

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.125 of 2016

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1. Chandra Mohan Prasad , Son of Late Bali Ram Prasad, Residing at 4, Kautilya Marg, P.S. Secretariat Police Station, Patna
 2. Vijayeshwar Narayan Sinha, Son of Late Chandreshwar Narayan Sinha, Residing at B-187, Sahadeo Mahto Marg, P.S-Sri Krishnapuri, Patna.
- ... Respondents/Review Petitioners

Versus

1. Mithilesh Kumar Singh, Son of Late Dinesh Kumar Singh, Resident of Village-Ramo Bariya, P.S. Industrial Area Buxar, District-Buxar.
.. Writ petitioners Respondent 1st Set.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, General Administration Department Government of Bihar, Patna
4. The Selection Committee through its Convener Chairman, Bihar Legislative Council, Bihar Vidhan Parishad.
5. The Principal Secretary to the Hon'ble Governor, Raj Bhawan, Patna, Bihar
6. Mr. Justice Shyam Kishore Sharma (Retired), Judge, Patna High Court, Patna, Son of not known to the petitioner, r/o Village-Mein, P.S. Mein, District Gaya at present Chairman, Arbitration Tribunal, Patna
7. Sri Kriti Chandra Saha, Son of not known to the petitioner, through Principal Secretary, General Administration Department, Government of Bihar, Patna

... .. Opposite Party/s

with

CIVIL REVIEW No. 309 of 2016

In

Civil Writ Jurisdiction Case No.17245 of 2015

Awadhesh Narayan Singh son of Late Keshav Prasad Singh Resident of 2, Kautilya Marg, P.S. - Patna Secretariat, Patna - 800001.

... .. Petitioner/s

Versus

1. Mithilesh Kumar Singh and Ors. son of Late Dinesh Kumar Singh resident of Village - Ramo Bariya, P.S. - Industrial Area Buxar, District - Buxar, Bihar.
2. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The Principal Secretary to the Hon'ble Governor, Raj Bhawan, Patna, Bihar.
5. Mr. Justice Shyam Kishore Sharma Retired, Judge, Patna High Court, Patna son of not known to the petitioner resident of Village - Mein, P.S. - Mein, District - Gaya at present Chairman, Arbitration Tribunal, Patna.
6. Sri Kriti Chandra Saha son of not known to the petitioner through Principal



Secretary, General Administration Department, Government of Bihar, Patna.

... .. Opposite Party/s

Appearance :

(In CIVIL REVIEW No. 125 of 2016)

For the Petitioner/s : Mr. K.N. Singh, Senior Advocate
with Mr. Prabhat Kumar

For the Opposite Party/s : Mr. Dinu Kumar, Advocate

(In CIVIL REVIEW No. 309 of 2016)

For the Petitioner/s : Mr. Surendra Kumar Singh

For the Opposite Party/s : Mr. Dinu Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV ORDER

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

6 26-06-2019 A limited review of the judgment and order of a Division Bench of this Court dated 05.04.2016, passed in CWJC No.17245 of 2015 is being sought in both these applications and, therefore, with the consent of the parties both the cases have been heard together.

2. We have heard Mr. K.N. Singh, learned Senior counsel for the petitioners in Civil Review No. 125 of 2016 and Mr. Surendra Kumar Singh, learned counsel for the petitioner in Civil Review No. 309 of 2016. Mr. Dinu Kumar, learned counsel has represented the contesting private respondent/the writ petitioner.

3. The petitioners were Members of the Selection Committee (Respondent No.4) constituted under sub-section (1)



of Section 4 of the Bihar Lokayukta Act, 2011 (hereinafter referred to as 'the Act of 2011'). Recommendation for appointment of respondent Nos. 5 and 6 as Members (judicial and non-judicial respectively), of the Institution of Lokayukta established under Section 3(1) of the Act was under challenge in the writ petition which had given rise to said CWJC No. 17245 of 2015. A Division Bench of this court by the judgment and order under review had held recommendation made by the Selection Committee for appointment of Respondent No.5 as the judicial member of the Institution of the Lokayukta, not sustainable, beyond jurisdiction and *ultra vires* the provisions of the Act.

4. The petitioners, who had participated in the process of selection in their capacity as Chairman/Members of the Selection Committee constituted under Section 4(1) of the Act are aggrieved by certain observations made by this Court in the judgment and order under review with particular reference to paragraphs 70 and 71 therein.

5. Mr. K.N. Singh, learned Senior Counsel appearing on behalf of the petitioners in Civil Review No. 125 of 2016 has submitted that the comments made in paragraphs 70 and 71 of the judgment under review amount to passing stricture against



the persons, who had participated as Chairman and Members of the Selection Committee. Paragraphs 70 and 71 of the judgment and order under review read thus:-

“70. We are sad than surprised for the manner in which the Selection Committee, consisting of top most functionaries of the important wings of the State of Bihar, recommended the name of respondent No.5 for his appointment.

71. It is, rather, disturbing to discover from the original records produced before us that none of the Members of the Selection Committee raised any objection over the recommendation of respondent No.5, whose case was not there for consideration before the Selection Committee and the decision to make recommendation in favour of respondent No.5 is unanimous by all the Members of the Selection Committee present in the meeting. We have hesitantly made these observations keeping in our mind high positions, which the Members of the Selection Committee held, at the meeting of the Selection Committee, as has been noticed above; but we are



constrained to express our views on what we have found.”

6. Learned Senior Counsel has argued that the comments made in paragraphs 70 and 71 of the judgment and order under review may be deleted as the decision of the Selection Committee to recommend name of respondent No.5 for his appointment as A Member of the Institution of Lokayukta was *bona fide*.

7. Following are the statements made in Civil Review No. 125 of 2016 for seeking review:-

“4. That, in paragraph 72 of the judgment the Hon’ble Court has held that recommendation in favour of Respondent No.6 for his appointment as Judicial Member of the institution of Lokayukta, therefore cannot be sustained being ultravires in the teeth of the mandatory/statutory requirement of the Act 2011, however, it is stated that said finding is based on incomplete and partial examination of documents perhaps the entire relevant documents were not produced before the Hon’ble court.

5. That, the aforesaid findings, adverse comments/strictures of the Hon’ble Court are based on the ground that the



Search Committee in its recommendations dated 13.09.2015 did not recommend Respondent No.6 although he had been already recommended by the Search Committee in the earlier recommendation dated 08.08.2014 and same was never considered and rejected earlier by the respondent no.4, the Selection Committee, prior to 13.09.2015 and remained under the consideration.

6. That, it may be stated that the Search Committee, it appears, had recommended only two names on 08.08.2014 namely Mr. Justice Jaya Nandan Singh and Respondent No.6 as it found only these two names suitable for recommendation to the Selection Committee. The aforesaid findings and stricture of the Hon'ble Court appears to have been made by placing reliance over the claim of the writ petitioner that the earlier recommendation dated 09.08.2014 made in favour of respondent no.6 by the Search Committee stood nullified as his name had not been recommended a second time by the Search Committee in its supplemental recommendation dated 13.09.2015.

7. That, the recommendations of the Search Committee dated 08.08.2014 was considered by the Selection Committee on



12.11.2014 when the Selection Committee noticed that the recommendation dated 08.08.2014 is not fully in consonance with the mandatory provisions under Sub-section 7(d) of Sec. 4 of the Act 2011 in as much as the recommendation contained only 2 names in each of the two categories against the requirement of recommending 3 names in each of the categories. Therefore, by resolution as contained in the minutes dated 12.11.2014 and 22.11.2014 decided that the recommendation dated 08.08.2014 of the Search Committee be sent back to it for removal of defect viz., compliance of the mandatory provisions of sub-section 7(d) of Sec. 4 of the Act.

8. That, evidently the recommendation dated 08.08.2014 was sent back to the Search Committee for supplementing the deficiency in the names sent for recommendation in each category in order to comply the mandatory provision of Sub-sec. 7(d) of Sec. 4 of the Act which were required to be done by supplementing name/names.

9. That, all the steps taken by the Search Committee pursuant to minutes dated 12.11.2014 and 22.11.2014 of the Selection Committee, for making recommendation dated 13.09.2015 were



taken and could have been taken only with respect to making recommendations for making good and deficiency under Sub-section 7 (d) of Sec. 4 by way of supplementing the earlier recommendation dated 08.08.2014 with further name/names.

10. That it would be borne from the records that the Search Committee in making recommendation dated 13.09.2015 never superseded or cancelled its earlier recommendation and had no jurisdiction to cancels/nullify its own earlier recommendation dated 08.08.2014 already made to the Selection Committee.

11. That, in addition to the Search Committee's recommendation dated 13.09.2015 its earlier recommendation dated 08.08.2014 of the Respondent No.6 remained before the Respondent No.4, the Selection Committee and one his name having been recommended to it by the Search Committee it was bound to consider it on merits.

12. That, the recommendation dated 13.09.2015 of the Search Committee was only by way of a supplemental recommendation which was required to be submitted to it by the Search Committee for removing the deficiency in its recommendations as pointed out vide



Resolution dated 12.11.2014. The recommendation dated 08.08.2014 was neither ever considered and or rejected by the Selection Committee on its merit nor the Search Committee could have cancelled or withdrawn it once having made a recommendation to the Selection Committee.

13. That, it is submitted that the Search Committee recommendation dated 08.08.2014 and the subsequent recommendation dated 13.09.2015 (purported to have been made by way of removal of defect under Sub-sec 7 (d) of Section. 4 of the Act) both were validly made recommendations to the Selection Committee and hence both i.e., all four names before it were considered by the Selection Committee for making its recommendation for appointment of Judicial Member of Lokayukta which is evident from the discussion noted in minutes dated 23.10.2015 of the Selection Committee.

14. That in view of the facts and circumstances stated above the petitioners herein, being the members of the Selection Committee, have acted in good faith and with all bonafide intentions while participating in deliberations of the Selection Committee Respondent No.4 and



the finding and adverse comments made about its recommendations dated 23.10.2015 without taking note of the entire deliberations of that date in its true perspective including the latter part of the first paragraph of the minutes attention to which appears not to have been drawn of the Hon'ble Court and same is quoted below:-

"चुकि पूर्व में खोजबीन समिति द्वारा भेजी गई अनुशंसा में दो रिक्त पदों में प्रत्येक के लिए केवल दो ही नाम भेजे गये थे, इसलिए चयन समिति के प्रस्तावा/निर्णय, दिनांक 22.01.2014 द्वारा खोजबीन समिति की उक्त अनुशंसा को बिहार लोकायुक्त अधिनियम, 2011 की धारा-4 की उपधारा-7 (घ) के प्रावधानों के अन्तर्गत प्रत्येक रिक्ति के लिए तीन-तीन नामों की अनुशंसा करने के आलोक में भेजा गया था। इस प्रकार खोजबीन समिति की अनुशंसा को इसलिए वापस किया गया था कि पूर्व में खोजबीन समिति द्वारा भेजी गई अनुशंसा में बिहार लोकायुक्त अधिनियम, 2011 की धारा-4 की उपधारा-7(घ) के आलोक में कमी को पूरा कर पुनः अनुशंसा भेजी जाए।"

8. Similar averments have been made in Civil Review No. 309 of 2016.

9. Referring to the above noted observations made in the review application, Mr. K.N. Singh, learned Senior counsel has submitted that the decision of the Selection Committee to



recommend the name of respondent No.5 for his appointment as Member, Lokayukta was *bona fide* and in that background the comments made by the Division Bench of this Court in paragraphs 70 and 71 may not be said to be justified.

10. Mr. Surendra Prasad Singh, learned counsel appearing on behalf of the petitioner in Civil Review No. 309 of 2016 has adopted the arguments advanced by Mr. K.N. Singh, learned Senior Counsel.

11. Mr. Dinu Kumar, learned counsel appearing on behalf of the writ petitioners/ Respondent No.1 has resisted the claim for review and has argued that the comments are justified.

12. On perusal of the order under review and pleadings on record, we are of the considered view that the said comments/observations made in paragraphs 70 and 71 of the judgment and order under review do not impute any motive against the Chairman and Members of the Selection Committee. In the peculiar facts and circumstances of the case, we clarify that the said observations in paragraphs 70 and 71 of the judgment and order under review shall in no circumstance be treated as adverse comments against either of the Chairman/Members of the Selection Committee in their individual capacity and the said comments/remarks in



paragraphs 70 and 71 shall be read accordingly.

13. To allay any scope of doubt, in our opinion, interest of justice shall be sub-served if the observations made in paragraph 69 to 71 are substituted with the following :-

“69. We are, as a matter of fact, at a complete loss as to how the Selection Committee recommended the name of Respondent No. 5, who was not nominated for his appointment pursuant to the advertisement/notice inviting nominations and whose case certainly was not placed before the Search Committee for considering his suitability for appointment to the post.

70. The Selection Committee, consisting of top most functionaries, erred in recommending the name of Respondent No.5 for his appointment.

71. We find, on perusal of the original records produced before us, that none of the Members of the Selection Committee raised any objection over the recommendation of Respondent No. 5 and the unanimous decision to make recommendation in favour of respondent No. 5 was wrong and is unsustainable. We have hesitantly made these observations keeping in our mind high



positions, which the Members of the Selection Committee held, at the meeting of the Selection Committee, as has been noticed above; but we are constrained to express our views on what we have found, however, these observations are not to be read as casting any aspersions on any individual member comprising the Selection Committee.”

14. These applications are allowed accordingly, with the aforesaid observations.

(CHAKRADHARI SHARAN SINGH, J)

Ashwani Kumar Singh,J:- I agree.

(Ashwani Kumar Singh, J)

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