Chairman, BBMB carries enormous responsibilities, as there are a number of inter-state issues of the participating State Governments of Punjab, Haryana, Rajasthan and Himachal Pradesh, which calls for tact and mature judgement. The post has, therefore, to be filled by a senior and an eminent engineer with wide experience in construction, operation and maintenance of major irrigation and power projects. A copy of the Job description for the post of Chairman, BBMB is enclosed.

3. The post of Chairman carries the scale of pay of Rs.75,500 (annual increment @ 3%) - 80,000 - per month (under revision as per 6th Central Pay Commission recommendations) with headquarters at Chandigarh. The other terms and conditions of appointment will be settled on selection of a suitable incumbent to the post.

4. It is requested that nomination of suitable Irrigation or Power Engineers may be sent so as to reach this Ministry latest **by 15th November 2015** for consideration alongwith their updated C.R. Dossiers, vigilance clearance and up-to-date bio-data in the enclosed format. **No application shall be entertained under any circumstances after the stipulated date.** Incomplete applications are liable to be **REJECTED**.

Encl: As above

Yours faithfully,
sd/-

(Kundan Kumar)

Under Secretary to the Govt of India
Tel: 2376 6242”

Alongwith above communication/letter job description for the post of Chairman, BBMB and application form are enclosed. An extract of job description, pay scale and terms and conditions of appointment, application form for Board level posts are reproduced hereunder:-

**APPLICATION FORM FOR BOARD
LEVEL POSTS.**

1. Name of the : Chairman, Bhakra
post applied for Beas Management
Board

2. Name of the :
Applicant (in full)

3. Father's Name :

4. Date of Birth
of the Applicant :

5. Postal Address

6. Telephone No. : Office
Residence.....

7. Educational/ :
Professional
Qualification

8. Positions held during the preceding ten years

No. Designation/Organization From To Pay scale
Place of posting

i)

ii)

iii)

9. Whether any punishment awarded to the applicant during the last 10 years and also whether any action or inquiry is going against the applicant.

Date (Name & Signature of the applicant)

**JOB DESCRIPTION FOR THE POST OF
CHAIRMAN, BBMB IN THE PAY SCALE OF
RS. 75,500 (ANNUAL INCREMENT @3%) -
80,000 - -PER MONTH.**

COMPANY PROFILE.

The Bhakra Beas Management Board (BBMB) was set up by the Ministry of Power in terms of the provisions of the Punjab Reorganization Act, 1966 for the administration, maintenance and operation of the Bhakra Nangal project, which is joint venture of the States of Rajasthan and the successor states of the erstwhile state of Punjab.

Bhakra Construction Board (BCB) was constituted under the Act for the construction of Beas Project and on completion of Beas Project it was transferred to Bhakra Beas Management Board (BBMB). BBMB is, therefore/looking after the administration, maintenance and operation of the Bhakra Nangal and Beas Projects, which are joint ventures of the State Governments of Punjab, Haryana, Rajasthan and Himachal Pradesh.

JOB DESCRIPTION

The post of Chairman, BBMB carries with it a great deal of responsibility as there area number of intricate inter-state problems of the participating State Governments of 'Punjab,

Haryana, Rajasthan and Himachal Pradesh which calls tact and mature judgement. The post has, therefore, to be filled by a senior and eminent engineer with wide experience in construction, operation and maintenance of major irrigation and power projects.

**PAY SCALE AND TERMS & CONDITIONS
OF APPOINTMENT**

The post of Chairman Bhakra Beas Management Board carries a pay scale of Rs.75,500 (annual increment @3%) - 80,000/-per month with head-quarters at Chandigarh. The other terms and conditions of appointment will be as per BBMB Rules 1974 as amended by the Central Government from time to time. **The terms and conditions of appointment shall be governed as per BBMB Rules 1974 existing on the date of appointment.**

TENURE:

The Chairman BBMB shall hold the office for a term of 3 years from the date on which he assumes charge of his office.

Provided further that the Chairman or a Whole time Member shall be eligible for reappointment for a further term of 3 years."

AGE: Preferred age would be about 54 years and in any case the candidate should not be more than 58 years of age.”

5) The petitioner is in the cadre of Chief Engineer and working as such in the Department of Irrigation and Water Resources, Haryana State. He is aggrieved by the restrictive clauses imposed in the communication/letter dated 19.10.2015, Annexure P-1, namely:-

“6. All Chief Secretaries of State Governments (except Partner States of BBMB).

7. All State Electricity Boards (except Partner States of BBMB)”

Due to imposition of restrictive clauses aforesaid, the petitioner has been disqualified to participate in the process of selection to the post of Chairman, BBMB, merely he is working and hails from one of the partner States of BBMB (Haryana State).

6) Learned counsel for the petitioner submitted that impugned notification/letter dated 19.10.2015 (Annexure P-1) is in violation of Article 14 of the Constitution of India, it does not forbid reasonable classification for the purpose of legislation. In order to pass test for permissible classification two tests must be fulfilled, namely, i) that classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of group; ii) differentia must have a rational relation to object sought to be achieved by the statute in question. Thus the action of the 1st respondent by not permitting the

Engineers of the Partner States in the selection process to the post of Chairman, BBMB, violates the fundamental rights envisaged under Article 14 of the Constitution, since there is no reasonable classification on record or by means of statutory law and it violates Article 16 of the Constitution.

7) It was further contended by learned counsel for the petitioner that impugned action of the respondent debarring a senior and eminent Engineer of the partner States is without nexus. It was also contended that Rule 2 (c) of BBMB Rules, 1974, Chairman, BBMB is to be appointed under Section 79 (2) (c) of PR Act, 1966. In this regard Section 79 (c) of the PR Act, 1966 stipulates that Chairman, BBMB is to be appointed by the Central Government. Rule 3 (3) of BBMB Rules, 1974 are approved by both Houses of Parliament as per Section 97 (3) of PR Act, 1966, which implies that Chairman, BBMB can be from any State Government, State Electricity Board or Central Government. Therefore, question of debarring partner States Engineer/s - Government Officers for the post of Chairman, BBMB or allowing Officers from Public Sector Undertakings (which are not Central Government) is in violation of the Parliamentary Act, as well as, BBMB Rules. Thus there is violation of PR Act, 1966 and BBMB Rules, 1974, in issuing impugned notification, which is liable to be quashed.

8) Lastly, it was submitted that the petitioner had rich experience to handle water and power issues since he is eligible, merely because he is from the partner States of the BBMB, right to

appointment to a public post cannot be denied on the sole reason that he is working and hails from one of the partner States of BBMB. Restricting selection and recruitment to the post of Chairman, BBMB, other than partner States is contrary to Apex Court decision and learned counsel for the petitioner relied on decision of the Apex Court reported as 2013 (16) SCC 440 **B. Amrutha Lakshmi vs. State of Andhra Pradesh and others.** Para 18 reads as follows:-

“18. We have got to accept that, if the rules for selection contain a requirement, the same has to be applied uniformly and strictly, and none from the eligible group can be eliminated from being considered on any criteria, other than those which are provided in the rules. If there is a criteria laid down for selection, the Administration has to confine to the same, and it cannot impose an additional criterion over and above whatever has been laid down. If that is done, it will no longer remain an exercise of discretion, but will result into discrimination. It will mean treating similarly situated employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Articles 14 and Article 16(1) of the Constitution of India. If the rules were to provide that in the

event of large number of persons coming into the zone of consideration, the names of the senior most alone will be forwarded, then it would have been a different situation. In the absence any such restrictive rule, as in the present case, the decision of the respondents cannot be justified.”

9) Learned counsel for the respondents raised preliminary issues, namely, there is delay and latches on the part of the petitioner in approaching this Court. Letter/communication dated 19.10.2015 was issued for nomination of suitable irrigation or power engineers for appointment to the post of Chairman, BBMB. Last date for receiving applications was 15.11.2015. The process of appointment of Chairman, BBMB is in the final stage as on 19.4.2016. It is at the level of Ministry of Power and the proposal of appointment is awaiting the approval of Appointments Committee of the Cabinet in the Department of Personnel and Training, Government of India. Whereas the writ petition was filed much after 19.4.2016. Next, it was submitted that petitioner has failed to implead those persons whose right would be directly affected. Thus the petition is bad for non-joinder of proper/necessary parties. It was also contended that petitioner has no locus standi as he had not applied for the post and did not participate in the process of selection to the post of Chairman of BBMB. On the above preliminary issues, the writ petition is liable to be rejected.

10) On merits, it was submitted that under the PR Act, 1966,

read with BBMB Rules, 1974, process of selection to the post of full time Chairman is not prescribed. In the communication dated 19.10.2015 (Annexure P-1), the object of restricting applicants from the partner States of BBMB and Partner States of BBMB (State Electricity Boards) is that the BBMB consists of partner States namely, State of Punjab, Haryana, Himachal Pradesh and Rajasthan. If an Officer from any one of the partner States is appointed as a Chairman of BBMB, he/she may prejudice the other partner States while taking a decision/s, since Chairman is the highest authority in the Board to take policy decision/s relating to BBMB, therefore, restrictions have been imposed in the communication dated 19.10.2015 (Annexure P-1). If an Officer/Engineer from a partner State is appointed to the post of Chairman, BBMB, it may hurt the feelings of the other partner States. Therefore, in order to meet unbiased person to hold the post of Chairman, such restrictions have been imposed. It was further contended that Hon'ble Chief Minister of Rajasthan vide his letter dated 16.10.2015 requested the Central Government to appoint the Chairman from outside the partner States so as the functioning of the Board remains impartial and just. It was further pointed out that since inception of BBMB, no regular Chairman has been appointed so far from the partner State, except once in the year 1970 for a very short period of 48 days. Therefore, there is an object behind in imposing the impugned clauses in the communication dated 19.10.2015 (Annexure P-1) The classification has a rational relation to the object which has to be achieved and to

ensure the impartiality of the functioning of the BBMB in the public interest. Thus there is no violation of Article 14 of the Constitution as contended by the petitioner. The respondents have not violated any of the provisions of the PR Act, 1966 and BBMB Rules, 1974. The petitioner has not made out a case so as to interfere with the impugned communication dated 19.10.2015 (Annexure P-1). Learned counsel for the respondents cited two decisions of the Apex Court to contend that classification is founded on intelligible differentia which distinguishes persons who are grouped and a differentia has a rational relation to object sought to be achieved in appointing a neutral person to be appointed as a Chairman :-

- i) (2014) 16 SCC 72 *S. Seshachalam and others vs. Chairman, Bar Council of Tamil Nadu and others.* Para 32 and 33 reads as follows :-

“32. Sub-section (2) of Section 1 of the Bihar State Advocates' Welfare Fund Act makes it applicable over the whole of the State of Bihar. Sub-section (3) of Section 1 of the Bihar State Advocates' Welfare Fund Act excludes the persons who have enrolled themselves as advocates after their retirement and are in receipt of retiral benefits from the government or their employers from the purview of the Welfare Fund Act. Advocates Welfare Fund is enacted with the object of providing social

security in the form of financial assistance to juniors and the welfare scheme for indigent or disabled advocates. As the appellants are already in receipt of pension from their employers, in our view, there is no arbitrariness in excluding them from the applicability of Bihar State Advocates' [Welfare Fund Act](#) 1983. The Division Bench of the Patna High Court applying its own decision in [Kedar Nath Tiwari v. State of Bihar](#), rightly dismissed the writ petition and we do not find any infirmity in the impugned order and the appeal is liable to be dismissed.

33. In the result, all the appeals are dismissed.”

ii) (2016) 2 Supreme Court Cases 445 [**Rajbala and others vs. State of Haryana and others.**](#)

Para 78 to 82 which is extracted hereunder:-

“78. The question is - whether the impugned provision which disqualifies a large number of voter population and denies their right to contest for various offices under the Act is discriminatory and therefore constitutionally invalid for being violative of Article 14 of the Constitution.

79. The learned Attorney General referred to

Section 21 of the Act which catalogues the functions and duties of Gram Panchayat falling under 30 broad heads. To demonstrate the range of those heads, he pointed out some of the duties of a Gram Panchayat and submitted that in the light of such responsibilities to be discharged by members elected to the Gram Panchayat, the legislature in its wisdom thought it fit to prescribe a minimum educational qualification and such a prescription cannot be said to be making an unreasonable classification among the voters attracting the wrath of Article 14. Several judgments of this Court are referred to emphasise the importance of education.

80. The impugned provision creates two classes of voters - those who are qualified by virtue of their educational accomplishment to contest the elections to the panchayats and those who are not. The proclaimed object of such classification is to ensure that those who seek election to panchayats have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the panchayats. The object sought to be achieved

cannot be said to be irrational or illegal or unconnected with the scheme and purpose of the or provisions of Part IX of the Constitution. It is only education which gives a human being the power to discriminate between right and wrong, good and bad. Therefore, prescription of an educational qualification is not irrelevant for better administration of the panchayats. The classification in our view cannot be said either based on no intelligible differentia unreasonable or without a reasonable nexus with the object sought to be achieved.

81. The only question that remains is whether such a provision which disqualifies a large number of persons who would otherwise be eligible to contest the elections is unconstitutional? We have already examined the scheme of the Constitution and recorded that every person who is entitled to vote is not automatically entitled to contest for every office under the Constitution. Constitution itself imposes limitations on the right to contest depending upon the office. It also authorises the prescription of further disqualifications/qualification with respect to the right to contest.

No doubt such prescriptions render one or the other or some class or the other of otherwise eligible voters, ineligible to contest. When the Constitution stipulates undischarged insolvents or persons of unsound mind as ineligible to contest to Parliament and Legislatures of the States, it certainly disqualifies some citizens to contest the said elections. May be, such persons are small in number. Question is not their number but a constitutional assessment about suitability of persons belonging to those classes to hold constitutional offices.

82. If it is constitutionally permissible to debar certain classes of people from seeking to occupy the constitutional offices, numerical dimension of such classes, in our opinion should make no difference for determining whether prescription of such disqualification is constitutionally permissible unless the prescription is of such nature as would frustrate the constitutional scheme by resulting in a situation where holding of elections to these various bodies becomes completely impossible. We, therefore, reject the challenge to clause (v) to Section 175(1).”

11) Learned counsel for the petitioner in reply to preliminary issues raised by the respondents' counsel, submitted that delay of latches on the part of the petitioner in approaching this Court in questioning the communication dated 19.10.2015 is not tenable, since the said communication (Annexure P-1) was not widely given publicity like in the newspapers. The petitioner could not submit his application for the post since there is a bar and moreover petitioner did not have the knowledge of issuance of communication dated 19.10.2015. As regards to the filing of the writ petition much after 19.4.2016, which is stated to be that process of selection to the post of Chairman, BBMB, is almost in the final stage. As on the date of filing of the writ petition, the process of appointment to the post of Chairman, BBMB, is yet to take final shape, so as to say that appointment order has been issued. Therefore, contention of the respondent that process of selection has reached final stage on this count, petition is liable to be rejected, may not be correct when the root of the matter is taken into consideration that selection to the post of Chairman, BBMB, which has been restricted to other than the partner States of BBMB. On the issue of non-joinder of proper/necessary parties are concerned, it is to be noted that process of selection is yet to be finalised. In other words order of appointment has not been issued on the date of filing of the writ petition. Therefore, question of non-joinder of proper and necessary parties may not arise since the petitioner has impleaded the author of Annexure P-1 and Union of India, which suffice to say that if the writ

petition is allowed, rights of the 1st respondent would be affected and not the future selectee. Therefore all the preliminary issues are to be rejected.

12) Heard learned counsel for the parties.

13) The respondents have raised preliminary issues like delay and laches; petitioner has not submitted his application; recruitment is at final stage as on 19.4.2016; petition has been filed much after 19.4.2016 and the petitioner failed to implead necessary parties and for non-joinder of proper parties, petition is to be rejected. Question of delay and laches in the present petition do not arise for the reasons that impugned communication dated 19.10.2015 (Annexure P-1) was not given wide publication. Petitioner could not submit his application on two counts, one is that it was not widely given publicity and assuming that he is aware of the communication dated 19.10.2015. He has been prevented from submitting application for the post of Chairman, BBMB. As on the date of filing of the petition, process of selection has not attained finality. In other words, order of appointment to the post of Chairman, BBMB has not been issued. It is still under active consideration for approval of Appointments Committee of the Cabinet in the Department of Personnel and Training, Government of India. Therefore, it has not attained finality. Consequently, question of selected parties to be impleaded as necessary party, do not arise. Petitioner's challenge is to communication dated 19.10.2015 (Annexure P-1). Union of India has been arrayed as party, therefore, the preliminary objections/issues

raised by the respondents are liable to be rejected.

14) On merits, examination of Section 79 (2) of the PR Act, 1966, BBMB shall consist of a whole time Chairman, two whole time members to be appointed by the Central Government and a representative each of the Governments of the States of Punjab, Haryana and Rajasthan and the Union Territory of Himachal Pradesh (now Himachal Pradesh State) read with sub-section (6), (7) and (8) of 79 are taken into consideration, ultimate control of the BBMB is with the Central Government. The Central Government has vast powers to give any directions to the Board and also functioning of the Chairman of the BBMB. Central Government has got powers regarding issuance of Rules and Regulations of the BBMB and service conditions of the Chairman also. In other words, if the Central Government determines for discontinuation of Chairman, the Chairman's services can be dispensed with. In totality of the circumstances, Central Government has supreme powers over the BBMB.

15) Perusal of the PR Act, 1966 read with BBMB Rules, 1974, it is evident that BBMB shall consist of a whole time Chairman to be appointed by the Central Government under Section 79 (2). Whereas PR Act, 1966 and BBMB Rules, 1974 do not stipulate any service conditions relating to recruitment to the post of Chairman. Whereas Section 97 (2) (b) of the PR Act, 1966 provides that the salaries and allowances to be paid to the whole time Chairman and whole time members of the BBMB is stipulated. Whereas mode of

recruitment like prescription of qualifications etc. is not forthcoming in the statutory Act or Rules and it is silent on the issue. The 1st respondent – Union of India vide its communication dated 19.10.2015 (Annexure P-1) relating to appointment to the post of Chairman, BBMB, it has been addressed to the 7 authorities to send nominations/applications. In the said communication, it is indicated “6. All Chief Secretaries of State Governments (except partner States of BBMB) and 7. All State Electricity Boards (except partner States of BBMB)”. In para 2 of the communication, eligibility for the post of Chairman, BBMB has been stated as under :-

“The post has, therefore, to be filled by a **senior and an eminent engineer** with wide experience in construction, operation and maintenance of major irrigation and power projects.”

16) A copy of the job description for the post of Chairman, BBMB is also enclosed. In para 4 of the communication, it is stated that nomination of suitable Irrigation or Power Engineers may be sent so as to reach the Ministry latest by 15.11.2015 for consideration alongwith their updated C.R. Dossiers, vigilance clearance and up-to-date bio-data in the enclosed format. No application shall be entertained under any circumstances after the stipulated date. Application form enclosed to the said communication is relating to bio-data of a candidate, which is required to be filled up by a candidate and he has to sign the application. In this background,

imposing restriction that officers/persons of the partner States of BBMB are not entitled to make application for the post of Chairman, BBMB is in violation of Article 14 and 16 (1), (2) & (3) of the Constitution, debarring the senior eminent engineers of the partner States is without any nexus, in the absence of statutory provisions under the PR Act, 1966 [Section 97 (1), (2) & (3)] read with BBMB Rules, 1974. Directly prescription or restrictive clause in the impugned communication would be contrary to the aforesaid constitutional, statutory Act and Rules. No records have been made available for imposing impugned restrictive clauses in the communication dated 19.10.2015 (Annexure P-1). The petitioner cited a decision of the Supreme Court, namely, **B. Amrutha Lakshmi's case (Supra)**, in which it is held that eligible group can be eliminated from being considered on any criteria, other than those which are provided in the rules. If there is a criteria laid down for selection, the Administration has to confine to the same and it cannot impose an additional criterion over and above whatever has been laid down. In the present case Section 79 (2) provides for the whole time Chairman and two whole time members to be appointed by the Central Government. There is no restriction that an officer or a person from partner State is not entitled for holding the post of a whole time Chairman. Therefore, in the absence of statutory provision by means of communication, the respondents cannot restrict recruitment to the post of Chairman other than the partner States of BBMB Engineers. Therefore, impugned clauses in the communication dated 19.10.2015

(Annexure P-1) is not in accordance with law.

17) Learned counsel for the respondents submitted that such restriction is permissible in view of the two decisions of the Apex Court, namely, *S. Seshachalam's case (Supra)* and *Rajabala's case (Supra)*. Perusal of these judgments, it is evident that there were statutory provisions restricting certain groups and it has been interpreted and held that such classification is permissible with reference to the object beyond such law. Article 16 (3) of the Constitution and Section 97 (3) of PR Act, 1966, is not complied. Whereas in the present case there is no restrictive clause in a statutory law and it is only by means of communication, so as to deny the participation in the recruitment from the officers/persons from the partner States of the BBMB. In the absence of a statutory provision for excluding certain class of persons for the recruitment to the post of Chairman, BBMB, imposing such restriction by means of communication (Annexure P-1) would be illegal and arbitrary. Therefore, the cited decisions of the respondents supra are not applicable to the present case, having regard to the facts of the case, read with Article 14 and 16 (1), (2) & (3) of the Constitution of India and so also statutory provisions namely, PR Act, 1966 read with BBMB Rules, 1974.

18) Learned counsel for the respondents vehemently contended that the object behind imposing impugned restriction clause for the purpose of recruitment to the post of Chairman, BBMB has a rational relation to the object which has to be achieved and to

ensure the impartiality of the functioning of the BBMB in the public interest. In other words person to be appointed to the post of Chairman, BBMB should not be from any partner State of BBMB. If any officer or person is appointed from the partner States of BBMB, he/she is likely to prejudice while making the policy or whenever another State partners of BBMB are in dispute, he/she would not be giving fair decision. With reference to this contention, he also relied on communication of the Hon'ble Chief Minister of Rajasthan dated 16.10.2015 wherein she had requested while appointing Chairman of BBMB, he or she should be from outside the partner States of the BBMB, so as to function of the Board remains impartial and just. While examining various provisions of PR Act, 1966 read with BBMB Rules, 1974, it is evident that the Central Government has got supreme power over BBMB. If the BBMB Chairman deviates any rules or regulations or gives any favourable decision to any of the partner States, the Central Government has every power to dispense the services of the Chairman. The above contention is only an after thought that if an officer or person from the partner States of BBMB is appointed as Chairman, he is likely to be biased in taking any decisions of the Board. In other words, speculation or apprehension of the Union of India is that if an officer or person from the partner State is appointed, justice would not be there. If the intention of Union of India is with reference to the above statement, then they had vast power so as to incorporate in the PR Act, 1966, read with BBMB Rules, 1974, prescribing the mode of recruitment to the post of

Chairman, BBMB, In the absence of necessary provision under the above Act and Rules, the 1st respondent cannot impose condition which violates Article 14 and 16 of Constitution in a communication to fill up the post of Chairman of BBMB. Learned counsel for the respondents submitted that it is not selection, it is only a nomination and from the inception of BBMB no Engineer/person from partner State has been appointed as Chairman. Perusal of Annexure P-1, it is evident that the post would be filled up by senior and eminent engineer, last date for making application and application format is enclosed. In the application, candidate was required to give his bio-data and also he is required to make signature. If the respondents have ignored Engineers from the inception of the BBMB the same was not challenged by any body and it was not subject matter of litigation. Materials are evident, that it is a selection and appointment to the post of Chairman, BBMB and not nomination, as contended by the respondents' counsel. Impugned communication does not spell out any criteria or indicia to oust eligible officers/Engineers from the partner States. Everything is left bald and vague. Rationale of classification should be based on scientific study and not on assumptions as to the existence of State affairs.

19) The post of Chairman, BBMB is a public post. Therefore, Constitutional provisions are applicable. The respondents cannot restrict the recruitment to the post of Chairman, BBMB other than partner States of BBMB.

20) 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.”

Supreme Court in the case of *State of Punjab and another vs. Brijeshwar Singh Chahal and another* (2016) 6 Supreme Court

Cases 1 (para 40) holds as follows:-

“40. The question whether a fair, reasonable and non-discriminatory method of selection should or should not be adopted can be viewed from another angle also equally if not more important than the need for preventing any infringement of Article 14. The State counsel appears for the State

Government or for public bodies who together constitute the single largest litigant in our Court system. Statistics show that nearly 80% of litigation pending in the courts today has State or one of its instrumentalities as a party to it. State Counsel/counsel appointed by public bodies thus represent the largest single litigant or group engaged in litigation. It is also undeniable that for a fair, quick and satisfactory adjudication of a cause, the assistance which the Court gets from the Bar is extremely important. It is at times said that the quality of judgment or justice administered by the courts is directly proportionate to the quality of assistance that the courts get from the Counsel appearing in a case. Our system of administration of justice is so modelled that the ability of the lawyers appearing in the cause to present the cases of their respective clients assumes considerable importance. Poor assistance at the Bar by counsel who are either not sufficiently equipped in scholarship, experience or commitment is bound to adversely affect the task of administration of justice by the Court. Apart from adversely affecting the public interest which State counsel

are supposed to protect, poor quality of assistance rendered to the courts by State Counsel can affect the higher value of justice itself. A fair, reasonable or non-discriminatory process of appointment of State Counsel is not thus demanded only by the rule of law and its intolerance towards arbitrariness but also by reason of the compelling need for doing complete justice which the Courts are obliged to do in each and every cause. The States cannot in the discharge of their public duty and power to select and appoint State counsel disregard either the guarantee contained in Article 14 against non-arbitrariness or the duty to protect public interest by picking up the best among those available and willing to work nor can the States by their action frustrate, delay or negate the judicial process of administration of justice which so heavily banks upon the assistance rendered by the members of the Bar.”

Supreme Court in the case of *Union of India and others vs. Sanjay Pant and others* 1993 Supp (2) Supreme Court Cases 494 (para 6 and 7) held as follows:-

6. The Tribunal allowed the O.A. on the following reasoning: In two cases viz., *M.*

Palaniappan v. Union of India and Smt. Rita Kumari the Tribunal has already held that termination of ad hoc appointee on the ground of not being a local candidate is illegal. Then the decisions were followed and applied in *P.G. James v. Union of India* where it was held that refusal to offer regular appointment on the said ground is illegal. These cases conclude the issue in this case. Moreover, requirement of residence in a particular territory (in this case, Union Territory of Andaman and Nicobar Islands) is opposed to [Article 16\(2\)](#). Under [Article 16\(3\)](#) only a law made by the Parliament can impose such a restriction or requirement, as the case may be. Admittedly, Parliament has not made any such law. Accordingly, the O.A. was allowed and it was declared that the respondent shall be deemed to have been appointed to the post of Statistical Assistant in a regular capacity with effect from 8.4.1987 (the date on which he was offered an ad hoc appointment) and that his seniority should be determined accordingly.

7. The learned Counsel for the appellants contended that the requirement of being a local candidate for the purpose of employment, in the

case of Andaman and Nicobar Administration was a provision made under Clause (4) of [Article 16](#) of the Constitution and is, therefore, not hit by Clause (3) or (2) of [Article 16](#) of the Constitution. The learned Counsel, however, could not place before us any order, notification or other proceeding not even the Circular dated 12.9.1980 struck down in *Palaniappan* - providing that for employment in Andaman and Nicobar Administration, the candidate should be a 'local candidate'. Only two letters, viz., the letter from the Government of India bearing Reference No. 14011/6/77 A&N addressed to the Chief Commissioner, Andaman and Nicobar Administration and the letter No. U-14011/ 10 (Section 11)/79 A&N dated 14.2.1984 from the Government of India, Ministry of Home Affairs addressed to the Chief Secretary, Andaman and Nicobar Administration, have been placed before us. We have carefully perused the same. Neither of them provides that only a 'local' candidate shall be entitled to be appointed in respect of any or all posts in the Andaman and Nicobar Administration or that only local candidates will be preferred in the matter of such appointment. In such a

situation, the question whether they can be justified with reference to Clause (4) of [Article 16](#) does not arise. We must say that the appellants have not laid the factual is foundation for the argument raised by them before us. This argument, it may be noted, was not raised before the Tribunal.”

21) In view of the facts and circumstances, read with legal issues, it is evident that for non-compliance of Articles 14 and 16 of the Constitution, PR Act 1966 and BBMB Rules, 1974, communication dated 19.10.2015 vide Annexure P-1 is set aside.

22) The respondents are directed to proceed with the process of selection to the post of Chairman, BBMB, after following due procedure of law within a period of 2 months from today in the interest of BBMB, since the post of Chairman, BBMB is vacant from 24.9.2015.

23) Civil writ petition is allowed.

24) No order as to costs.

July 19th, 2016
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(P.B. Bajanthri)
Judge