

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE
STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT APPEAL Nos.1220 AND 1225 OF 2016

Writ Appeal NO.1220 of 2016

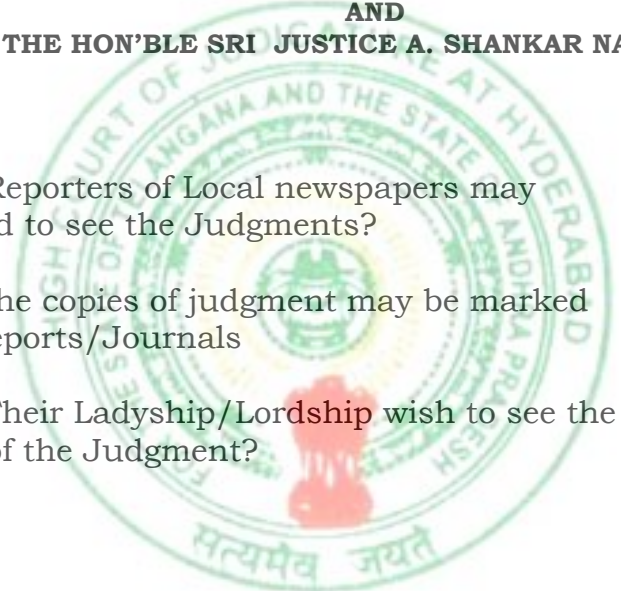
Karem Sivajee
..... Appellant
v.

J.Prasad Babu & Ors.
..... Respondents

DATE OF JUDGMENT PRONOUNCED: 06.01.2017

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

- 
1. Whether Reporters of Local newspapers may be allowed to see the Judgments? -
2. Whether the copies of judgment may be marked to Law Reports/Journals Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

+ WRIT APPEAL Nos.1220 AND 1225 OF 2016

Writ Appeal No.1220 of 2016 :

% Dated 06-01-2017

Karem Sivajee

.... Appellant

v.

\$ J.Prasad Babu & Ors.

.... Respondents

! Counsel for appellant : Sri Vedula Venkataramana, Learned Senior Counsel for Sri K. Sarvabhounma Rao, Learned Counsel.

^ Counsel for respondents: Learned Advocate-General (AP), Learned Government Pleader for Social Welfare (AP), Sri V.V. Narayana Rao, Learned Counsel for Sri V.Y. Prabhuvu, Learned Counsel.

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> HEAD NOTE:

? Citations:

1. AIR 1953 SC 148 : 1953 SCR 533
2. AIR 1961 SC 674
3. AIR 1966 SC 1678
4. (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673
5. (1957) 1 AER 49
6. (1977) 4 SCC 193
7. MANU/UP/1300/2015
8. (2007) 6 SCC 276
9. (1985) 3 SCC 398
10. (1975) 2 SCC 649
11. (2013) 5 SCC 1
12. (2005) 7 SCC 627
13. (2008) 1 SCC 728
14. (1990) 4 SCC 356
15. (2007) 2 SCC 181
16. AIR 1967 S.C. 295
17. (1981) 1 SCC 664
18. AIR 1969 SC 707
19. (1976) 1 SCC 77
20. AIR 1964 SC 1742
21. (1899) 2 QB 158
22. (2003) 2 SCC 455
23. (1973) 1 SCC 216
24. (1876) 7 AC 743
25. (1955) AC 696 (HL)
26. (1976) 3 ALL ER 611

27. (1976) 2 All ER 721
28. (1834) 1 Ad & EI 136
29. (1836) 2 M&W 195
30. (1973) 2 ALL ER 204
31. (1974) 2 ALL ER 73
32. (2002) 3 SCC 722
33. (2006) 11 SCC 731 = AIR 2006 SC 3106
34. (1891) A.C. 531 (G)
35. (1846) 4 MIA 179 = 6 Moo P.C 1 (PC)
36. AIR 1933 PC 63 (1)
37. (2002) 3 SCC 533
38. (2005) 4 SCC 530



**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

WRIT APPEAL Nos.1220 AND 1225 OF 2016

COMMON JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Both W.A. Nos.1220 and 1225 of 2016 are preferred by the 4th respondent and respondent Nos.1 and 2, in W.P. No.14299 of 2016, respectively aggrieved by the order of the Learned Single Judge dated 04.11.2016 setting aside the appointment of the 4th respondent as the Chairman of the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes, vide G.O.Ms. No.45 dated 13.04.2016, on grounds of illegality and procedural impropriety. The parties in these appeals shall, hereinafter, be referred to as they are arrayed in W.P No.14299 of 2016.

The petitioners, five in number, filed W.P. No.14299 of 2016 to declare the action of the 1st respondent in issuing G.O.Ms. No.45 dated 13.04.2016 appointing the 4th respondent as the Chairman of the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes (hereinafter called the "Commission") as illegal, arbitrary and violative of Article 14 of the Constitution of India, and to direct the 1st respondent to empanel candidates for being considered for appointment as the Chairman of the Commission.

G.O.Ms. No.44 dated 13.04.2016 was issued by the Government of Andhra Pradesh, in the exercise of its powers under Section 3 of the A.P. State Commission for Scheduled Castes and Scheduled Tribes Act, 2003 (hereinafter called the 2003 Act)

reconstituting the Commission. On the very same day, G.O.Ms. No.45 dated 13.04.2016 was issued nominating the 4th respondent as the Chairman of the reconstituted Commission. The term of the Chairman was to be for a period of three years from the date he assumed office or until he attained the age of sixty five years, whichever was earlier. G.O.Ms. No.45 dated 13.04.2016, whereby the 4th respondent was appointed as the Chairman of the Commission, was subjected to challenge in W.P. No.12499 of 2016, resulting in the order under appeal being passed.

In W.P. No.14299 of 2016 the Learned Single Judge framed the following five points for consideration:

- (1) Whether the appointment of the Chairman, under Section 5(1)(a) of the 2003 Act, could be based on the 'pleasure doctrine' or whether prescription of a fixed term in Section 6 made the said principle inapplicable?
- (2) Whether absence of Rules under Section 18 of the Act gave the 1st respondent the power to make appointment to the post of Chairman as per it's free will and choice?
- (3) Whether the selection of an 'eminent person' in clause 5(1)(a) should be based on objective criteria, and whether the person should at least satisfy the minimum criteria mentioned in clause 5(1)(b) for appointing ordinary Members of the Commission?
- (4) Whether the petitioners have locus standi to file the Writ Petition?
- (5) Whether appointment of the 4th respondent, as the Chairman of the Commission, required reconsideration in the light of the provisions of the Act?

On point No.1 the Learned Single Judge, on an analysis of the provisions of the Act, held that there was nothing in any of the provisions of the Act, or any Rule, for simple termination of a person nominated as the Chairman; no Rule could be made for simple termination without notice, as Section 6 of the Act only prescribed the grounds of disqualification to be enumerated in the

Rules; the 2003 Act was a piece of social legislation to safeguard the interests of the Schedule Castes and the Schedule Tribes; the 2003 Act sought to implement the provisions of Article 17 of the Constitution relating to untouchability; it was made in furtherance of Article 38 of the Constitution to secure a social order for the promotion of welfare of all the people, and for achieving equal justice under Article 39-A; it was also meant to promote the education and economic interests of the Schedule Castes and the Schedule Tribes under Article 46; and, therefore, appointment of members and the Chairman of the Commission did not attract the pleasure doctrine. The Learned Single Judge further held that the 2003 Act required an eminent person to be appointed as the Chairman on the basis of objective criteria/material in view of the language of Section 5 of the Act; and the pleasure doctrine could not be applied when the 2003 Act prescribed a fixed term, but did not provide for disqualification or for summary termination.

On point No.2, the Learned Single Judge held that, even in the absence of Rules having been made under the Act, the 1st respondent could not appoint any person at its will and choice to the important post of Chairman of the Commission; the High Court could exercise its powers, under Article 226 of the Constitution of India, to ensure that the State Government exercised its discretion properly; even in the absence of prescription of parameters by the Statute, some parameters could be implemented in the process of selecting persons such as the Chairman of the Commission; the question as to eminence and integrity of the person to be appointed as the Chairman, and his record of service to the Scheduled Castes and Scheduled Tribes, were important factors

which were needed to be considered before a person is appointed to the post of Chairman of the Commission; the mere fact that the body in question only made recommendations to the Government did not mean that its functions were not important, and persons could be appointed as per the whims and fancies of the Government; absence of a challenge to Section 5(1)(a) of the 2003 Act did not enable the 1st respondent to make appointment to the post of Chairman as per the sweet will and pleasure of the political executive; in the context of the responsibilities conferred, under Section 12 of the 2003 Act, on the Chairman and members of the Commission, parameters such as integrity of the candidate, and his record of service to the Scheduled Castes and the Scheduled Tribes, were implied in the very nature of duties entrusted to the Commission; necessary guidance must be provided by Rules to make Section 5(1)(a) workable and meaningful; and absence of Rules framed under the 2003 Act, in respect of qualifications for appointment of a Chairman, did not permit the 1st respondent to appoint a person to the post of Chairman of the Commission as per its free will and choice.

On point No.3, the Learned Single Judge held that the words “eminent person” in Section 5(1)(a) required the person to be far above ordinary, i.e., far above those who could be appointed as members of the Commission who were men of integrity; they should stand head and shoulders above persons who are eligible to be appointed as members of the Commission; selection of a person as an “eminent person” should be based on objective criteria, and was not to be a subjective decision; the minimum requirement of “ability, integrity and having outstanding record of selfless service

to the cause of justice for the Scheduled Castes and the Scheduled Tribes” were applicable to the post of Chairman; the State Government was not entitled to fill up the posts of members and Chairman of the Commission without any norms, at its pleasure, wherein persons favoured by the party in power were chosen without any reference to qualities such as their ability, integrity, track record of providing services to members of the Scheduled Castes and the Scheduled Tribes, educational qualifications etc; the contention that appointment of the 4th respondent as Chairman of the Commission was not justiciable, since it was a part of the spoils system, was liable to be rejected; the term “eminent persons” in Section 5(1)(a) should be determined on the basis of objective criteria, and should atleast satisfy the minimum criteria mentioned in Section 5(1)(b) for appointing ordinary members of the Commission; it was possible to read into Section 5(1)(a) the said minimum criteria, and the requirement that the person must possess ability, very high integrity and a record of service to the Scheduled Castes and the Scheduled Tribes; and there ought to be a transparent process of selection of person to the post of the Chairman of the Commission.

On point No.4, the Learned Single Judge held that all the petitioners belonged to the Scheduled Caste community, and the 1st petitioner claimed to have credentials to be considered for appointment to the said post vis-à-vis the credentials of the 4th respondent; along with the counter-affidavit of respondents 1 and 2, a copy of the application submitted by the 1st petitioner to the Chief Secretary on 14.07.2015, for consideration of his

candidature for the said post had been filed; and the petitioners could, therefore, not be non-suited on the ground of locus.

On point No.5, the Learned Single Judge held that appointment of the 4th respondent could not have been made on the spoils system or the pleasure doctrine; interference is permissible if the appointment is not legally valid; appointment to the post of Chairman of the Commission could be tested on the touchstone of Articles 14 and 16 of the Constitution, as the Commission fell within the definition of “State” under Article 12; on application of the Wednesbury rule, the order of appointment of the 4th respondent was liable to be set aside on grounds of illegality, non-application of relevant principles, and procedural irregularities; the 1st respondent had committed an illegality in presuming that the appointment of the 4th respondent to the post of Chairman was an appointment under the ‘spoils system’; it had erred in its belief that the word ‘eminent’ was subjective, it did not require any objective criteria, and even the relevant minimal qualifications prescribed for members need not be applied; there was no evidence that the 1st respondent had checked the antecedents of the 4th respondent through a process of police verification to check whether he was a person of integrity; this was because appointment of 4th respondent was made on the same day the Commission was constituted; no evidence was placed before the Court regarding scrutiny of the credentials of the 4th respondent with regards the services rendered by him for the upliftment of member of the Scheduled Castes and the Scheduled Tribes; no evidence was placed before the Court to show if any person’s candidature had been considered, or that applications of

other persons were invited, and any search committee was appointed to identify such persons and make a comparative assessment of their credentials; it was not the case of the respondents that persons from the Scheduled Castes and the Scheduled Tribes, such as High Court and Supreme Court judges, bureaucrats, high ranking police officers, persons involved in social service particularly to the cause of upliftment of Schedule Castes and Scheduled Tribes, were unavailable for a detailed consideration of several names for appointment to the office of Chairman of the Commission; the respondent had assumed that the post could be filled under the political spoils system, which it was not; and as appointment of the 4th respondent, as the Chairman of the Commission, had been made without reference to the requirements of the statute, without following any objective criteria for deciding the eminence of a person suitable to be appointed to the post, and without following any transparent method to identify that the 4th respondent was the person to be appointed to the post, appointment of the 4th respondent was vitiated both on grounds of illegality as well as procedural impropriety. The Learned Single Judge held that the appointment of the 4th respondent, as the Chairman of the Commission, was liable to be set aside. In conclusion the Learned Single Judge held that:-

- (i) the appointment of the 4th respondent, as the Chairman of the Commission, was liable to be set aside both on the grounds of 'illegality' and 'procedural impropriety'.
- (ii) Appointment of the Chairman, under Section 5(1)(a) of the Act, cannot be based upon the general principle of 'spoils system' in view of Section 6(1) which provides for a period of 3 years as the tenure of the Chairman of the Commission unless otherwise disqualified from continuing as such under the Rules; and as, admittedly,

no such disqualification Rules have been framed, and there is no scope for disqualification, the present case of appointment of the 4th respondent cannot be brought within the spoils system/pleasure doctrine.

- (iii) The members and Chairman of the Commission perform a variety of highly important functions and exercise important powers to safeguard the interests of the Schedule Castes and the Schedule Tribes.
- (iv) Even in the absence of Rules being framed under the Act, the 1st respondent could not appoint any person as per its will and choice to the post of Chairman of the Commission. Parameters such as ability, integrity of the candidate and his record of service to the Scheduled Castes and the Scheduled Tribes are implied by the very nature of duties entrusted to the Commission.
- (v) 'Eminent persons' are not ordinary persons. They are far above those who can be the members of the Commission, who should be men of integrity. They ought to, at least, stand head and shoulders above persons who are eligible to be appointed as members of the Commission.
- (vi) Formation of opinion by the 1st respondent, that a person is 'eminent', must be on objective material and cannot rest upon a subjective view unsubstantiated by demonstrable credentials.
- (vii) Article 14 of the Constitution of India requires the procedure under law to be fair, just and reasonable; and such powers, to make appointment to public offices, should be exercised in a manner consistent with public interest. The process, leading upto the appointment, must be fair and reasonable, and must provide for consideration of all persons eligible and qualified in this regard.
- (viii) The first respondent failed to follow a transparent and objective process by giving due publicity to the fact that the State Government is in the process of filling up vacancies in the Commission, since it is conceived in public interest and discharges public functions. Its membership/Chairmanship cannot be regarded as an instrument of conferring largesse on a chosen few.

While setting aside the appointment of the 4th respondent as the Chairman of the Commission, the Learned Single Judge directed the 1st respondent to follow a transparent method such as inviting applications from interested persons through advertisement and/or constituting a search committee, to suggest

suitable candidates, keeping in mind the parameters of integrity and track record of the applicants/candidates, and also whether they can be treated as 'eminent' persons; and to then make appointment of a suitable person to the said post in accordance with law. The 1st respondent was directed to consider persons from all walks of life including individuals who have retired as judges of the Supreme Court or the High Court or civil servants, and whose contribution to the upliftment of the Scheduled Castes and the Scheduled Tribes is well documented, so that the Commission inspires the confidence of the public at large.

Learned Advocate General for the State of Andhra Pradesh, appearing on behalf of respondents 1 and 2, would submit that the 2003 Act does not prescribe any procedure for inviting applications, nor is knowledge of the laws stipulated as a condition for appointment as the Chairman; the Learned Single Judge erred in holding that the post of Chairman of the Commission required knowledge in law; the mere fact that Rules were not made, did not disable the Government from appointing a person as the Chairman of the Commission under Section 5(1)(a) of the Act; in the absence of any stipulation in the Act, and in the absence of Rules being made in this regard, the Learned Single Judge erred in holding that a notification should be issued for inviting applications for appointment to the office of Chairman; such a direction amounts to judicial legislation which is impermissible; the State Government has the discretion to appoint an "eminent person" as the Chairman of the Commission; and it is not obligated to invite applications, or constitute a search committee, in order to make appointment to the office of Chairman of the Commission.

Sri Vedula Venkataramana, Learned Senior Counsel appearing on behalf of the 4th respondent, would submit that appointment to the post of Chairman of the Commission is not justiciable; the Constitution of India provides for appointment to several constitutional posts without stipulating guidelines or prescribing the eligibility criteria for such appointments; a few of such posts are as referred to in Articles 76, 148 and 155 of the Constitution of India; a process of inviting applications from the general public, in selecting candidates for appointment to such constitutional posts, cannot be resorted to; confidence and trust is reposed by the Legislature in the designated appointing authority to exercise power in a legitimate manner; appointment to a statutory office is based on the subjective decision of the State; the analogy of State largesse is not attracted; the power to appoint a person as the Chairman of the Commission is referable to Section 5(1)(a) of the Act; the conditions stipulated, for appointment as members of the Commission under Section 5(1)(b) of the Act, cannot be read into Section 5(1)(a) thereof; the wisdom of the legislature in prescribing different criteria, for appointment to the office of Chairman and for appointment as members of the Commission, cannot be scrutinised by Courts; the Statute has to be read as it is, and, if the wisdom of the law maker cannot be discerned, the Courts cannot read into the provisions, the lack of wisdom of the law maker, to make the provision more meaningful or purposeful; the literal rule of construction of statutes should be applied; the word “*eminent*” is incapable of precise meaning; non-consideration of all “eminent persons”, belonging to the Scheduled Castes, cannot be the subject matter of judicial review; the

Chairman of the Commission is a member only for the purpose of a quorum, and nothing more; there is no justification in reading clauses (a) and (b) of Section 5(1) together; no obligation is cast by the Act on the State to make a comparative evaluation of the degree of “eminence of persons” who may be available in abundance for appointment to the post of Chairman; and the Learned Single Judge erred in interfering with the appointment of the 4th respondent as the Chairman of the Commission. He would rely on **Nalinakhya Bysack v. Shyam Sunder Haldar**¹; **Shri Ram v. State of Maharashtra**²; and **Shyam Kishsori Devi v. The Patna Municipal Corporation**³.

On the other hand Sri V.V. Narayana Rao, Learned Counsel appearing on behalf of the petitioners, would submit that Section 11 of the 2003 Act confers powers, akin to a Civil Court, on the Commission; the Learned Single Judge was, therefore, justified in reading the requirement of knowledge in laws for appointment to the office of Chairman under Section 5(1)(a) of the Act; the very fact that the 4th respondent was appointed as the Chairman of the Commission on the very same day on which it was reconstituted (13.04.2016) shows that the 4th respondent was appointed at the whim and fancy of respondents 1 and 2, and not on the basis of any objective criteria; and the order of the Learned Single Judge does not necessitate interference in an intra-court appeal under clause 15 of the Letters Patent.

The contention that Clause (a) of Section 5(1) of the 2003 Act relates to appointment of a Chairman, and the conditions

¹ AIR 1953 SC 148 : 1953 SCR 533

² AIR 1961 SC 674

³ AIR 1966 SC 1678

stipulated therein are different from the conditions stipulated in Clause (b) which relates to appointment of members, does not merit acceptance as the legislative intent, in prescribing the criteria for appointment as the Chairman and as members of the Commission, must be gathered on reading of the provisions of the Act as a whole, and not on a reading of a clause in a particular Section in isolation. The key to the opening of every law is the reason and spirit of the law—it is the “animus imponentis”, the intention of the lawmaker, expressed in the law itself, taken as a whole. To arrive at the true meaning of any particular phrase in a Statute, that particular phrase is not to be viewed detached from its context. (**Delhi Airtech Services (P) Ltd. v. State of U.P.**,⁴; **Attorney General v. HRH Prince Ernest Augustus of Hanover**⁵). The words in a Statute cannot be read in isolation, their colour and content are derived from their context and every word in a statute is to be examined in its context. (**Delhi Airtech Services (P) Ltd.**⁴; **Union of India v. Sankalchand Himatlal Sheth**⁶). Bearing these principles in mind, let us take note of the relevant provisions of the A.P. State Commission for Scheduled Castes and Scheduled Tribes Act, 2003 (the “2003 Act” for short).

As is evident from the statement of objects and reasons for the 2003 Act, the State Government appointed Justice Dr. K. Punnamayya, retired judge of the Andhra Pradesh High Court, as the Single Member Commission of enquiry to enquire into the practice of untouchability against the Scheduled Castes and the Scheduled Tribes, and the incidence of atrocities against them; and to suggest

⁴ (2011) 9 SCC 354 : (2011) 4 SCC (Civ) 673

⁵ (1957) 1 AER 49

⁶ (1977) 4 SCC 193

measures for eradication of untouchability and prevention of such atrocities against the Scheduled Castes and the Scheduled Tribes. The Commission, after examining numerous petitions presented by the Scheduled Castes and the Scheduled Tribes, made certain suggestions, and for measures to be taken for eradication of untouchability, and for prevention of atrocities against the Scheduled Castes and the Scheduled Tribes. In order to achieve this goal, the Commission recommended constitution of an independent Commission, on the lines of the Andhra Pradesh State Minorities Commission, to perform the duties of the Commission as prescribed under Article 338(5) of the Constitution of India, by giving it a statutory status under a specific Legislation. The State Government, after examining the recommendations of the Single Member Commission of enquiry, decided to enact a law for constitution of the Andhra Pradesh State Commission for the Scheduled Castes and the Scheduled Tribes. This resulted in the 2003 Act being made.

Section 2(a) of the 2003 Act defines “Chairman” to mean the Chairman, of the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes, appointed under Section 5. Section 2(b) defines “Commission” to mean the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes constituted under Section 3. Section 2(c) defines “Civil Rights” to mean any right accruing to a person, by reason of the abolition of untouchability, by Article 17 of the Constitution. Section 2(d) defines “disabilities” to mean those provided in Article 15(2) of the Constitution, and Section 2(h) defines “Scheduled Castes and Scheduled Tribes” to have the meanings assigned to them

respectively under clauses (24) and (25) of Article 366 of the Constitution. Section 2(g) defines “prescribed” to mean prescribed by rules made, by the Government, under the Act.

Chapter II of the 2003 Act relates to the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes. Section 3(1), thereunder, enables the Government, by notification, to constitute a body to be known as the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes to exercise the powers conferred on, and to perform the functions assigned to, it under the Act. Section 3(2) stipulates that the Commission shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act and the rules made thereunder, to acquire, hold and dispose of property and to enter into contracts and, in the said name, to sue and be sued. Section 4 relates to the meetings of the Commission, and sub-section (1) thereof stipulates that the Commission shall hold ordinary meetings at such places, and at such intervals, as may be prescribed, and that the meetings may be convened by the Chairman at any time for the transaction of any urgent business. Section 4(2) stipulates that the number of members necessary to constitute a quorum of the meeting, and the procedure to be followed therein, shall be such as may be prescribed. Section 5 relates to composition of the Commission and, since the dispute in these Writ proceedings revolves around its scope, Section 5 is extracted hereunder:

“Composition of Commission:- (1) The Commission shall consist of the following members:-

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

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

The Secretary shall convene the meetings of the Commission from time to time.”

Section 6 relates to the term of Office and conditions of service of the Chairman and Members and, under sub-section (1) thereof, the Chairman or the members shall, unless otherwise disqualified from continuing as such under the Rules, hold office for a term of three years from the date he assumes office or until he attains the age of sixty five years, whichever is earlier, and shall be eligible for re-appointment for a second term only. Section 6(2) stipulates that the Chairman or a Member may, by writing under his hand addressed to the Government, resign from office, but he shall continue in office till his resignation is accepted by the Government, or his successor is appointed. Section 6(3) stipulates that the successor, so appointed under sub-section (2), shall hold office for the remainder of the term of his predecessor or until he attains the age of sixty five years, whichever is earlier. Section 6(4) enables the Government to remove a person from the office of a member, if that person (a) becomes an undischarged insolvent; (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Government, involves moral turpitude; (c) becomes of unsound mind and stands so declared by a competent court; (d) refuses to act or becomes incapable of acting; (e) without

obtaining leave of absence from the Commission, absents himself from three consecutive meetings of the Commission; (f) has, in the opinion of the Government, so abused the position of the member as to render that person's continuance in office detrimental to the interest of the Scheduled Castes and the Scheduled Tribes in the State, or the public interest. Under the proviso thereto, no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

Section 10(1) stipulates that the Commission shall meet as and when necessary, at such time and place, as the Chairman may think fit. Section 10(2) empowers the Commission to regulate its own procedure. Section 11 relates to the power of the Commission and, sub-section (1) thereof, stipulates that the Commission shall, while performing its functions under Section 12, have the power of the Civil Court trying a suit and, in particular, in respect of the matters mentioned therein. Section 11(2) stipulates that any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 192 and 228 of the Indian Penal Code, and the Commission shall be deemed to be a Court for the purpose of Section 195 of the Code of Criminal Procedure. Section 11(3) confers power on the Commission to requisition such information, document and such assistance as may be required from any department of the Government for the effective implementation of the provisions of the Act. Section 12 stipulates the functions the Commission is required to perform and, among them, are (a) inquire into complaints of (i) violation of any rights provided under the Protection of Civil Rights Act, 1955, and the Scheduled Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989; (ii) negligence, in the prevention of such violation, by a public servant; (iii) inquire and recommend to the concerned disciplinary authority to initiate disciplinary action in case the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in regard to the discharge of his duties in relation to the protection of the interests of the Scheduled Castes and the Scheduled Tribes; (b) investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution, or under any other law for the time being in force, or under any order of the Government, and to evaluate the working of such safeguards; (c) evaluate the working of various safeguards and civil rights accruing to a person as stipulated in the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 for the protection of the Scheduled Castes and the Scheduled Tribes, and in the laws, regulations and any other orders passed by the Union and State Governments; investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and the Scheduled Tribes under the Constitution or under any other laws and Government orders, and to evaluate the making of such safeguards; (d) make recommendations with a view to ensure effective implementation and enforcement of all safeguards under the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; (e) undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the Scheduled Castes and the Scheduled Tribes; (f) look into specific

complaints regarding deprivation of rights and safeguards in the interest of the Scheduled Castes and the Scheduled Tribes; (g) enquire into any unfair practice, take a decision thereon, and recommend to the Government the action to be taken in that matter; (h) to spread literacy among various sections of society regarding the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and to promote awareness of the safeguards available for the protection of these rights; (i) conduct studies, research and analysis on the question of avoidance of discrimination against the Scheduled Castes and the Scheduled Tribes; (j) suggest appropriate legal and welfare measures in respect of the Scheduled Castes and the Scheduled Tribes to be undertaken by the Government; (k) inquire into any unfair practice; (l) receive written complaints regarding Schedule Castes and Scheduled Tribes, and to cause investigation or inquires to be made by the Commissioner of Social Welfare to monitor working of the laws concerning the Scheduled Castes and the Scheduled Tribes women, to invite one or more prominent persons to participate in the meetings of the Commission to advise on such matters as may be necessary; encourage the efforts of non-governmental organisations and institutions working in the field of human rights, and for the upliftment and betterment of the Scheduled Castes and the Scheduled Tribes; and make periodical reports, at prescribed intervals, to the government. Section 17 stipulates that the Chairman/Members and employees of the Commission shall be deemed to be public servants within the meaning of Section 21 IPC. Section 18(1) enables the Government,

by notification, to make rules for carrying out all or any of the purposes of the Act.

As noted hereinabove, the composition of the Commission, constituted under Section 3 of the 2003 Act, is to consist of the members mentioned therein which, under clause (a) of Section 5(1), is the Chairman and, under clause (b) thereof, five members. The Legislature has, in enacting Section 5 of the 2003 Act, considered the Chairman also to be a member of the Commission. We must express our inability to agree with the submission of Sri V. Venkataramana, Learned Senior Counsel, that the Chairman of the Commission is a Member under Section 5(1)(a) of the 2003 Act only for the purpose of a quorum. There is nothing in the language of Section 5(1) to support such a view. It is Section 4 of the 2003 Act which relates to meetings of the Commission and not Section 5(1). Section 4(2) of the 2003 Act stipulates that the number of members to constitute the quorum of the meeting, and the procedure to be followed in such meetings, shall be prescribed by way of rules made under the Act. As prescription of the quorum, for a meeting of the members of the Commission, has been left to the discretion of the rule making authority, it is evident that Section 5(1) of the 2003 Act, which provides that the Chairman shall also be a member of the Commission, is not merely for the purpose of prescribing a quorum for the meetings of the Commission.

Section 5(1)(b) enables the Government to appoint not more than five members amongst persons, belonging to the Scheduled Castes and the Scheduled Tribes, of ability, integrity and having outstanding record of selfless service for the cause of justice to the

Scheduled Castes and the Scheduled Tribes. Of these five members, one should be a woman. The composition of the Commission is of six members, i.e., the Chairman and five other members. As the Chairman is also a member of the Commission under Section 5(1) of the 2003 Act, he must necessarily possess the qualifications, prescribed by the legislature, for being appointed as a “member” under Section 5(1) i.e., he should be a person of ability, integrity, and should have an outstanding record of selfless service to the cause of justice for the Scheduled Castes and the Scheduled Tribes.

The word '*eminence*', used in Section 5(1)(a), is not a defined expression under the 2003 Act. It must, therefore, bear its ordinary connotation and meaning. The word '*eminence*' has been defined in the Shorter Oxford English Dictionary to mean "distinguished in character or attainment". The Random House Dictionary of the English language defines the expression '*eminence*' to mean "*high in station, rank, or repute; distinguished*". Webster's New Twentieth Century Dictionary of the English language defines the expression '*eminent*' to mean "*standing high by comparison with others; renowned; exalted; distinguished*". The meaning which is ascribed to the expression '*eminent*' in these dictionaries bears a common sense understanding of the expression. **(Gorakhpur University Aff. College Teachers Association v. State of U.P⁷).**

As Section 5(1)(a) stipulates that the Chairman should be an eminent person belonging to the Scheduled Castes and the Scheduled Tribes, a person appointed as the Chairman must not

⁷ MANU/UP/1300/2015

only possess the qualifications, stipulated under Section 5(1)(b), to be appointed as a member i.e., he should not only be a person of ability, integrity and having an outstanding record of selfless service to the cause of justice for the Scheduled Castes and Scheduled Tribes, he must, in addition, be an eminent person from the Scheduled Castes and the Scheduled Tribes. As held by the Learned Single Judge in the order under appeal, in our opinion rightly so, the legislature has, by the use of the word “*eminent*” in Section 5(1)(a) of the 2003 Act, directed the executive only to appoint a person, from among the Scheduled Castes and the Scheduled Tribes, who not only possesses the qualifications stipulated for being appointed as a member of the Commission, but is also a person of eminence which would mean a person who stands far higher in comparison with the other members of the Commission.

We are in complete agreement with the conclusion of the Learned Single Judge that the State Government must bear in mind the parameters of integrity and track record of the applicants, and should satisfy itself that the person to be appointed as the Chairman of the Commission is an eminent person i.e., a person who stands far higher in comparison with the other members of the Commission, all of whom are required to be men and women of ability, integrity and having an outstanding record of selfless service to the cause of justice for the Scheduled Castes and Scheduled Tribes, besides being members of the Scheduled Castes or the Scheduled Tribes. The Commission, constituted under the 2003 Act, has been entrusted with several important functions under Section 12 thereof with a view to protect

and promote the interest of the Scheduled Castes and the Scheduled Tribes. Statutory Commissions, such as the commission constituted under Section 3(1) of the 2003 Act, are conceived in public interest and discharge public functions. Their membership cannot be regarded as an instrument for conferring largesse on a chosen few (**Gorakhpur University Aff. College Teachers Association**⁷), and it is only a person of eminence, ability and integrity with an outstanding record of selfless service to the cause of justice for the Scheduled Castes and the Scheduled Tribes, who can be appointed as the Chairman of the Commission.

As the Chairman is also a member of the Commission, under Section 5(1) of the 2003 Act, it cannot be said that the legislature has prescribed different criteria for appointment to the posts of Chairman and members, or that the qualifications stipulated for being appointed as a member of the Commission under Section 5(1)(b) of the Act does not apply for appointment to the office of the Chairman of the Commission under Section 5(1)(a) of the 2003 Act. It is only a person, fulfilling the qualifications stipulated under Section 5(1)(a) of the 2003 Act, who can be appointed as a member of the Commission. In addition he must, as stipulated in Section 5(1)(a), be a person of eminence. It is only a person, who stands far higher in comparison with the other members of the Commission, who can be appointed as the Chairman of the Commission.

The State Government cannot appoint any person it pleases as the Chairman of the Commission as the legislative mandate is that only a person, who possesses the qualifications prescribed in

both clauses (a) & (b) of Section 5(1) of the 2003 Act, who can be appointed as the Chairman. Appointments made, applying the doctrine of pleasure, have received Constitutional sanction under Article 310. Unlike in the United Kingdom, this doctrine is not subject in our country to any law made by Parliament but only to the provisions of the Constitution. (**Union of India v. Shardindu**⁸). The distinction between a statutory appointment and a pleasure appointment should be borne in mind. Pleasure appointments are those where the incumbents are appointed at the pleasure of the President, Governors etc. As against this, statutory appointments are made under the statute and the service conditions of the incumbents are governed by the statute. They are not pleasure appointments. Under the Constitution, appointment of Governors is purely a pleasure appointment, or appointment of such a nature which the incumbent holds at the pleasure of the President. (**Shardindu**⁸; **Union of India v. Tulsiram Patel**⁹). Unlike posts to which persons are appointed, and who hold office under the pleasure of the Government, appointment to statutory posts, (such as the posts of Chairman and Members of the Commission under the 2003 Act), can only be made in strict adherence to the qualifications prescribed either under the Statute (i.e., the 2003 Act) or in terms of the rules made thereunder. The posts of Attorney General of India under Article 76 of the Constitution of India, the Controller and Auditor General of India under Article 148, and the Governor under Article 155, cannot be compared with the posts of Chairman and members of the Commission as the latter posts are governed by the provisions of the 2003 Act, and it

⁸ (2007) 6 SCC 276

⁹ (1985) 3 SCC 398

is only such persons, from among those fulfilling the qualifications stipulated thereunder, who can be appointed as the Chairman and members of the Commission.

The Courts have power to examine whether the executive has acted lawfully. (**Hochtief Gammon v. State of Orissa**¹⁰; **State of Punjab v. Salil Sabhlok**¹¹). If the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account (expressly or impliedly), a Court will normally hold that the power has not been validly exercised. (**De Smith's Judicial Review, 6th Edn; Salil Sabhlok**¹¹). While this Court, in the exercise of its jurisdiction under Article 226 of the Constitution, would not, ordinarily, interfere with the discretion of the State Government in selecting and appointing the Chairman of the Commission, if it is shown that the relevant factors either expressly provided, or those implied from the very nature of the functions entrusted to the Commission, have not been considered by the State Government in selecting and appointing the Chairman of the Commission, this Court would quash such selection and appointment to ensure that the discretion of the State Government is exercised within the bounds of the statute. (**Salil Sabhlok**¹¹). Absence of any procedure being laid down by the Legislature for appointment of the Chairman of the Commission would not confer on the State Government absolute discretion in selecting and appointing any person it pleases as the Chairman of the Commission. Even though no

¹⁰ (1975) 2 SCC 649

¹¹ (2013) 5 SCC 1

procedure has been laid down in the 2003 Act for appointment of the Chairman and Members of the Commission, the State Government must select only persons of competence, (ie those who fulfil the criteria stipulated under clauses (a) & (b) of Section 5(1) of the 2003 Act), for appointment to such an office, as the discretion vested in the State Government under the 2003 Act is limited by the purposes for which the discretion is vested, and the purposes are discernible from the functions of the Commissions specified in Section 12 of the 2003 Act. (**Salil Sabhlok**¹¹).

In cases where the validity of the appointment of either the Chairman or the Members of the Commission is under challenge, this Court, in the exercise of its powers under judicial review, can undoubtedly examine if the relevant factors, stipulated by the legislature, have been considered by the Government while making such appointments, and whether the material on record, before the State Government shows that the person, appointed as the Chairman of the Commission, possesses the qualifications prescribed under clauses (a) & (b) of Section 5(1) of the 2003 Act. While the satisfaction of the Government in making appointments to statutory posts may well be subjective, it must, nonetheless, be based on the material on record, and on a consideration of relevant factors. The opinion of the State Government must be founded on material, and not rest upon a subjective view unsubstantiated by demonstrable credentials. (**Gorakhpur University Aff. College Teachers Association**⁷).

Formation of opinion must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. (**Hindustan Petroleum Corpn. Ltd. v. Darius**

Shapur Chenai¹²; **Devinder Singh v. State of Punjab**¹³). While formation of opinion may well be subjective, it must be based on objective considerations, (**India Cement Ltd. v. Union of India**¹⁴, **Rajesh Kumar v. Dy. CIT**¹⁵), and existence of circumstances relevant to the inference, as the sine qua non for action, must be demonstrable. (**Barium Chemicals Ltd. v. Company Law Board**¹⁶; **Swadeshi Cotton Mills v. Union of India**¹⁷). If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the Section exists, the action might be exposed to interference unless the existence of the circumstances is made out. It is not reasonable to say that the Section permitted the Government to say that it has formed the opinion on circumstances which it thinks exist. Since the existence of “circumstances” is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. (**Barium Chemicals Ltd.**¹⁶).

In the formation of opinion regard must be had to the factors enumerated in that particular Section of the Act, together with all other factors relevant for the exercise of that power. There must exist circumstances which, in the opinion of the competent authority, suggest what has been set out in Act. Existence of such circumstances is a condition precedent for the formation of the

¹² (2005) 7 SCC 627

¹³ (2008) 1 SCC 728

¹⁴ (1990) 4 SCC 356

¹⁵ (2007) 2 SCC 181

¹⁶ AIR 1967 S.C. 295

¹⁷ (1981) 1 SCC 664

requisite opinion and, if the existence of those conditions is challenged, Courts are entitled to examine whether those circumstances existed when the order was made. (**Rohtas Industries Ltd v. S.D. Agarwal**¹⁸). If it is shown that the circumstances do not exist, or that they are such that it is impossible for any one to form an opinion therefrom, the opinion can be challenged on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the Statute. (**Barium Chemicals Ltd.**¹⁶). If the satisfaction, in regard to the existence of any of the conditions stipulated in the Act, is based on no evidence or on irrelevant and extraneous considerations, the Court will be justified in quashing such an illegal order. (**Swadeshi Cotton Mills**¹⁷).

We find considerable force in the submission of Sri V.V. Narayana Rao, Learned Counsel for Petitioners, that the very fact that the 4th respondent was appointed as the Chairman of the Commission on the same day, on which the Commission was constituted on 30.06.2016, shows that the Government had appointed him as the Chairman even without undertaking the exercise of ascertaining whether or not he possessed the qualifications prescribed, under Section 5(1) of the 2003 Act, for being appointed to the said office. We are saved the trouble of examining this aspect any further as, on being asked whether there was any material on record to show application of mind by respondents 1 and 2 regarding suitability of the 4th respondent to be appointed as the Chairman of the Commission, the Learned

¹⁸ AIR 1969 SC 707

Advocate General for the State of Andhra Pradesh fairly stated that there was no material on record in this regard. It is evident, therefore, that the 4th respondent was appointed as the Chairman of the Commission even without respondents 1 and 2 having any material before them to show that the 4th respondent fulfilled the conditions stipulated in clauses (a) & (b) of Section 5(1)(a) of the Act.

We, however, find considerable force in the submission of the Learned Advocate General for the State of Andhra Pradesh that, in the absence of any such stipulation in the 2003 Act, this Court, in the exercise of its powers of judicial review, would neither be justified in prescribing qualifications for appointment as the Chairman of the Commission nor in laying down the procedure to be followed in making such appointments. As the provisions of the 2003 Act are clear and unambiguous, it is not for Courts to read something, which is not specified therein, and infer that the 2003 Act prescribes the mode and manner in which appointment should be made to the offices of Chairman and members of the Commission. The language used speaks the mind and reveals the intention of the framers. **(C.I.T. v. T.V. Sundaram Iyengar (P) Ltd¹⁹)**. Where the language of an enactment is plain and clear upon its face, and is susceptible of only one meaning, then, ordinarily, that meaning should be given by the Court. In such a case the task of interpretation can hardly be said to arise. **(Sankalchand Himatlal Sheth⁶)**. If the words of a statute are, in themselves, precise and unambiguous “no more is necessary than to expound those words in their natural and ordinary sense, the

¹⁹ (1976) 1 SCC 77

words themselves in such case best declaring the intention of the legislature”. (**Shri Ram**²⁰).

The duty of the Court is to give effect to the intention of the legislature, as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. (**Banarsi Debi v. I.T. Officer**²⁰; **Attorney-General v. Carlton Bank**²¹). The primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. (**Unique Butyle Tube Industries Pvt. Ltd., v. Uttar Pradesh Financial Corporation**²²). Applying any other rule of construction is not permissible when the plain meaning of the word used by the legislature is clear and unambiguous, and the acceptance of that meaning does not make the Section otiose. (**Shri Ram**²). If the provision is unambiguous and if, from that provision, the legislative intent is clear, we need not call into aid the other rule of construction of statutes. (**Hiralal Rattanlal v. State of U.P**²³).

It is only where the words, according to their literal meaning, “produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification”, would the Court be justified in “putting on them some other signification, which, though less proper, is one which the Court thinks the words will bear”. (**Sankalchand Himatlal Sheth**⁶; **River Wear Commissioners v. Willam Adamson**²⁴). It must be borne in mind that a provision is not ambiguous merely because it contains a

²⁰ AIR 1964 SC 1742

²¹ (1899)2 QB 158

²² (2003) 2 SCC 455

²³ (1973) 1 SCC 216

²⁴ (1876) 7 AC 743

word which, in different contexts, is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is ambiguous only if it contains a word or phrase which, in that particular context, is capable of having more than one meaning. (**Kirkness (Inspector of Taxes) v. John Hudson & Co., Ltd.**²⁵). It is only when the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act, whilst the other construction is likely to assist the achievement of the said policy, would Courts prefer to adopt the latter construction.

'The golden rule' of construction is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. (**Suthendran v. Immigration Appeal Tribunal**²⁶; **Farrell v. Alexander**²⁷; **R v Inhabitants of Banbury**²⁸). Of course, the Legislature is to be credited with good sense, so that when such an approach produces injustice, absurdity, contradiction or stultification of the statutory objective, the language may be modified sufficiently to avoid such disadvantage, though no further. (**Suthendran**²⁶; **Becke v Smith**²⁹; **R v Inhabitants of Banbury**²⁸; **Tzu-Tsai Cheng v. Governor of Pentonville Prison**³⁰; **Applin v. Race Relations Board**³¹; **Harbhajan Singh v. Press Council of India**³²; **Justice G.P. Singh — Principles of Statutory Interpretation (8th Edn., 2001)**). The words of a Statute should,

²⁵ (1955) AC 696 (HL)

²⁶ (1976) 3 ALL ER 611

²⁷ (1976) 2 All ER 721

²⁸ (1834) 1 Ad & EI 136

²⁹ (1836) 2 M&W 195

³⁰ (1973) 2 ALL ER 204

³¹ (1974) 2 ALL ER 73

³² (2002) 3 SCC 722

in its interpretation, not be added to or subtracted from, almost a necessity. (**Shyam Kishori Devi**³³).

As a plain and literal reading of the provisions of the 2003 Act do not result in absurdity, this Court would not be justified in reading into it a non-existent procedure for appointment to the office of Chairman and members of the Commission. While the Government is obligated to appoint only a person, who possesses the requisite statutory qualifications stipulated under clauses (a) & (b) of Section 5(1) of the 2003 Act, as the Chairman of the Commission, the manner in which such a person should be selected for appointment to this post, whether or not it should be by comparative evaluation of the degrees of eminence of such persons, are all matters which, in the absence of any statutory prescription in this regard, should be left to the discretion of the Government. When the Act has not prescribed any definite term, and any particular mode, the High Court cannot read into the Statute a restriction or prohibition that is not expressly provided by the Act. The appointing authority, who has the power to appoint, has the discretion in making such appointment when the statute does not lay down the method of appointment. (**B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn.**³³).

It is no doubt true that Section 11(1) of the 2003 Act stipulates that the Commission shall, while performing its functions under Section 12, have the powers of a Civil Court trying a suit and, in particular, in respect of matters enumerated thereunder. That does not, however, mean that only a person, who

³³ (2006) 11 SCC 731 = AIR 2006 SC 3106

has knowledge in laws, can be appointed as the Chairman of the Commission. Any such stipulation would result in rewriting the statute, and in prescribing qualifications which the legislature has chosen not to stipulate. While the conditions prescribed under Section 5(1)(a) and (b) of the 2003 Act necessitate strict adherence, and a transparent process being followed in appointing a person as the Chairman would be in order, this Court would not take upon itself the task of determining the mode and manner in which the Chairman of the Commission should be appointed, as these are all matters for the legislature or the rule making authority to prescribe, and not for the Courts to stipulate. It is not competent to any Court to proceed upon the assumption that the legislature has made a mistake. The Court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature, the Court would not, ordinarily, aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up the deficiencies in the Act even where there is a *causus omissus*. (**Nalinakhya Bysack**³⁴; **Commissioner for Special Purposes of Income Tax v. Pemsel**³⁴; **Crawford v. Spooner**³⁵; **Hansraj Gupta v. Official Liquidator of Dehra Dun-Mussoorie Electric Tramway Co., Ltd.**³⁶).

Causus omissus cannot be supplied by the Court. The provisions of the statute have to be read as a whole and in its context. When the language of the provision is plain and unambiguous the question of supplying the *causus omissus* does

³⁴ (1891) A.C. 531 (G)

³⁵ (1846) 4 MIA 179 = 6 Moo P.C 1 (PC)

³⁶ AIR 1933 PC 63 (1)

not arise. While the Court can interpret the law, it cannot legislate. (**Shardindu**⁸; **Padma Sundara Rao (Dead) v. State of T.N.**³⁷). The Judicial function is limited to finding solutions within specified parameters. Anything more than that would be "judicial heroics" and "naked usurpation of legislative function". (**Shardindu**⁸; **Standard Chartered Bank v. Directorate of Enforcement**³⁸). To the extent, the Learned Single Judge directed that applications be invited from interested persons through advertisements, a search committee be constituted to suggest suitable candidates, an exercise of comparative evaluation of all eligible candidates be undertaken, and only a person with knowledge in the Laws be considered for appointment as the Chairman, the order under appeal is set aside.

The order under appeal is affirmed to the extent the Learned Single Judge has held that only a person, who fulfils the qualifications prescribed both in clauses (a) & (b) of Section 5(1) of the 2003 Act, can be appointed as the Chairman of the Commission; and the formation of opinion by the State Government, regarding the eminence of the person being appointed as the Chairman of the Commission, and that he possesses the qualifications stipulated in clauses (a) & (b) of Section 5(1), must be based on objective material before it. As the 4th respondent was appointed as the Chairman of the Commission by respondents 1 and 2, even without ascertaining whether he possessed the qualifications stipulated in clauses (a) & (b) of Section 5(1) of the 2003 Act, his appointment has been rightly set aside, by the Learned Single Judge, in the order under appeal.

³⁷ (2002) 3 SCC 533

³⁸ (2005) 4 SCC 530

Subject to the observations hereinabove mentioned, both the Writ Appeals fail, and are, accordingly, dismissed. Miscellaneous Petitions, if any, shall also stand dismissed. However, in the circumstances without costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

Date: 06-01-2017.

Note: L.R. copy to be marked.

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