

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8400/2019

Amol Prabhakar Joshi,
Aged 63 years, Occupation: Retired Government Servant,
R/o 604, Swapnil Trisha Apartments, Plot No.126 A,
Buty Layout, Laxminagar, Nagpur – 440022.

PETITIONER

.....VERSUS.....

1. Maharashtra Electricity Regulatory Commission,
through its Secretary, having its office at
World Trade Centre, Centre No.1, 13th Floor,
Cuffe Parade, Colaba, Mumbai 400005.
2. Deepak Jinvardas Lad, Aged 66 years,
the Electricity Ombudsman (Nagpur), Maharashtra
Electricity Regulatory Commission, having his office at
Plot No.12, Shrikrushna, Vijay Nagar, Chhaoni, Nagpur
440013 and R/o Mahavir Kalpavruksha, Hazel 602,
Near Hypercity Mall, Ghod Bunder Road,
Kasarwadavali, Thane (West) 400615.

RESPONDENTS

Shri R.D. Bhuibhar, counsel for the petitioner.
Ms Deepa Chavan with Shri P.K. Sathianathan, Shri Ravindra Chile and Shri
R.D. Khade, counsel for the respondent no.1.
Respondent no.2 served.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : 15TH MARCH, 2022.

JUDGMENT : (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned
counsel for the parties at length.

2. The petitioner seeks issuance of a writ of *quo warranto* against
the second respondent who is holding the post of Electricity Ombudsman
(Nagpur) under the Maharashtra Electricity Regulatory Commission
(Consumer Grievances Redressal Forum and Electricity Ombudsman)
Regulations, 2006 read with the provisions of the Electricity Act, 2003.

3. The facts giving rise to the present proceedings are that on 21.12.2018 an advertisement was issued on behalf of the Maharashtra Electricity Regulatory Commission (for short, 'MERC') stating therein that MERC had decided to fill up the post of Electricity Ombudsman (Nagpur). Applications were invited from amongst (i) retired Judge of the High Court or (ii) retired Secretary to the Government, or (iii) retired Chief Executive Officer of Electricity Utilities. The applications were to be submitted by 18.00 hours on 16.01.2019. The petitioner who retired from the post of Secretary, Ministry of Urban Department, Government of Maharashtra as well as the second respondent alongwith seven others had applied for being considered for appointment to the post of Electricity Ombudsman. On 22.03.2019 the second respondent was appointed to the said post with effect from 25.03.2019. The petitioner sought information under the provisions of the Right to Information Act, 2005 in the matter of the application submitted by the second respondent. The petitioner was provided with a statement reflecting the applications received for consideration for appointment on the post of Electricity Ombudsman (Nagpur). The same indicated that of the nine applications received, three applicants including the petitioner and the second respondent were found eligible for such appointment. It was stated that the second respondent had retired as Member of MERC and that the status of the Member of MERC was equivalent to that of the Principal

Secretary of the State Government. On receiving this information the petitioner has filed this writ petition seeking writ of *quo warranto* principally on the ground that the second respondent was ineligible to hold the public office of Electricity Ombudsman (Nagpur) for want of requisite prescribed qualifications.

4. Shri Ranjeet Bhuihar, learned counsel for the petitioner submitted that the office of Electricity Ombudsman was a public office since the mode, manner and requirements for such appointment were prescribed under the Electricity Act, 2003 (for short, 'the Act of 2003') read with the Maharashtra Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Electricity Ombudsman) Regulations, 2006 (for short, 'the Regulations of 2006'). Inviting attention to Section 181(2)(r) of the Act of 2003 it was submitted that the State Commission as defined by Section 2(64) of the Act of 2003 constituted under Section 82(1) was empowered to frame guidelines under the Act of 2003. A distribution licensee was required to establish a forum for redressal of grievances of consumers in accordance with guidelines specified by the State Commission in view of Section 42(5) of the Act of 2003. A consumer who is aggrieved by the non-redressal of his grievances under sub-Section (5) of Section 42 could make a representation for redressal of his grievances to the Ombudsman to be appointed or designated by the

State Commission in view of Section 42(6) of the Act of 2003. Attention was invited to the Regulations of 2006 and especially Regulation 2.1(f) which defines 'Electricity Ombudsman' to mean an Authority appointed or designated by the Commission pursuant to Section 42(6) of the Act of 2003 who could consider grievances made to the Commission. Regulation 10 pertaining to Constitution of Electricity Ombudsman and Regulation 11 specifying the jurisdiction of the Electricity Ombudsman were also referred to. By Regulation 13 of the Regulations of 2006 the qualifications of Electricity Ombudsman were prescribed and it was submitted that for an Electricity Ombudsman to be appointed he ought to have the qualifications as prescribed. Inviting attention to the information furnished under the Right to Information Act, 2005 by the Public Information Officer, MERC it was submitted that the second respondent did not hold any of the qualifications as prescribed by Regulation 13 of the Regulations of 2006. He submitted that by introducing the concept of equivalence, the second respondent had been held qualified for such appointment. The second respondent had acted as Member of MERC from August-2014 to May-2018. It was stated that the status of the Member of MERC was equivalent to that of the Principal Secretary of the State Government. On that basis, the second respondent was held to be duly qualified and thereafter appointed. The learned counsel submitted that it was only the qualifications prescribed by

Regulations of 2006 that were required to be possessed and by applying the criteria of equivalence the second respondent could not have been held to be duly qualified. Placing reliance on the decision in *Prakash Chand Meena & Others Versus State of Rajasthan & Others* [(2015) 8 SCC 484] it was submitted that in the advertisement issued by MERC it was not indicated that persons holding equivalent qualifications were eligible to apply. The learned counsel also referred to the decision in *Zonal Manager, Bank of India, Zonal Office Kochi & Others Versus Aarya K. Babu & Others* [(2019) 8 SCC 587] in that regard. Acceptance of a qualification other than the one notified would amount to denying an opportunity to those persons who did not apply despite possessing such equivalent qualification had the same been notified. It was then submitted that in the reply filed by MERC support of the provisions of Section 89(2) of the Act of 2003 was sought to be taken. By that provision the salary, allowances and other terms and conditions of service of the Chairperson and Members were such as prescribed by the Appropriate Government. Merely because the Member of the Commission was being paid monthly salary and allowances as admissible to the Principal Secretary of the State Government, the same would not entitle such Member of MERC to claim equivalence to the post of Principal Secretary of the State Government. It was thus submitted that since the second respondent did not hold the requisite qualifications as prescribed

he had no right to continue as Electricity Ombudsman and a writ of *quo warranto* ought to follow.

5. Ms Deepa Chavan, learned counsel for the first respondent-MERC supported the appointment of the second respondent as having been made in accordance with law. Inviting attention to Section 82 of the Act of 2003 and proviso thereto it was submitted that the State Electricity Regulatory Commission established under Section 17 of the Electricity Regulatory Commission Act, 1998 (for short, 'the Act of 1998') and the enactments specified in the Schedule which was functioning immediately before the appointed date was to be the State Commission for the purposes of the Act of 2003 and the Chairperson, Members and other Officers were to continue to hold office on the same terms and conditions on which they were appointed under those Acts. Referring to the provisions of Section 19(2) of the Act of 1998 it was submitted that the salary and allowances payable and other terms and conditions of service of Members of the State Commission were those prescribed by the State Government. On 01.06.2000 the State Government through its Department of Industries and Energy had issued a resolution for establishing new posts at the State Commission. The post of Member of the Commission was stated to be equivalent to the post of Principal Secretary of the State Government. Referring to the provisions of Section

89(2) of the Act of 2003 it was urged that the Appropriate Government namely the State Government had prescribed the salary, the allowances and other terms and conditions of service of the Chairperson and the Members by virtue of notification dated 16.03.2005. The same indicated that the pay-scale admissible to the Electricity Ombudsman/Member of the Commission was similar to the pay-scale of the Principal Secretary of the State Government. It was thus submitted that in the light of proviso to Section 82 and sub-Section (2) of Section 89 of the Act of 2003 MERC had acted in accordance with law by treating the qualifications of the second respondent to be as prescribed. Reference was also made to Section 180(2)(d) of the Act of 2003 to submit that the State Government was duly empowered to prescribe the salary, the allowances and other terms and conditions of service of the Chairperson and the Members of the State Commission under Section 89(2) of the Act of 2003.

It was then submitted that in proceedings seeking issuance of a writ of *quo warranto* it was only the legality of the appointment as made that was required to be examined and not the reason for the appointment of the second respondent in preference to other applicants including the petitioner. Such equivalence was being applied from 01.06.2000 and it was not for the first time that the concept of equivalence had been applied while appointing the second respondent. The petitioner having participated in the process of selection and having failed to secure an appointment was disentitled to challenge the

appointment of the second respondent. Reliance was placed on the decision in *Ramjit Singh Kardam & Others Versus Sanjeev Kumar & Others* [(2020) 13 SCC 56] to urge that the phrase ‘conditions of service’ was to be understood as having wide import. The same would encompass a wide range of conditions relating to salary, pay-scales, suspension amongst other conditions. Attention was also invited to the judgment of the Constitution Bench in *PTC India Limited Versus Central Electricity Regulatory Commission* [(2010) 4 SCC 603] and the decision in *Sushma Suri Versus Government of NCT of Delhi* [(1999) 1 SCC 330]. It was thus submitted that since the second respondent was found possessing the qualifications as ‘prescribed’ he was duly qualified to hold the post of ‘Electricity Ombudsman’. There was no case thus made out to issue a writ of *quo warranto* and the writ petition was liable to be dismissed.

6. We have heard the learned counsel for the parties at length and we have also perused the documentary material placed on record. We have given due consideration to the submissions made by the learned counsel. For considering the prayer for issuance of a writ of *quo warranto* principally two material aspects would be required to be examined. Firstly, whether the office held by the person concerned is a public office and secondly whether such public office is held without any legal authority. We may in this regard refer to a few leading judgments.

The Constitution Bench in *University of Mysore Versus C.D. Govinda Rao* [AIR 1965 SC 491] has observed as under:

“7. Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.”

Another Constitution Bench of the Hon'ble Supreme Court in *B.R. Kapur Versus State of Tamil Nadu* [(2001) 7 SCC 231] has in paragraph 79 observed as under:

“79. A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfill the

required qualifications or suffers from any disqualification, which debars the person to hold such office.....”

In *Mahesh Chandra Gupta Versus Union of India* [(2009) 8 SCC 273] it has been held that “eligibility” is a matter of fact while “suitability” is a matter of opinion. In a case involving lack of “eligibility” writ of *quo warranto* would certainly lie. This legal position has been reiterated recently in *Bharati Reddy Versus State of Karnataka & Others* [(2018) 6 SCC 162]. Keeping the aforesaid position in mind the challenge as raised to the appointment of the second respondent can be considered.

7. On considering the first requirement that the office in question ought to be a public office, it has been held in *Dr. P.S. Venkataswamy Versus University of Mysore* [AIR 1964 Mysore 159] that a public office is a one created by the Constitution of India or by any Statute and invested with the power or charged with the duty of acting in execution or in enforcement of law. Such office may either be an elective office or one in respect of which a nomination is made or appointment is made under a Statute. The question as to issuance of *quo warranto* in the context of the post of Electricity Ombudsman under the Act of 2003 need not detain us for the reason that the Hon’ble Supreme Court in *Rajesh Awasthi Versus Nandlal Jaiswal & Others* [(2013) 1 SCC 501] considered the correctness of the judgment of the Allahabad High Court of issuing a writ of *quo warranto* holding that the appellant therein had

no authority to continue as Chairperson of the Uttar Pradesh State Electricity Regulatory Commission on the ground that the selection committee had failed to comply with the provisions of Section 85(5) of the Act of 2003. It is thus clear from the aforesaid that the office of Electricity Ombudsman is a public office under the Act of 2003 and therefore the first requirement for considering the prayer for issuance of writ of *quo warranto* stands satisfied.

8. The second requirement as to whether the office held by the second respondent is without legal authority or has been made contrary to the statutory provisions would be the material question in these proceedings. To consider the same a brief reference to the relevant statutory scheme would be required to be made. Section 2(64) of the Act of 2003 defines the expression 'State Commission' to mean the State Electricity Regulatory Commission constituted under Section 82(1) of the Act of 2003. Section 82 of the Act of 2003 provides for constitution of State Commission to be known as the Electricity Regulatory Commission and it is a body corporate having perpetual succession. Under Section 42(5) of the Act of 2003 every distribution licensee is required to establish a forum for redressal of grievances of consumers in accordance with the guidelines as may be specified by the State Commission. Under Section 42(6) of the Act of 2003 any consumer who is aggrieved by non-redressal of his

grievances under sub-Section (5) can make a representation for the redressal of his grievance to the Authority to be known as Ombudsman to be appointed or designated by the State Commission. Under Section 180 of the Act of 2003 the State Government is empowered to make rules for carrying out the provisions of the Act of 2003 while under Section 181 of the Act of 2003 powers are conferred on the State Commission to make regulations consistent with the Act of 2003 and the rules generally to carry out provisions of the Act of 2003. Such powers include the power to make guidelines under Section 42(5) in view of the provisions of Section 181(2)(r) of the Act of 2003. Under Section 181(2)(s) of the Act of 2003 the State Commission is also required to prescribe the time and manner for settlement of grievances under Section 42(7).

9. Acting under the aforesaid powers, MERC has made the Regulations of 2006. Regulation 2.1(f) defines 'Electricity Ombudsman' to mean an Authority appointed or designated by MERC in pursuance of Section 42(6) to whom any consumer who is aggrieved by the non-redressal of his grievances by the Forum may make a representation. Regulation 10 prescribes for the constitution of Electricity Ombudsman and the Electricity Ombudsman as appointed is entitled to hold office for a period not exceeding three years. It is permissible to extend the tenure of the Electricity Ombudsman for a further period not exceeding two years subject to the age limit of seventy years. Regulation 13 of the

Regulations of 2006 prescribes the qualifications of the Electricity Ombudsman and said Regulation reads thus:

“13: *Qualification:*

The Electricity Ombudsman shall be constituted from amongst a retired Judge of a High Court, a retired Secretary to the Government, or retired Chief Executive Officer of an electricity sector utility.”

It is seen from Regulation 13 of the Regulations of 2006 that the Electricity Ombudsman should be from amongst a retired High Court Judge or a retired Secretary to the State Government or retired Chief Executive Officer of an Electricity Sector Utility. According to the petitioner, the second respondent does not possess any of the three requirements as prescribed since the second respondent is neither a retired Judge of a High Court, a retired Secretary to the State Government or a retired Chief Executive Officer of an Electricity Sector Utility. As per the information provided to the petitioner under the Right to Information Act, 2005 experience of the second respondent in the context of Regulation 13 of the Regulations of 2006 is stated to be as under:

- “1) *Retired as Member at Maharashtra Electricity Regulatory Commission (From Aug 2014 – May 2018)*
- 2) *Electrical Consultant – CIDCO (From Nov 2013 – Aug 2014)*
- 3) *Advisor Contract Management – Orange City Water Pvt. Ltd. Nagpur (From July 2013 – Oct 2013)*
- 4) *Retired as Chief Engineer at MSEDCL (From 1974 to 2011)”*

It is thus evident from the experience gained by the second respondent that he was Member of MERC from August-2014 to May-2018. It is this experience that has been taken into consideration by MERC while appointing the second respondent. In the remarks column against the name of the second respondent it has been stated as under:-

“Eligible

Shri D.J. Lad was Retired as Member of Maharashtra Electricity Regulatory Commission. The Status of the Member of the Commission is equivalent to that of the Principal Secretary of the State Government.

As per the Section 89(5)(a) and (b) of EA, 2003, retired member of the Commission shall not accept any commercial employment for a period of two years from the date of he ceases to hold such office and not represent any person before the Central Commission or any State Commission in any manner.”

10. According to the petitioner, the second respondent does not possess the requisite experience/qualification prescribed under Regulation 13 of the Regulations of 2006. This position is sought to be countered by MERC by stating that it has proceeded to consider the position/status of the Member of the Commission to be equivalent to that of the Principal Secretary of the State Government. The further fact that the petitioner was Secretary at the Ministry of Urban Development of the State Government from April-2008 to June-2010 is also not disputed. It would therefore be necessary to consider whether MERC by treating the status of the Member of the Commission to be equivalent to the Principal

Secretary of the State Government is legally justified in doing so. To substantiate its stand in that regard, MERC has sought to rely upon the provisions of Section 19(2) of the Act of 1998. As per that provision, the salary and the allowances payable to and other terms and conditions of service of Members of the State Commission would be such as may be prescribed by the State Government. With the coming into force of the Act of 2003, the Act of 1998 stood repealed by virtue of Section 185(1) of the Act of 2003. Section 89(2) of the Act of 2003 provides for the term of office and conditions of service of Members of the Commission. It reads as under:-

“89(2): The salary, allowances and other terms and conditions of service of the Chairperson and Members shall be such as may be prescribed by the Appropriate Government:

Provided that the salary, allowances and other terms and conditions of service of the Members, shall not be varied to their disadvantage after appointment.”

Reliance was placed on the proviso to Section 82(1) of the Act of 2003 to contend that the State Commission established under the Act of 1998 and the enactments specified in the Schedule that was functioning before the appointed date would be the State Commission for the Act of 2003 and the Chairperson and Members would continue to hold the office on the same terms and conditions on which they were appointed under those

Acts. Under Section 180(2)(d), the salary, the allowances and other terms and conditions of service of the Chairperson and the Members of the State Commission under Section 89(2) of the Act of 2003 can be provided for by the State Government by making rules. In that context, reference is made to Government Resolution dated 01.06.2000 issued by the Industries and Energy Department of the State Government. Thereunder, sanction was granted to the creation of twenty seven posts at MERC. It was stated that as regards the post of Chairperson, the same was with the status of Principal Secretary while the post of Member of the Commission was of the status of Chief Secretary. It is on the aforesaid statutory basis that MERC seeks to sustain the appointment of the second respondent as Electricity Ombudsman. To reiterate, while appointing the second respondent the State Commission found that the status of the Member of the Commission was equivalent to that of the Principal Secretary of the State Government.

11. In our view, MERC has misdirected itself by considering the aspect of equivalence of the status of Member of the Commission to that of the Principal Secretary of the State Government as satisfying the qualification as prescribed for the post of Electricity Ombudsman for reasons more than one:

(a) Firstly, as per Regulation 13 of the Regulations of 2006 the qualification prescribed for being appointed as Electricity Ombudsman

has been clearly spelt out. The appointment can only be from persons who were either a retired Judge of a High Court, a retired Secretary to the State Government or a retired Chief Executive Officer of the Electricity Sector Utility. Regulation 13 does not permit consideration of any other post as equivalent to those named therein. The use of the expression “from amongst” is a clear indicator of the fact that said Regulation is worded in a restrictive nature and does not permit any other person from categories not mentioned therein to seek appointment as Electricity Ombudsman. For consideration of a post to be equivalent to the one indicated in the provision the same should find reference in the provision itself. Regulation 13 of the Regulations of 2006 does not give any scope to import the concept of equivalence since it is silent in that regard.

(b) The advertisement dated 21.12.2018 issued on behalf of MERC seeks to invite applications from interested persons who satisfy the qualification prescribed by Regulation 13 of the Regulations of 2006. The advertisement does not state that the aspect of equivalence would also be taken into consideration while determining the suitability for appointment as Electricity Ombudsman. Failure to indicate the likely adoption of the principle of equivalence in the advertisement is another reason to hold that it was not permissible for MERC to have considered the aspect of equivalence. Moreover, Regulation 13 uses the expression

“from amongst” which would clearly indicate that said Regulation did not intend operation of the principle of equivalence. In this regard the learned counsel for the petitioner is justified in placing reliance on the decision in *Aarya K. Babu & Others* (supra). In paragraph 13 thereof it has been observed as under:-

“13. We are of such opinion in view of the well-established position that it is not for the Court to read into or assume and thereby include certain qualifications which have not been included in the Notification by the employer. Further the Rules as referred to by the learned Counsel for the Respondents is pointed out to be a Rule for promotion of officers. That apart, even if the qualification prescribed in the advertisement was contrary to the qualification provided under the recruitment rules, it would have been open for the candidate concerned to challenge the Notification alleging denial of opportunity. On the other hand, having taken note of the specific qualification prescribed in the Notification it would not be open for a candidate to assume that the qualification possessed by such candidate is equivalent and thereby seek consideration for appointment nor will it even be open for the employer to change the requirements midstream during the ongoing selection process or accept any qualification other than the one notified since it would amount to denial of opportunity to those who possess the qualification but had not applied as it was not notified.”

Reliance has also been rightly placed on the decision in *Prakash Chand Meena & Others* (supra) where it was held that the advertisement inviting applications ought to indicate that equivalent qualification holders were also eligible to apply.

Assuming the applicability of the principle of equivalence, it goes without saying that if MERC in its advertisement would have indicated that the principle of equivalence was to be adopted, applicants possessing such equivalent qualification would have responded to the same;

(c) The emphasis of MERC in equating the status of the Member of the Commission to be equivalent to that of the Principal Secretary of the State Government for the present purpose is flawed. MERC has sought to rely upon the provisions of Section 82(1) proviso and Section 89(2) of the Act of 2003 which provisions relate to the terms and conditions of service. The notification dated 16.03.2006 and the Government Resolution dated 21.03.2009 also would not come to the aid of MERC for the reason that the same pertain to grant of similar pay-scales and other emoluments as that being granted to the Chief Secretary of the Government of Maharashtra. Reliance has also been placed on the Maharashtra Electricity Regulatory Commission (Conditions of Service of Chairperson and Members) Rules 2005.

In this regard it is required to be noted that the basic criteria for determination of equivalence is the nature of duties and responsibilities attached to the post and not the pay admissible to the post – *E.P. Royappa Versus State of Tamil Nadu & Another* **AIR 1974 SC 555**. In *Vice-Chancellor, Lalit Narain Mithila University Versus Dayanand Jha*

[AIR 1986 SC 1200], the question considered was whether the post of Principal and Reader carrying the same pay-scale could be treated to be equivalent. It was held that the true criterion for equivalence is the status and nature as well as the responsibility of duties attached to the post. Even if both the posts carried the same pay-scale, if the responsibilities and the duties were different they could not be treated to be equivalent. It was held that since the post of Principal carries higher responsibilities and duties it cannot be treated to be equivalent to the post of Reader. Yet again in *S.I. Rooplal & Another Versus Lt. Governor Through Chief Secretary Delhi & Others* [1999 Supp.(5) SCR 310], the Hon'ble Supreme Court after referring to the decision of the Constitution Bench in *Union of India & Another Versus P.K. Roy & Others* [(1968) 2 SCR 186] held that equivalence cannot be judged by the sole fact of equal pay. Ordinarily four factors which are (i) nature of duties; (ii) responsibilities and powers exercised by the Officer holding the post; (iii) minimum qualifications prescribed and (iv) salary of the post are required to be considered. If the first three factors are fulfilled then merely because the salary admissible to both the posts is different, the same would not make the post 'not equivalent'.

12. From the aforesaid settled legal position it becomes clear that the nature of duties, responsibilities and powers exercised while holding a post in question is more relevant and determinative than similarity of pay-

scales. MERC by seeking to rely upon the conditions of service and the similarity of pay-scales and other allowances has sought to apply the principle of equivalence which in our view would not be sufficient to hold that such principle of equivalence is attracted. We however clarify that the larger question as to whether the post of Member of the State Commission is infact equivalent to the post of Principal Secretary of the State Government is not being finally determined in these proceedings and the aforesaid observations are made in the context of the statutory provisions that were referred to us by the learned counsel for MERC and especially Regulation 13. It is thus held that for adopting the principle of equivalence there ought to be statutory support for the same which is absent in the present case. For these reasons, we find that the decision in *PTC India Limited* and *Sushma Suri* (supra) do not assist the case of MERC. Moreover, the petitioner is not estopped from challenging the appointment of the second respondent after participating in the selection process since he has not challenged the advertisement as issued. His challenge is to the eligibility of the second respondent in the context of his qualifications and as held in *Mahesh Chandra Gupta* (supra) in a case involving lack of eligibility, writ of *quo warranto* can be issued. Hence, the ratio of the decision in *Ramjit Singh Kardam & Others* (supra) is not at all applicable to the case in hand.

13. Thus from the aforesaid discussion it becomes clear that the second respondent does not possess the requisite qualification prescribed by Regulation 13 of the Regulations of 2006. In absence of there being any statutory support to apply the principle of equivalence and the same not being indicated in the advertisement issued by MERC it is found that the second respondent is not entitled to hold the office of Electricity Ombudsman under the Act of 2003 and the Regulations of 2006. It is clear that the appointment of the second respondent as Electricity Ombudsman is contrary to the aforesaid statutory provisions. The petitioner is thus entitled for the relief sought by him. A writ of *quo warranto* is thus liable to be issued. Accordingly, the following order is passed:-

- (I) It is declared that the second respondent is ineligible to hold the post of Electricity Ombudsman (Nagpur) and his appointment as such by the order dated 22.03.2019 is set aside.
- (II) The writ of *quo warranto* is accordingly issued nullifying the appointment of the second respondent.

14. The writ petition is allowed. Rule is made absolute in aforesaid terms with no order as to costs.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

At this stage, the respondent no.1 prays that the effect of the judgment be stayed for a period of four weeks. The request is opposed by the learned counsel for the petitioner. In view that we have taken, we do not find any ground to stay the operation of the judgment.

The request is therefore rejected.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

APTE