

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 2507 of 2017 (O&M)
Date of Decision: 19.07.2017.**

Ashok Kumar Viridi

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Petitioner in person.

Mr. P.S.S. Thethi, Addl. AG Punjab.

Mr. Ashwani Chopra, Senior Advocate with
Mr. Akshit Chaudhary, Advocate
for respondent No.9.

S.S. Saron,J.

The petitioner by way of present petition under Articles 226/227 of the Constitution of India, has made the following substantive prayers:-

- (i) Issue an appropriate writ or direction especially a writ in the nature of certiorari/quo warranto to quash and set aside the appointments vide notifications No. 13/3/ 2014-PE2/481 dated: Chandigarh 10.2.2016 (Annexure P-1) and No.13/3/2014-PE 2/492 dated: Chandigarh 10.2.2016 (Annexure P-2) issued by the respondent No.2, in respect of appointments of respondents No. 4 and 5 as Chairman and Member respectively, of the Punjab State Electricity Regulatory Commission Chandigarh through the advertisement/ public notice

issued by Government of Punjab Department of Power, September 17, 2015 for the posts of Chairperson and Member in Punjab State Electricity Regulatory Commission which was ultra vires and violative of Article 14 and Article 16 of the Constitution of India and Section 84 and Section 85 of The Electricity Act 2003 as in this advertisement/ public notice it was inter alia provided that “the applicant should be less than 62 years but not less than 55 years of age as on 1.2.2016” which was a tailor made term and condition to suit and facilitate the selection of the respondent No.4 as Chairperson and to debar/the persons who has been high court judges who in accordance with Article 217 of the Constitution of India hold the office until attaining the age of 62 years and despite the facts that the section 84 and 85 of The Electricity Act 2003 impeccably, unambiguously and unequivocally provide for preference to high court judges including those who has been high court judges and put them on higher pedestal for appointment as chairperson of the State Commission.

- (ii) Issue an interim injunction/restraining order to the respondent commission from passing any order/ judgment except in Tariff Order/ARR of PSPCL and PSTCL as an inquiry/investigation by the independent agency under the supervision of this Hon'ble Court will evince that this commission is marred by galore of

corruption and illegalities.

- (iii) That as this petition involved larger public interest also, this Hon'ble court may graciously treat it as PIL.
- (iv) To declare that the petitioner who retired as Chief Engineer from Haryana Government owned Power Utility and have legal background/Advocate possessing professional qualification in law one of the essential qualifications for discharge of judicial functions of the State Commission is to be best suitable candidate for the post of Chairperson as Hon'ble Supreme Court in catena of cases has held that Electricity Regulatory Commissions to have technical experts as well as the persons with background of law as its members and the petitioner being Law Graduate also from Punjab University, the blend of technology, engineering and law shall be the best suited person/candidate for the post of Chairperson/Member.
- (v) Order for this Hon'ble Court monitored enquiry in larger public interest and justice in allegations of corruption and illegalities leveled by the petitioner and the petitioner further offer his assistance as amicus curiae as the enquiry shall involve highly complicated technical issues also and pertinently the petitioner is a techno legal person.”

A perusal of the above prayers show that the petitioner on the

Chairman of the Punjab State Electricity Regulatory Commission, Chandigarh ('Commission' - for short) and at the same time he seeks quashing of the appointments of respondents No.4 and 5 as Chairman and Member respectively of the Commission by way of a petition in the nature of Public Interest Litigation.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab, appearing on behalf of State submits that respondent No.4 has since resigned from the post of Chairman of the Commission. He has served a 90 days notice which is to expire on 9.8.2017. Respondent No.5, however, continues as a member of the Commission.

The petitioner in fact is himself a candidate, who applied for the offices of Chairman and Member of the Commission and is, therefore, espousing a cause for seeking his own appointment.

The petition in the circumstances is not liable to be treated as a Public Interest Litigation, as in a Public Interest Litigation, it is well settled that the petitioner is liable to disclose his personal interest in the petition. He is liable to disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. This Court has framed Maintainability of Public Interest Litigation Rules, 2010 ('Rules' - for short). Rules 6 and 7 of the said Rules read as under:-

6. Ordinarily, the PIL may be entertained on any subject of vital public importance, such as:

- (a) Bonded Labour matters.
- (b) Neglected children.
- (c) Petitions from riot victims.
- (d) Petitions complaining of harassment or torture

of persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes by the others or by the police.

(e) Petitions pertaining to environmental pollution, disturbance of ecological balance, forest and wild life.

(f) Petitions complaining violation of human rights.

7. The Registry shall be entitled to verify the antecedents of a person, society or an association who invokes the jurisdiction of the High Court on the cause of public interest. Wherever the Registry has any doubt on such antecedents, an office note to this effect shall be put up, except on the petitions which are received by post.

The said Rules were considered by a Division Bench of this Court in Ajaib Singh v. State of Punjab, (2013-4) PLR 367, a reference to which has also been made in the last order passed by this Court on 30.5.2017.

A Division Bench of this Court in the said case emphasized that a petitioner filing a Public Interest Litigation has to specifically disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. The expression “specifically disclose his credentials”, it was said must, naturally, imply that he has to set forth what he does for his living, what public interest he has been espousing, the work done by him in that behalf, the particulars of any matter preferred by

imply merely writing a sentence that a person is residing in the State, is public spirited and is, thus, filing a PIL.

In terms of the above judgment, the petitioner though has disclosed that he is a retired Chief Engineer; however, he himself is a candidate for the posts of Chairman and Member of the Commission. Therefore, the petition in the nature of PIL challenging the validity of appointment to the post of Chairman and Member of the Commission would not be maintainable in the nature of a public interest litigation petition.

It may be noticed that on the last date of hearing, the petitioner *inter alia* stated that as this petition involves larger public interest also, this Court may graciously treat it as a PIL. Similar averments have been made in prayer clause-(3). The petitioner in para-3 of the petition states that he applied for the post of Chairperson and Member vide application dated 4.1.2016 (Annexure-P-8) against the public notice.

Mr. Ashwani Chopra, Senior Advocate, has put in appearance on behalf of the Commission (respondent No.9). He submits that the petitioner is espousing a personal litigation/interest, as he himself is a candidate for the posts of Chairman and Member of the Commission. He also submits that the petitioner has not disclosed the fact that he was appointed as a Registrar of the Commission and his services were terminated on 09.12.2016. He has by way of a writ petition i.e. CWP No. 25781 of 2016 assailed his termination from service from the post of Registrar.

The petitioner admittedly was holding the post of Registrar of the Commission from which he has been terminated and he has filed a writ petition assailing his termination from the said post. It is not in dispute that

the petitioner has a right to assail his termination in accordance with law. At this stage, the pendency of the petition challenging his termination from the post of Registrar of the Commission is not liable to be commented upon. However, the said fact was liable to be disclosed by the petitioner in the present petition.

It may in any case be noticed that after the order was passed by this Court on 30.5.2017, the petitioner filed written submissions/reply for modifying the said order dated 30.5.2017. The written submissions/reply that has been filed is without any formal application seeking permission of the Court to file such submissions/reply. In fact, a miscellaneous application/petition after filing of the writ petition was liable to be filed in the Registry of the High Court in accordance with the procedure provided by Chapter 1, Part A (a), Volume 5 of the Punjab and Haryana High Court Rules and Orders (Practice and Procedure). The same was to be taken on record only with the leave of the Court.

The petitioner has stated that he is an Advocate and he has been practicing in this Court since 2014. Therefore, in any case, it was improper for him to file written submissions/reply without seeking permission of the Court. The officials concerned and the Registrar (Judicial) were called as to how the written submissions/reply was taken on record. They stated that they took the written submissions/reply on record thinking that it was a written statement and thereafter it was realized that these were in fact written submissions. It may also be noticed that the petitioner did not even file any covering letter for placing the written submissions/reply on record, which he, in any case, was liable to submit. He, however, stated before the

Be that as it may, the manner in which the written submissions/reply has been filed without seeking permission of the Court, after passing of the order on the last date of hearing is improper and this cannot be taken as part of the record when no direction has been issued by the Court. In this regard Rule-I, Part-A (a) of Rules and Orders of Punjab and Haryana High Court Volume-V, Chapter-1, may be noticed, which reads as under:

"Judicial Business

Part A-(a) The presentation and reception of appeals, petitions and applications for review and revision.

1. All ordinary appeals, petitions and applications for review or revision, written statements, affidavits or other documents, sought to be presented shall be presented by litigants or their Advocates by depositing them in the petition box of the Court outside the room of the Deputy Registrar between the hours of 10 a.m to 4 p.m. on every day which is not a court holiday. Petitions sent by litigants through post for taking some judicial action shall not be entertained by this court but returned per bearing post:

Provided that appeals, petitions, applications for review or revision, written statements, affidavits or other documents of prisoners or detenus, received through the officer incharge of the prison shall be entertained by this Court."

Mr. Chopra, learned Senior Advocate has also objected to the

inasmuch as it is stated by the petitioner that he being a practising advocate in the High Court has full faith, belief and confidence in view of the settled law and the facts and circumstances of the case that he is likely to get the relief prayed by him, i.e. the relief of setting aside his termination letter, and as such, the imputation of “counter-blast” made and use of unethical word “crooked” against his advocate colleague during the hearing on 29.05.2017 by the learned counsel for respondent No. 9 is completely misplaced and unfortunate. In other words, the petitioner seeks to contend that the learned Senior Counsel Shri Ashwani Chopra used an unethical word “crooked” against him on the last date of hearing. Shri Chopra submits that he had never even remotely used such a word against the petitioner, leave alone even attributing such a word. He submits that he did not use any such word.

In fact, the order on the last date of hearing was passed on 30.5.2016 and not on 29.5.2017, which date was a holiday. Shri Chopra is a Senior Advocate of this Court and we have no reason to doubt his submissions. In any case, it is to be noticed that the use of said expression is not relevant for the determination of the *lis* and, therefore, to avoid any controversy in this regard, the same is ordered to be struck off from the written submissions/reply in exercise of powers under Order 6 Rule 16 of the Code of Civil Procedure read with Rule 32 of the Writ Jurisdiction (Punjab and Haryana) Rules, 1976.

Mr. P.P.S. Thethi, learned Additional Advocate General, Punjab, submits that the petitioner has made no averment in the body of the petition that the appointment of respondent No.5 is bad or is improper. In other words, there is no ground given as to how the appointment of

Respondent No. 5 as Member of the Commission is improper. Thus, it

cannot be said that the appointment of respondent No. 5 as Member of the Commission is liable to be set aside. Therefore, even otherwise, the petition challenging his appointment would not be maintainable.

In this regard, it may be noticed that the petitioner in para No. 7 of the petition has stated that the appointment of respondents No. 4 and 5 as Chairperson and Member respectively of the Commission are violative of Articles 14 and 16 of the Constitution of India, as despite the availability of the petitioner as a candidate having both the technical and legal expertise who is a retired Chief Engineer from the Haryana Government owned power utility and a person possessing professional qualification in law, the favourites of the authorities at the pinnacle of the State of Punjab were selected and appointed as Chairperson and Member respectively who were having only one qualification of either Management or Engineering and who remained posted as Secretary Home in Punjab Government and Chief Engineer in PSEB/PSPCL respectively and who by no stretch of imagination can be said to be insulated from all forms of interferences, pressures or influences from coordinate branches of Government/PSPCL and both Punjab Government in general and PSPCL in almost in all the cases/*lis* were the stakeholders before the State Commission which was categorically not in the case of the petitioner as the petitioner was an employee of the Haryana State.

Keeping in view the fact that the petitioner has no *locus standi* to file a PIL in a matter in which he has personal interest, it would be just and expedient not to entertain the same and the petitioner may, if so advised, by way of an independent petition, which is not in the nature of a

Commission. It is to be noticed that the petition against respondent No.4 is infructuous as he has already tendered his resignation.

Therefore, it is to be noticed that the petitioner seeks to espouse his personal merit vis-a-vis those who have been selected and appointed. It is not the case of the petitioner that the appointment of respondents No. 4 and 5 as Chairperson and Member respectively of the Commission is in violation of any statutory provisions. It would be difficulty for this Court to go into the *inter se* merit of the respective candidate for a particular post or posts for that is the domain of the selection bodies/committees. Besides, the petitioner having participated in the selection procedure is not liable to seek its invalidation on the ground that his merit has not been correctly assessed vis-a-vis other candidates.

In the circumstances, the petitioner appearing in person submits that he may be allowed to withdraw this petition and further submits that he may be given liberty to file a fresh petition by giving better particulars seeking invalidation of the Member of the Commission and, if any, fresh cause of action arises.

Dismissed as withdrawn with the aforesaid liberty.

(S.S. SARON)
JUDGE

(AVNEESH JHINGAN)
JUDGE

19.07.2017
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Note:- 1. Whether speaking/reasoned : Yes.
2. Whether Reportable : Yes.