IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(PROCEEDINGS THROUGH V.C.)

LPA-245-2018 (O&M)

Date of Decision: March 15, 2022

STATE OF PUNJAB AND ANOTHER

...APPELLANTS

Versus

RAMANDEEP SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. P.Chidambaram, Senior Advocate with
Ms. Uttara Babbar and Mr. Manan Bansal, Advocates and
Mr. Atul Nanda, Advocate General Punjab with
Ms. Diya Sodhi, Assistant Advocate General Punjab,
for the appellants.

Mr. Gurminder Singh, Senior Advocate,
with Mr. Jatinder Singh Gill, Advocate,
for respondent No. 1.

Mr. Satya Pal Jain, Additional Solicitor General of India,
assisted by Mr. Dheeraj Jain, Senior Standing Counselling
for respondents No. 2 and 3.

None for respondent No. 4.

AUGUSTINE GEORGE MASIH, J.

This Letters Patent Appeal has been preferred by the State of Punjab challenging the judgment passed by the learned Single Judge dated 17.01.2018, whereby writ petition preferred by respondent No. 1-Ramandeep Singh challenging appointment of Suresh Kumar-respondent No. 4 as Chief Principal Secretary to Chief Minister (hereinafter referred to as 'CPSCM') vide order dated 17.03.2017 (Annexure P-1) being illegal and

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delegation and assignment of powers on 08.04.2017 (Annexure P-2) under the Rules of Business of the Government of Punjab, 1992 (hereinafter referred to as '1992 Rules') and the other statutory provisions, stands allowed and a writ in the nature of quo-warranto has been issued removing respondent No. 4 from the post by declaring his appointment as void.

2. When this appeal came up for hearing for the first time before a Division Bench of this Court on 14.02.2018, the operation of the impugned order was ordered to be stayed and in pursuance thereto, respondent No. 4 continued to serve as appointed.

3. Mr. Chidambaram, senior counsel for the appellants-State of Punjab has attacked the judgment of the learned Single Judge on the plea that the writ petition, which has been preferred by respondent No. 1, is in the form of a Public Interest Litigation (PIL) although termed as quo-warranto and according to the High Court Rules and Orders, a Public Interest Litigation has to be listed before a Division Bench of this Court and not before a Single Bench. The judgment, so delivered by the learned Single Judge and the power exercised by the said Court, was to be construed as coram non- judice and, therefore, cannot sustain.

4. Learned senior counsel asserts that a writ of quo-warranto would not be maintainable as the office, which is held by respondent No. 4, is not a public office, rather he has been appointed on contract basis for a fixed period of time which is co-terminus with the Chief Minister. In the absence of any characteristic of the appointment on a public post of respondent No. 4, which he is holding as a staffer position in the office of the Chief Minister, no quo-warranto would be applicable as he cannot be said to be usurper of the office.

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5. It is submitted that none of the three conditions, as laid down through the various judgments of the Hon'ble Supreme Court, stand satisfied. In support of this contention, he has placed reliance upon the judgments of the Supreme Court in the cases of **Central Electricity Supply Utility of Odisha** v. **Dhobei Sahoo & Ors.,** (2014) 1 SCC 161, **Rajesh Awasti** v. **Nandlal Jaiswal & Ors.,** (2013) 1 SCC 501, **High Court of Gujarat & Anr.** v. **Gujarat Kishan Mazdoor Panchayat & Ors.**, (2003) 4 SCC 712, **University of Mysore** v. **C.D. Govinda Rao & Anr**., AIR 1965 SC 491 and **Nitin Sinha** v. **Union of India & Ors.**, W.P. (PIL) No. 42/2012.

6. Elaborating further he states that appointment of respondent No. 4 is to a non-cadre post and, therefore, not governed by any statutory Rules, rather the terms and conditions of his appointment are based upon the contractual appointment, which has been given to him and as specified in the appointment order as per the terms and conditions and, therefore, is governed by the same. In the absence of any statutory Rules governing the terms and conditions of appointment, quo-warranto would not lie especially in the case of a contractual appointment. In support of this contention, he has placed reliance upon the judgments of the Supreme Court in the cases of **B. Srinivasa Reddy** v. **Karnataka Urban Supply & Drainage**, (2006) 11 SCC 731 (2), **P.K.Sandu (Mrs.)** v. **Shiv Raj V. Patil,** (1997) 4 SCC 348, and **S.C.Anand** v. **Union of India**, AIR 1953 SC 250.

7. Mr. Chidambaram has submitted that it is to be treated as a Public Interest Litigation as respondent No. 1 himself asserts to be espousing the cause of the people of Punjab and has approached the Court in the interest of public, then in any case, in a matter relating to service in

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Government and that too, for a post, as pleaded by respondent No. 1, no Public Interest Litigation is maintainable. In support of this submission, he has placed reliance upon the judgments of the Supreme Court in the cases of **Dr. Duryodhan Sahu & Ors.** v. **Jitendra Kumar Mishra & Ors., (**1998) 7 SCC 273 and **Ashok Kumar Pandey** v. **State of West Bengal**, (2004) 3 SCC 349.

8. Learned senior counsel has also challenged the findings returned by the learned Single Judge that the appointment of respondent No. 4 was to a public office as he was to discharge sovereign functions which functions could not have been delegated by the Chief Minister. It is on this basis and on this assumption that the impugned order dated 08.04.2017 (Annexure P-2), which was the delegation and assignment of powers by the Chief Minister, was found to be illegal. He contends that none of the functions, which are being performed by respondent No. 4, were sovereign functions, rather none of the sovereign function, if any, performed by the Chief Minister has been mentioned to have been delegated vide order dated 08.04.2017 (Annexure P-2). In support of this contention, he has placed reliance upon the judgments of the Supreme Court in the cases of **Balmer Lawrie & Company Ltd.** v. **Partha Sarathi Sen Roy & Ors.**, (2013) 8 SCC 345 and **Agricultural Produce Market Committee** v. **Ashok Harikunti & Anr.,** (2000) 8 SCC 61.

9. He has further relied upon the judgments of the Supreme Court in the cases of **R.Chitralekha** v. **State of Mysore & Ors**., AIR 1964 SC 1823, **MRF Limited** v. **Manohar Parrikar & Ors.**, (2010) 11 SCC 374, **Narmada Bachao Andolan** v. **State of Madhya Pradesh,** (2011) 12 SCC 333 and **State of Bihar** v. **Sunny Prakash,** (2013) 3 SCC 559, to contend

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that Article 166 of the Constitution of India is directory and not mandatory and the conclusions, therefore, drawn by the learned Single Judge that this Article is mandatory and, therefore, required to be followed and any violation thereof, would lead to the appointment being illegal, cannot sustain and in any event, it is so asserted that there is no contravention of this Article while appointing respondent No. 4 as the Chief Principal Secretary to Chief Minister.

10. As regards the observations of the learned Single Judge that the appointment of respondent No. 4 was made in undue haste and, therefore, an adverse inference has been drawn, the learned senior counsel has referred to the process of appointment of respondent No. 4 and has stated that the Government was formed on 16.03.2017, which is much prior to the settlement of the terms and conditions on 19.04.2017. His further contention is that the appointment of Chief Principal Secretary to Chief Minister is invariably the first act of the new Chief Minister and thus, on taking charge, the Chief Minister had proceeded to appoint respondent No. 4, which is in normal course and it cannot be said that it was so done in undue haste.

It is, on these grounds and basis, the learned senior counsel prayed that the judgment of the learned Single Judge cannot sustain and deserves to be set aside by allowing the appeal.

11. On the other hand, Mr. Gurminder Singh, learned senior counsel for contesting respondent No. 1-Ramandeep Singh has supported the judgment passed by the learned Single Judge by contending that a writ of quo-warranto, as per the High Court Rules and Orders, has to be listed and heard by a Single Judge. For a writ of quo-warranto and maintainability thereof, any person in public, in the interest of justice, can approach this

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Court under Article 226 of the Constitution of India. Referring to the judgment of the Hon'ble Supreme Court in **Ghulam Qadir** v. **Special Tribunal & Ors.**, (2002) 1 SCC 33, his submission is that the Rule of *Locus Standi* does not apply on the writs of Habeas Corpus and Quo-Warranto. The same also does not apply on the Public Interest Litigation. For a writ of quo-warranto, any person, even if the said person has no personal interest or special interest in the subject matter, can approach the Court. In support thereof, reliance has been placed upon a judgment of the Supreme Court in **Rajesh Awasthi** v. **Nand Lal Jaiswal and Ors., (**2013) 1 SCC 501. What has been emphasized upon by the learned senior counsel is that the writ petition, which has been preferred, is not a Public Interest Litigation, as has been sought to be portrayed by the State.

12. Further submission of the learned senior counsel for respondent No. 1 is that respondent No. 1 is a resident of State of Punjab and is directly affected by the administrative machinery of the State. Since the matter otherwise has vital public importance being associated with good governance, it cannot be termed as a Public Interest Litigation especially when the relief, which is being sought by him, is based upon the fact that the powers and functions, which are being exercised by respondent No. 4 by virtue of his appointment as the Chief Principal Secretary, are that of the Principal Secretary to the Chief Minister which power is to be exercised by an IAS Officer Cadre only being a cadre post.

13. It has also been asserted by him that the appointment of respondent No. 4 and the terms and conditions attached thereto along with the impugned Standing Orders make it amply clear that the office held by the said respondent is a 'public office'. Assuming that the assertion of the

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State is accepted that respondent No. 4 was not appointed on a civil post under the State but still, as he was discharging the public functions, it would bring his appointment within the purview of 'public office' maintaining a writ of quo-warranto in such circumstances. Reliance, in support of this contention, has been placed upon the judgment of the Supreme Court in **Kumari Shrilekha Vidyarthi and others** vs. **State of U.P. And others,** (1991) 1 SCC 212. He contends that the appointment of respondent No. 4 is *per se* illegal as the same has not been issued in the name of the Governor which is mandatory as per the 1992 Rules. Mere authentication of an illegal order would not make it legal.

14. Mr. Gurminder Singh has opposed the stand of the State in the present appeal that the Chief Minister can proceed to appoint any person to run the functions of the Government smoothly. He states that the Chief Minister has a right to appoint any person as his Principal Secretary only in such circumstances where none from the cadre officers is eligible and not in the case of a fresh appointment as in the case of respondent No. 4. He asserts that the rank, which has been conferred upon respondent No. 1, is higher than the Principal Secretary to the Chief Minister i.e. Chief Principal Secretary to the Chief Minister with the pay scale of the Cabinet Secretary, which again is higher than the Principal Secretary. Not only this, a condition was also imposed by the Department of Finance for keeping one post in the cadre of IAS vacant. All this clearly shows that he has been appointed against a 'cadre post'. Respondent No. 4 has been given a free hand as there is no liability attached to any decision which may be taken by him while performing the functions of the CPSCM.

15. This has been asserted by him on the basis that there are no

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disciplinary rules etc. which would be applicable to him nor is there any aspect which would reflect any such control/check or balance. This, he emphasizes, on the basis of the fact and with reference to Para-2.0 of the Standing Orders which envisaged to empower the Chief Principal Secretary to dispose of the matters which are otherwise to be disposed of at the level of Chief Minister. Under this para, reference has been made to discussion to be held with the Chief Minister by respondent No. 4 and that too only, if possible. In case it is not so viable or possible, the Chief Principal Secretary to the Chief Minister can take a decision and give effect thereto with a rider that it would be put up before the Chief Minister on his return, meaning thereby that the Chief Minister would give an ex-post facto approval, thus, leaving virtually no scope for the Chief Minister to take a contrary view. Any decision, which would be taken which is prejudicial to the interest of the State and that too, before approval of the Chief Minister, shows the unlimited powers conferred upon the Chief Principal Secretary which are arbitrary powers and can be exercised by respondent No. 4 at his discretion.

16. Further contention of the learned senior counsel for respondent No. 1 is that the appointment of respondent No. 4 as the CPSCM is in direct contravention of the All India Services Act, 1951 (hereinafter referred to as '1951 Act') and the Indian Administrative Services (Cadre) Rules, 1954 (hereinafter referred to as '1954 Rules') framed thereunder as also the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 (hereinafter referred to as '1955 Regulations'). The post of Chief Principal Secretary to the Chief Minister is a 'cadre post' and as such while appointing respondent No. 4, the 1951 Act, Rules and Regulations made thereunder have been violated. Power of the cadre officer has been conferred upon

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respondent No. 4, who is, admittedly, not a member of the service which amounts to usurping the public office. He supports the judgment passed by the learned Single Judge to contend that no interference in the order passed by the learned Single Judge, in the facts and circumstances of the case, is called for and, therefore, the appeal deserves dismissal.

17. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings, the impugned judgments as well as the other relevant records.

18. The first question, which needs to be answered, is whether the writ petition, which has been preferred by respondent No. 1 as quo-warranto, is actually so or is it a Public Interest Litigation?

19. A perusal of the pleadings would indicate that respondent No. 1, being a resident of State of Punjab and a practicing Advocate, is interested in the functioning of the administrative machinery of the State which has a bearing and affects his daily life. He being a public spirited person has questioned the appointment of respondent No. 4, which has been projected by the senior counsel for the appellants as a Public Interest Litigation and not a writ in the nature of quo-warranto. This is being emphasized upon on the aspect that a Public Interest Litigation, as per the High Court Rules and Orders, is required to be heard by a Division Bench of this Court and, therefore, should have been referred to the Chief Justice for placing the same before a Division Bench. The learned Single Judge having failed to appreciate this aspect despite an objection being raised by the State of Punjab amounts to a judgment which has been pronounced and given by a learned Single Judge which is coram non-judice.

20. This plea of the learned senior counsel for the appellants

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appears to be correct when seen in the context of the High Court Rules and Orders but when seen in the light of the pleadings in the writ petition, it would be difficult to accept that the present writ petition is a Public Interest Litigation, rather the challenge to the appointment of respondent No. 4 as CPSCM vide order dated 17.03.2017 (Annexure P-1) is primarily submitted to be in violation of All India Services Act, 1951 and the Rules and Regulations framed thereunder as it has been pleaded that the appointment of respondent No. 4 is on a cadre post, which, therefore, has to be governed as per the Statutory Rules. The plea, thus, of the learned senior counsel for the appellants with regard to the challenge to the judgment of the learned Single Judge being coram non-judice cannot be accepted.

This, we state, in the light of the fact that for a writ of quo-warranto, challenge can be posed by a person who may not be a candidate himself nor would the rule of *locus standi* apply to the writ. This would mean that a person, who does not have any personal interest or special interest in a matter, can still maintain the writ of quo-warranto, which has been so filed by respondent No. 1. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in Rajesh Awasthi's case (supra). On going through the High Court Rules and Orders dealing with the maintainability of the Public Interest Litigation Rules, 2010, the case in hand would not fall within the said parameters and, therefore, it cannot be termed as a 'Public Interest Litigation'.

21. Now moving on to the aspect as to whether a writ of quo-warranto would be sustainable in the facts and circumstances of the present case, which is the basic issue to be decided in the present case.

Three conditions are required to be satisfied for issuance of a

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writ of quo-warranto as are given in Halsbury's Laws of England, 3rd Edition, Vol.11, Page 145, where the test has been laid down which is required to be satisfied for issuance of a writ of quo-warranto. The relevant portion thereof reads as follows:-

> "xxx xxx xxx xxx xxx
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> It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

22. The three conditions, therefore, required are: (i) that the office in question is a public office (ii) which is being held by usurper without legal authority (iii) leading to an enquiry as to whether the appointment of the said alleged usurper is made in accordance with law or not.

23. The Hon'ble Supreme Court in Central Electricity Supply Utility of Odisha's case (supra) in para-21, after referring to the various judgments passed by it, concluded as follows:-

> "21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of *locus standi* which is strictly applicable to service jurisprudence for the purpose of

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canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."

24. Meaning thereby that the appointment, if made contrary to the statutory provisions, a writ of quo-warranto would lie. That does not mean that the suitability of a candidate for appointment would also fall within the realm of the jurisdiction of the Court to issue a writ of quo-warranto as it has a limited field of operation. The operational field of a writ of quo-warranto would not cover the factors which are relevant for issuance of a writ of certiorari because of its limited sphere of operation. It is a writ in a nature which is technical, which affords a judicial enquiry to find out and call upon the alleged usurper of the public office, on which he has been appointed against the relevant statutory provisions which he holds without legal authority.

It is on these above touchstones that the appointment of respondent No. 4 as the Chief Principal Secretary to Chief Minister vide order dated 17.03.2017 (Annexure P-1) on the pay scale of Cabinet Secretary of the Government of India needs to be tested.

25. As per the affidavit dated 08.02.2019 filed by the Chief Secretary to Government of Punjab, appellant No. 2, in pursuance to the order passed by this Court on 13.02.2019 permitting the filing of the said affidavit to bring on record the actual powers and functions which were being discharged by respondent No. 4, he was selected and appointed by

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the Chief Minister on the post of Chief Principal Secretary on a temporary post not occupying any cadre/ex-cadre post of the Indian Administrative Services.

This appointment of respondent No. 4 was approved by the Council of Ministers in its meeting on 18.03.2017. Minutes of the said meeting have been appended as Annexure A-1, where the terms and conditions of the appointment of respondent No. 4 were detailed. The same were endorsed to the Governor of Punjab. CPSCM does not perform any sovereign functions or exercise any independent powers nor is it a Public Office. He is occupying a post as a staff officer to the Chief Minister in his office i.e. the Chief Minister's office. The said post is temporary and his tenure is co-terminus with the term of the Chief Minister and has been made with the approval of the competent authority as per the existing Rules of Business of the Government of Punjab, 1992 under Article 166 of the Constitution of India. The post of Chief Principal Secretary to the Chief Minister is entrusted with the functions of Principal Staff Officer to the Chief Minister. The Staff Officers are appointed to aid and assist the Chief Minister in the disposal of his official duties and tasks. The functions and responsibilities of the Staff Officers are decided by the Chief Minister. Reference has been made to the Standing Orders issued by the office of Chief Minister on 08.04.2017 (Annexure A-2) with the approval of the Chief Minister, in accordance with the Rules of Business, Government of Punjab, 1992 assigning the task to aid and assist the Chief Minister to respondent No. 4, as detailed in para-12 of the affidavit.

It has further been stated in the affidavit that the allocation and distribution of work of the Chief Minister's office amongst the respective

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Staff Officers is not a delegation order as it does not purport to delegate any powers exercised by the Chief Minister. It has been clarified that the Chief Minister/Minister-in-Charge of a Department can delegate his substantive powers to the Administrative Secretaries of the Department or to officers subordinate to him such as Special/Additional/Under Secretary etc. It is these officers who can exercise such delegated substantive powers under the Rules. Such type of powers have not been delegated to the Staff Officers of the Chief Minister's office including the CPSCM vide Standing Order dated 08.04.2017. The order dated 08.04.2017 of the Chief Minister states as to which of his Staff Officers will authenticate and record the orders given or passed by him. It is those orders of the Chief Minister which are recorded by the Staff Officers conveying the decisions of the Chief Minister on specific matters.

26. The said affidavit, on the facts, has not been contradicted by respondent No. 1 as the same is based on the records.

27. What, thus, culls out from the said affidavit, which has been filed in pursuance to the orders passed by this Court, is that the appointment of respondent No. 4 is contractual in nature for a period co-terminus with the tenure of the Chief Minister. If that be the position, when it has been asserted that the appointment is on a non-cadre post where no statutory rules govern the said appointment, writ of quo-warranto would not lie.

28. As far as the plea of the learned counsel for respondent No. 1 that the appointment of respondent No. 4 is on a 'cadre post' dependent upon the rider which has been put by the Finance Department while approving the appointment of respondent No. 4 as CPSCM, that 'a cadre post be kept vacant', suffice it to state that the said aspect has not been approved by the

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Council of Ministers and, therefore, the Chief Secretary has rightly stated in his affidavit dated 08.02.2019, referred to above, that the appointment of respondent No. 4 was not on a cadre post. If the appointment is not against a cadre post, the question of applicability of the 1951 Act and consequently, the Rules and Regulations framed thereunder would not arise.

29. The plea with regard to the aspect that respondent No. 4 was holding a Public Office, as has been raised by respondent No. 1, on the plea that he was discharging sovereign functions which could not have been delegated by the Chief Minister to respondent No. 4, is based upon the Standing Orders dated 17.03.2017, wherein the CPSCM has been authorized to dispose of the cases of immediate nature in the absence of the Chief Minister after discussing with him on mobile phone, if possible. However, such cases would be put up before the Chief Minister on his return to the headquarters for ex-post facto approval.

This contention was being sought to be projected keeping in view the term 'if possible' used in the Standing Orders dated 17.03.2017. This virtually was sought to be projected as a decision taken by the Chief Principal Secretary to the Chief Minister on behalf of the Chief Minister where the Chief Minister was not contactable by any means, which, in such a situation, when would have been acted upon, cannot be recoiled to its original position by the Chief Minister, even if he decides contrary to the same, has been accepted by the learned Single Judge.

The conclusion of the learned Single Judge that the sovereign functions have been delegated to respondent No. 4 by the Chief Minister, has been made on the basis coming to a conclusion that the Standing Orders delegate the powers of the Chief Minister upon a person who is not

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answerable to Government and there are no disciplinary rules governing his appointment.

30. To consider this aspect, reference to the judgment of the Supreme Court in Balmer Lawrie & Company Ltd.'s case (supra), where in para Nos. 18 and 20, it has been held as follows:-

> "18. Often, there is confusion when the concept of sovereign functions is extended to include all welfare activities. However, the Court must be very conscious whilst taking a decision as regards the said issue, and must take into consideration the nature of the body's powers and the manner in which they are exercised. What functions have been approved to be sovereign are the defence of the country, the raising of armed forces, making peace or waging war, foreign affairs, the power to acquire and retain territory, etc. and the same are not amenable to the jurisdiction of ordinary civil courts.
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> xxx xxx xxx xxx xxx
>
> 20. Every governmental function need not be sovereign. State activities are multifarious. Therefore, a scheme or a project, sponsoring trading activities may well be among the State's essential functions, which contribute towards its welfare activities aimed at the benefit of its subjects, and such activities can also be undertaken by private persons, corporates and companies. Thus, considering the wide ramifications, sovereign functions should be restricted to those functions, which are primarily inalienable, and which can be performed by the State alone. Such functions may include legislative

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functions, the administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon, etc. Therefore, mere dealing in a subject by the State, or the monopoly of the State in a particular field, would not render an enterprise sovereign in nature."

31. In the light of the above settled proposition of law with regard to the sovereign functions, the findings, as returned by the learned Single Judge, cannot sustain and deserve to be set aside, where it has been held that the sovereign functions have been delegated by the Chief Minister to respondent No. 4. It may be clarified here that the learned senior counsel for the appellants has stated that as a matter of fact, there has been no occasion when this clause in the Standing Orders has been used or utilized.

Learned senior counsel for respondent No. 1 has, very fairly, conceded this aspect.

32. Now moving on to emphasis laid by learned senior counsel for respondent No. 1 upon the aspect that Article 166 of the Constitution of India is mandatory and has rightly been so held by the learned Single Judge which deals with the conduct of the business of the Government of a State. He has asserted that the 1992 Rules have been framed in exercise of powers by the Governor under Article 166 (3) of the Constitution. Referring to Rules 18 and 19 of the 1992 Rules, he has asserted that the order of appointment of respondent No. 4 by the Chief Minister and the terms and conditions attached thereto after approval by the Council of Ministers has not been sent to the Governor. He, on this basis, contends that the appointment of respondent No. 4 being in violation of the 1992 Rules cannot sustain. Further reliance has been placed upon Rule 7 (2) of the 1992

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Rules, according to which, no proposal which requires previous consultation of the Department of Finance, the said consultation, if done, has to be so accepted. He, on this basis, supports the judgment of the learned Single Judge where it has been held that the 1992 Rules having not been followed, the appointment is illegal.

33. The conclusion drawn by the learned Single Judge that Article 166 was mandatory, cannot be accepted, wherein reliance has been placed upon the judgment in R.Chitralekha's case (supra) and the Hon'ble Supreme Court in MRF Limited's case (supra) as these judgments have been misread. Rather, in para No. 77 of MRF Limited's case (supra), it has been held as follows:-

> "77. The decision of the Constitution Bench in *Chitralekha* has been misinterpreted. In that case this Court was considering a controversy in regard to an order which was not expressed in the name of the Governor in terms of Articles 166 (1) and (2). In that context, this Court observed that it is a settled law that the provisions of Article 166 of the Constitution are only directory and not mandatory in character. The context clearly shows the observation that the provisions of Article 166 of the Constitution are only directory and not mandatory, referred only to clauses (1) and (2) of Article 166 and did not refer to clause (3) which was not under consideration at all. *Chitralekha*, therefore, cannot be relied upon to support the contention that the Business Rules made under clause (3) of Article 166 are directory."

34. Reference, in this regard, can also be made to the judgment of

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the Hon'ble Supreme Court in Narmada Bachao Andolan's case (supra) and Sunny Prakash's case (supra), where again it has been held that the provisions of Article 166 of the Constitution are directory and not mandatory.

35. The submission of the learned senior counsel for respondent No. 1 that Rules 18 and 19 as also Rule 7 of the 1992 Rules require the decisions taken as per the Standing Orders have to be sent to the Chief Minister and the Governor, also cannot be accepted. In the present case, although the appointment of respondent No. 4 vide order dated 17.03.2017 was subject to the approval by the Council of Ministers, with the same having been approved by the Council of Ministers, it cannot be said that the appointment of respondent No. 4 is illegal.

36. As regards the non-acceptance of the advice of the Department of Finance with regard to keeping of cadre post of IAS vacant, suffice it to say that the appointment of respondent No. 4 was not against a cadre post and, therefore, the condition and the rider, as imposed by the Department of Finance, had no bearing upon the appointment of respondent No. 4 whose appointment was purely contractual in nature for a fixed tenure which is co-terminus with that of the Chief Minister. It being a contractual appointment, the terms of contract hold the field in this regard. There is nothing which has come on record which would indicate that any of the terms and conditions of the contract were against the public policy or illegal.

37. It would not be out of way to mention here that the Union of India is also a party to the writ petition, wherein affidavit of Under Secretary, Department of Personnel & Training, Govt. of India, dated

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28.09.2017 has been filed. In para Nos. 4 and 5 of the said affidavit, it has been stated as follows:-

> "4. That the main contention in the Writ Petition is that the State Government of Punjab has appointed a retired IAS Officer as Chief Principal Secretary to Chief Minister, Punjab under the Rules of Business of the Government of Punjab, 1992 which is violative of the provisions of the All India Services Act, 1951 as well as the Rules and Regulations framed under Indian Administrative Service (Cadre) Rules, 1954 and Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955.
>
> 5. That the appointment of retired IAS officer (not a cadre officer) by State Government of Punjab as Chief Principal Secretary to Chief Minister (not a cadre post) is not governed by Indian Administrative Service (Cadre) Rules. The post of Chief Principal Secretary is neither a cadre post nor a temporary/ex-cadre posts as per IAS (Cadre) Rules, 1954."

A perusal of the above would leave no manner of doubt that the appointment of respondent No. 4 was not on a cadre/temporary/ex-cadre post. The findings, thus, recorded by the learned Single Judge cannot sustain.

38. Another ground, which has been taken by the learned Single Judge relating to the appointment of respondent No. 4, is that his appointment has been made in undue haste and, therefore, an adverse inference has been drawn. This conclusion, in our considered view, is misplaced.

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39. Whenever the new Chief Minister enters into office, inevitably he needs someone to assist him in performing his functions and duties. It is with that intent and for fulfilling the commitments made in the manifesto, a comprehensive planning and regular monitoring is required at the level of the Chief Minister's office. For this, decision was taken by the Chief Minister to appoint respondent No. 4, who had experience of work in various departments of the State Government, Govt. of India, United Nations etc. and had earlier also worked at the office of the Chief Minister as the Principal Secretary.

40. Keeping all these aspects as also the fact that respondent No. 4 had superannuated as an Additional Chief Secretary, he was appointed as the CPSCM by the Chief Minister subject to the approval of the Council of Ministers. This inevitably had to be the first act of the Chief Minister after assuming office, in this case on 16.03.2017 It has been explained that the Council of Ministers had approved the proposal and appointment of respondent No. 4 in its meeting on 17.03.2017. The Standing Orders were issued on 08.04.2017 and the terms and conditions of appointment of respondent No. 4 were approved by the Council of Ministers in its meeting on 19.04.2017, which have been forwarded to the Governor. It cannot, thus, be said that the appointment of respondent No. 4 has been made in undue haste or that the Standing Orders have been issued in a hurry and not brought to the notice of the Governor.

41. We do not see any undue haste in appointment of respondent No. 4 in the above factual matrix. In any case, this has no bearing upon the appointment of respondent No. 4 when we have come to the conclusion that respondent No. 4 was not holding a public office nor was he performing any

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public/sovereign functions. The appointment being purely contractual in nature and there being no violation of any statutory Rules especially when, he has not been appointed against any cadre/ex-cadre/temporary post of IAS, we see no ground which would entitle issuance of a writ of quo-warranto by this Court holding respondent No. 4 to be a usurper of office.

42. In the light of the above, the present appeal is allowed. The impugned judgment dated 17.01.2018 passed by the learned Single Judge is set aside and the writ petition preferred by respondent No. 1-Ramandeep Singh is, hereby, dismissed.

43. In view of the disposal of the main appeal, all the pending applications have been rendered infructuous and the same are disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

March 15, 2022
pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

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