IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.19625 of 2025
Reserved on: 01.10.2026
Date of decision: 28.10.2026
Uploaded on: 28.10.2026

Pankaj Rai. ...Petitioner.

Versus

State of Himachal Pradesh & Anr. …Respondents.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?[1] *Yes.*

For the petitioner	:	Mr. P.S. Patwalia and Mr. Shrawan Dogra, Senior Advocates with Mr. Tejasvi Dogra, Ms. Harshika, Ms. Ridhima Karol, Advocates.
For the respondent(s)	:	Mr. Rajiv Atma Ram, Senior Advocate with Mr. Brijesh Khosla, Advocate with Mr. Shalabh Thakur, Assistant Advocate General for respondents-State.

Vivek Singh Thakur, Judge

Petitioner, being aggrieved by the action of the respondents by way of rejection of the panel recommended by the Selection Committee for appointment to the post of Chairman, Himachal Pradesh Electricity Regulatory Commission (hereinafter referred to as the '**State Commission**'), vide decision dated

[1] *Whether the reporters of the local papers may be allowed to see the Judgment?* Yes

16.09.2025 (Annexure P-6), notified vide Notification dated 30.09.2025 (Annexure P-4), has approached this Court seeking the following substantial reliefs:-

> "I. Impugned notification dated 30.09.2025 (Annexure P-4), as well as the impugned order dated 16.09.2025 (Annexure P-6) whereby, the respondent no. 2 cancelled selection process for the post of Chairman, HP Electricity Regulatory Commission in pursuance to the advertisement dated 14.08.2025, be quashed and set aside.
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> II. Respondents No. 1 & 2 may be directed to conclude the selection process for the post of Chairman, HP Electricity Regulatory Commission (HPERC) in strict adherence to the statutory mandate and notified eligibility criteria ensuring that the petitioner's candidature is duly evaluated in a fair and time-bound manner."

Admitted Facts

2. Respondent-State, through the Department of Multipurpose Power Projects (MPP) & Power, Government of Himachal Pradesh, invited applications from interested and eligible Indian nationals for one post of Chairman in the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as '**State Commission**'), as per the provisions contained in Section 82(5) and Section 89 of the Electricity Act, 2003 (hereinafter referred to as '**2003 Act**') vide advertisement dated 14.08.2025 (Annexure P-1), with the closing date of 30.08.2025 for submitting applications to be addressed to the Secretary (Power) to the Government of Himachal Pradesh.

3. Apart from notifying the requirement of submitting a bio-data with complete details as notified in the advertisement, along with the mandatory undertaking and declaration, it was also notified regarding the qualifications for appointment to the post of Chairman as under:-

> "The qualification for appointment of Chairman of State Commission and their terms of office and conditions of service are provided in section 84 and 89 of the Electricity Act, 2003, respectively. Salary, allowances & other conditions of Chairman have been provided in the Himachal Pradesh Electricity Regulatory Commission (Salary, Allowances and other conditions of Service of Chairman and members) Rules 2006 notified on 30.11.2006 with amendment dated 6th April, 2017 and 7.1.2025.
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> As per Section 84 of the Electricity Act, 2003, the Chairman and the Members of the State Commission shall be a person of ability, integrity and standing who has adequate knowledge of, and has shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management. The Chairman and the Members of the State Commission shall not hold any other office as provided in sub-section (3) of Section 84 of the Electricity Act, 2003."

4. In pursuance to advertisement, the petitioner, amongst other 16 applicants, applied for the post of Chairman of the State Commission.

5. The petitioner, as on date, is serving as Deputy Director (Administration), Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh, since 18.12.2023. His application

was processed and forwarded to the Secretary (Personnel) to the Government of Himachal Pradesh, vide forwarding letter dated 28.08.2025 sent by the Senior Administrative Officer (NF), PGIMER, Chandigarh (Annexure P-2), a copy whereof was also endorsed to the Director, INI-II Section, Ministry of Health and Family Welfare (MoHFW), New Delhi, for information.

6. In his application, the petitioner submitted complete details of his designations and places of posting since May 1993 and works looked after as detailed therein, which are as under:-

S. No.	**Complete Designation & Place of Posting**	**Name of Organization**	**Period (From)**	**Period (To)**	**Nature of Duties**
1.	Sr. Engineer	Ambuja Cement	May, 1993	June, 1998	To look after the work of Stacker and Reclaimer right from construction to commissioning to operation and other allied works.
2.	Asstt. Engineer, PHSEB	Govt. of Himachal Pradesh	June, 1998	Oct., 2000	Planning, designing and preparation of specifications of hydro mechanical components (hydraulic gates & hoists, penstocks, trash racks, butter fly valves, electric overhead travelling cranes, steel liners etc.).
3.	Trainee HAS	Govt. of Himachal Pradesh	Nov., 2000	Aug., 2001	Underwent training of Himachal Administrative Services.
4.	Asstt. Collector cum BDO, Pooh	Govt. of Himachal Pradesh	28.08.2001	30.06.2002	▪ To supervise the overall development of the block. ▪ To ensure the completion of works of various heads in a given time frame. ▪ To monitor funds and to ensure proper utilization of funds.

					• To coordinate with all the departments at the block level as Executive Officer to Panchayat Samiti.
5.	Sub Divisional Magistrate, Keylong	Govt. of Himachal Pradesh	01.07.2002	07.04.2003	To maintain law and order, coordination with allied departments, licensing & registration work, Handling relief operations, Court & Revenue matters, Enquiries, Protocol duty, Inspection of development works, Organization of Fairs etc.
6.	Sub Divisional Magistrate, Sundernagar	Govt. of Himachal Pradesh	08.04.2003	15.07.2007	To maintain law and order, coordination with allied departments, licensing & registration work, Handling relief operations, Court & Revenue matters, Enquiries, Protocol duty, Inspection of development works, Organization of Fairs etc.
7.	Sub Divisional Magistrate, Ghumarwin	Govt. of Himachal Pradesh	16.07.2007	26.02.2008	To maintain law and order, coordination with allied departments, licensing & registration work, Handling relief operations, Court & Revenue matters, Enquiries, Protocol duty, Inspection of development works, Organization of Fairs etc.
8.	Addl. Director (IT)	Govt. of Himachal Pradesh	March, 2008	04.02.2009	To supervise, coordinate and monitor the progress of various projects undergoing in IT department.
9.	Sub Divisional Magistrate, Hamirpur	Govt. of Himachal Pradesh	05.02.2009	06.05.2012	To maintain law and order, coordination with allied departments, licensing & registration work, Handling relief operations, Court & Revenue matters, Enquiries, Protocol duty, Inspection of development works, Organization of Fairs etc.
10.	Additional District Magistrate, Mandi	Govt. of Himachal Pradesh	07.05.2012	01.11.2014	• To maintain law and order. • Monitoring of traffic issues. • Disposal of appeals/court cases. • Review of various schemes of Govt. • Land related matters. • Public Redressal matters. • Implementation/monitoring of e-governance centres.

11.	Commissioner, Municipal Corporation, Shimla	Govt. of Himachal Pradesh	03.11.2014	April, 2017	To implement various provisions of HPMC Act, 1994 and the Bye-laws framed thereunder and other instructions issued by the Government from time to time. In addition, monitoring and implementation of various State/Central Govt. Schemes and programmes.
12.	Managing Director, National Health Mission	Govt. of Himachal Pradesh	April, 2017	July, 2018	Involved in Planning, Management and implementation of various schemes and projects of Health Department and also monitoring various projects under National Health Mission.
13.	Commissioner, MC, Shimla & Managing Director and CEO, Shimla Smart City Ltd.	Govt. of Himachal Pradesh	22.07.2018	22.10.2020	• To implement various provisions of HPMC Act, 1994 and the Bye-laws framed thereunder and other instructions issued by the Government from time to time. In addition, monitoring and implementation of various State/Central Govt. Schemes and programmer. • To accomplish the project of Shimla Smart City by following the provisions of HPMC Act, 1994 and other instructions issued by the State/Central Government.
14.	Deputy Commissioner, Lahaul Spiti	Govt. of Himachal Pradesh	22.10.2020	20.06.2021	• To maintain Law & Order in the District, Disaster Manager, Protocol duties etc. • To monitor the general working of different government schemes being implemented in the district. • To actively coordinate with different government departments & NGOs in order to maintain smooth functioning of Administration.
15.	Deputy Commissioner, Bilaspur	Govt. of Himachal Pradesh	28.06.2021	23.02.2023	• To maintain Law & Order in the District, Disaster Manager, Protocol duties etc. • To monitor the general working of different government schemes being implemented in the district as well as monitoring of National Highway Project and AIIMS, Bilaspur.

					▪ To actively coordinate with different government departments & NGOs in order to maintain smooth functioning of Administration. ▪ As Commissioner of Temple Trust, to ensure that the issues of pilgrims and other stake holders are addressed and continuous development is come out for the convenience of all.
16.	Special Secretary (Education)	Govt. of Himachal Pradesh	06.03.2023	15.12.2023	Involved in Planning, Management and implementation of various schemes and projects of the Education Department.
17.	Deputy Director (Admn.)	Postgraduate Institute of Medical Education & Research, Chandigarh	18.12.2023	Till date	▪ Looking after the administration, including judicial matters, service matters of 9000 employees and management of the Institute. Also working as Appellate Authority under the RTI Act. ▪ Supervising the Engineering Services including Civil, Electrical, Public Health, Refrigeration and construction of upcoming Centres. ▪ Working as Estate Officer also and exercising the powers under the Public Premises (Eviction of Unauthorized Occupants) Act.

7. Petitioner also submitted a letter of willingness to resign from his existing post and to join as Chairman of the State Commission, if selected, as required under Clause (C) of the advertisement, along with a point-wise undertaking and declaration on four points as required under Clause (D) of the notification, including a declaration that he did not have any financial or other interest likely to affect prejudicially his functions as Chairman of the State Commission.

8. Accepting the application of the petitioner received from PGIMER, Chandigarh, the petitioner was called for interview before the Selection Committee on 14.09.2025, vide call letter dated 06.09.2025 (Annexure P-3). Out of 16 applicants, only 12 applicants, including petitioner, appeared before the Selection Committee for interview on 14.09.2025.

9. After perusal of the applications submitted by the applicants, followed by examination of their educational qualifications and experience, interaction with them, due assessment of their ability and knowledge, and after due deliberation, the Selection Committee unanimously, keeping in view the requirements prescribed under Section 84(1) of the Electricity Act, 2003 and on the basis of particulars furnished in the bio-data as well as experience from their previous assignments and job profiles, recommended two candidates, namely the petitioner and one Rajiv Sood, finding them suitable for the post of Chairman of the State Commission, but in no order of preference.

10. The proceedings of the meeting of the Selection Committee held on 14.09.2025 making such recommendations are as under: -

> "**PROCEEDINGS OF THE MEETING HELD ON 14.9.2025 AT 10:00 AM FOR THE SELECTION OF THE CHAIRMAN,**

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION (HPERC), SHIMLA

A meeting of the Selection Committee for the selection of the Chairman, HPERC was held on 14.09.2025. The Chairman of the Selection Committee, Justice V.K. Sharma (Retd.), and the Co-Member, Shri Jishnu Barua, attended the meeting in person.

2. At the outset, the Special Secretary (MPP & Power) to the Government of Himachal Pradesh placed before the Selection Committee the advertisement dated 14th August, 2025, issued for inviting applications to the post of Chairman, HPERC, and apprised the Committee that the last date for submission of applications was 30th August, 2025. The Committee perused the said advertisement.

3. The Special Secretary further informed the Committee that 16 applications had been received for the post of Chairman, HPERC. He apprised the Committee of the educational qualifications and experience of the applicants, and placed before it the applications received, along with the bio-data furnished by each applicant.

4. The Selection Committee was apprised that the Chief Secretary to the Government of Himachal Pradesh is a member of the Committee, as notified vide Notification dated 25.08.2025. It was, however, brought to the notice of the Committee that Shri Prabodh Saxena, presently holding the charge of Chief Secretary, Government of Himachal Pradesh, has submitted his application for the post of Chairman, HPERC, and has, therefore, withdrawn from the Selection Committee.

5. The Committee took note that Section 85(6) of the Electricity Act, 2003 stipulates that no appointment of the Chairman or any other Member shall be invalid merely by reason of any vacancy in the Selection Committee. In view of the above, the withdrawal of the Chief Secretary, Government of Himachal Pradesh, from the Selection Committee was accepted. It was accordingly observed that the Selection Committee shall function as a two-member Committee.

6. It was also apprised that in the advertisement, the candidates were asked to submit a declaration in the form of undertaking alongwith their applications on the points that the applicant does not have any financial or other interest likely to affect prejudicially his/her function as Chairman, HPERC; whether any criminal case has been registered against the applicant;

whether the applicant has been charge-sheeted for any criminal offence; and whether the applicant has been convicted by any competent court for any criminal offence. Further, it was apprised that all the applicants have submitted their applications alongwith the declaration.

7. Out of the 16 applicants who had applied for the post of Chairman HPERC, only 12 applicants, as per Annexure-I, appeared before the Selection Committee. After perusal of the applications submitted by the applicants, followed by examination of their educational qualifications and experience, interaction with them, due assessment of their abilities and knowledge, and after due deliberations, both Members of the Selection Committee were unanimous in their opinion that, keeping in view the requirements prescribed under section 84(1) of the Electricity Act, 2003 for the post of Chairman, HPERC, and on the basis of the particulars furnished in the bio-data, as well as the applicant's experience from their previous assignments and job profiles, the following two candidates, in no order of preference, have been found suitable for the post of Chairman HPERC and are accordingly recommended for this post.

1. Sh. Pankaj Rai
2. Sh. Rajiv Sood

Furthermore, the Selection Committee has satisfied itself that as required under section 85(5) of the Electricity Act, 2003 the recommended persons do not have any financial or other interest which is likely to affect prejudicially their functions as Chairman of the HPERC.

Sd/-	Sd/-
[Sh. Jishnu Barua]	[Justice V.K. Sharma, (Retd.)]
Member, Selection Committee	Chairman, Selection Committee"

11. The recommendations of the Selection Committee were submitted before the competent authority and were placed before the Hon'ble Chief Minister, who, based on the comments recorded in the file (received under the Right to Information Act), from Note N-141 to N-145, dated 16.09.2025, concluded that the panel as recommended was not acceptable and rejected the same. This

decision was subsequently notified vide Notification dated 30.09.2025 (Annexure P-4).

Petitioner's case

12. It is the case of the petitioner that the petitioner is a serving IAS officer in the State of Himachal Pradesh of the 2014 batch, and he has had a distinguished career as a civil servant, with educational qualifications of Bachelor in Engineering (Mechanical) and MBA (Finance). Prior to the induction of the petitioner as a civil servant in the State of Himachal Pradesh in the year 2000, the petitioner, after having completed his B.E. (Mechanical), worked as Senior Engineer from May, 1993 until June, 1998 with a private company, i.e., Ambuja Cement Ltd.. Thereafter, the petitioner worked as Assistant Engineer with the H.P. State Electricity Board (HPSEB) under the Department of MPP & Power from June, 1998 onwards until October, 2000. Subsequently, the petitioner cleared the Himachal Pradesh Administrative Examination and completed his training in HAS from November, 2000 until August, 2001. After having completed the training in the Himachal Administrative Services, the petitioner was posted as Assistant Commissioner-cum-Block Development Officer, Pooh, District Kinnaur, H.P., and served therein from 28.08.2001 until 30.06.2002. Later on, from 01.07.2002 until 26.02.2008, the petitioner served as Sub Divisional Magistrate

in the respective Districts of Himachal Pradesh. Thereafter, from March, 2008 until 04.02.2009, the petitioner served as Additional Director (IT) with the Government of Himachal Pradesh. From 05.02.2009 until 06.05.2012, the petitioner again served as SDM, Hamirpur. Thereafter, from 07.05.2012 until 22.10.2020, the petitioner had the opportunity to serve as Additional District Magistrate, Mandi, and thereafter as Commissioner, Municipal Corporation, Shimla, Mission Director, National Health Mission, and Special Secretary (Health), and then again as Commissioner, Municipal Corporation, Shimla & Managing Director, Shimla Smart City Ltd.. Thereafter, from 22.10.2020 until 23.02.2023, the petitioner served on the post of Deputy Commissioner, Lahaul & Spiti and District Bilaspur, respectively. Later on, from 06.03.2023 until 15.12.2023, the petitioner had the opportunity to serve as Special Secretary (Education), wherein the petitioner was involved in planning, management, and implementation of various schemes and projects of the Education Department.

13. It is further the case of the petitioner that at present the petitioner is serving as Deputy Director (Administration) with Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh, w.e.f. 18.12.2023, wherein the petitioner is looking after the administration, including judicial matters, service matters of

approximately 9000 employees, and management of the Institute. The petitioner at PGIMER, Chandigarh is also working as Appellate Authority under the RTI Act. The petitioner is supervising the Engineering Services/projects, including Civil, Electrical, Public Health, Refrigeration, and construction of upcoming centres. The petitioner is also working as Estate Officer, exercising the powers under the Public Premises (Eviction of Unauthorized Occupants) Act.

14. With aforesaid facts, it is case of the petitioner that rejection of panel recommended by Selection Committee is based on wrong notion, irrelevant material and misconception, and in view of Scheme and Provision of 2003 Act, the same is beyond the competence and domain of the respondent-State and, therefore, liable to be interfered with by exercising power of judicial review conferred upon this Court under Article 226 of Constitution of India.

Respondents' response

15. In response to the petition, it has been contended on behalf of the respondent-State that the petitioner has no legal right to seek appointment to the post of Chairman, HPERC, in furtherance of the advertisement (Annexure P-1). It is further contended it is well-settled that mere selection does not confer any legal right for appointment, and mere inclusion of a candidate's name in the

selection list gave him no right, and if there was no right, there could be no occasion to maintain a writ petition for enforcement of a non-existing right. It has been submitted that Government has taken the impugned decision in a consideration manner by way of '**policy decision**' of not appointing the petitioner for the reasons contained therein.

16. It is further case of the respondent that there are no allegations of the mala fides in the writ petition and no person has been impleaded as party by name. Thus, in the absence of mala fides, the impugned decisions have been taken bona fide and in the best interests of the State and the general public.

17. It is the further case of the respondents that, referring to Section 84(1) of the Electricity Act, 2003, it is apparent from the provisions of this Section that ability, integrity, and standing are necessary parameters for appointment as Chairman, and standing is one of the parameters which is not fulfilled by the petitioner, being not a senior officer in the apex scale, and thus he is lacking in fulfilling the requirements of Section 84 of the Act.

18. It has been further submitted that it is apparent from a perusal of Section 86 of 2003 Act that State Commission discharges functions of utmost importance to the State including advising the

State Government on matters contained in Section 86(2) of the 2003 Act. Thus, it is of the utmost importance that the post of Chairman of the State Commission be held by a senior person of outstanding ability and integrity having adequate knowledge and demonstrative capacity in dealing with problems as per Section 84 of the 2003 Act. Further, that Section 84 read with Section 86 of the 2003 Act make it incumbent upon the State Government to consider and appoint the most suitable senior Officer having great ability, integrity and standing and the decisions of the State Government in Annexures P-4 and P-6 are in terms of Section 84 read with Section 86 of the Electricity Act, 2003 in Public Interest.

19. It has also been further submitted that the impugned Notification (P-4) and the impugned Order (P-6) are a ‘policy decision’ of the State Government taken in Public Interest.

20. It has been further submitted on behalf of the respondents that there was a procedural error with regard to the issuance of the advertisement dated 14.08.2025, because the Selection Committee for the selection of Chairman of the State Commission was to be notified prior to the issuance of the notification/advertisement for filling up the post by the Administrative Department. However, in the present case, the Selection Committee

was constituted after the issuance of the advertisement, and the advertisement was required to be ratified by the Selection Committee, which has not been done. Therefore, because of this patent procedural error, it necessitated the termination of the selection proceedings, and accordingly the proceedings have been terminated on legally valid grounds.

21. It has been further submitted on behalf of the respondents that the Selection Committee has not given any reasons for its recommendations, and among the applicants, other than the recommended candidates, there were senior IAS Officers and Technocrats, who had far more experience in Power Sector, as compared to the recommended candidates, for example (i) Sh. Ram Shubag Singh (IAS); (ii) Sh. Sanjay Gupta (IAS); and (iii) Sh. Prabodh Saxena, IAS (now Retd.) who belonged to the IAS batches of 1987, 1988, and 1990, respectively, whereas the petitioner belongs to the IAS batch of 2014.

22. It has been further submitted on behalf of the respondents that in the course of discharge of his functions, the Chairman of the State Commission is required to regularly coordinate and interact with the Chairman HPSEBL; Chairman HPPCL; Chairman HPTCL and other officers who are of the rank and

status equivalent to the Chief Secretary to the State Government. It is, therefore, imperative that the person holding the office of Chairman HPERC (State Commission) possesses an equivalent stature, standing, and authority, so as to effectively discharge statutory responsibilities and engage with heads of power utilities at the highest level without any institutional or functional incongruity.

23. It has been further submitted that the competent authority, upon noticing the cumulative infirmities in the selection process, namely, absence of recorded reasons, overlooking of Apex Scale officers, eligibility, and failure to ensure compliance with mandatory procedural requirements, rightly exercised its discretion to cancel the selection process in its entirety vide notification dated 30.09.2025, which deserves to be upheld in the eyes of law.

Submissions on behalf of Petitioner:

24. Learned Senior Counsel for the petitioner, referring to Sections 82, 84, and 85 of the Electricity Act, 2003, has submitted that the selection of the Chairman is the function of the Selection Committee, whereas the State Government has only a role for the constitution of the Selection Committee consisting of a person who has been a Judge of the High Court as Chairman, the Chief Secretary of the concerned State, and the Chairman of the Central

Electricity Authority or Chairman of the Central Commission as members. The Selection Committee has to finalize the selection of the Chairman and members within three months and recommend a panel of two names for every vacancy referred to it. Thereafter, the State Government has no option to cancel the process for appointment of Chairman or member only on the ground that the person is not considered suitable by the Government or the Hon'ble Chief Minister, as has been done in the present case, because it is not within the domain of the State to comment upon the suitability of a candidate recommended by the Selection Committee after following due process. The role of selection has been vested exclusively with the Selection Committee, and the Government can choose either of the two names for filling up the vacancy of Chairman or member, but cannot reject the panel on the grounds as enumerated for rejection of the panel and for terminating the selection process in the present case.

25. It has been submitted that under Section 84 of the Electricity Act, 2003, the qualification for appointment of Chairman or member of the State Commission is that he shall be a person of ability, integrity, and standing, having adequate knowledge of, and having shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law, or management.

It has been submitted that a person should have adequate knowledge and capacity in either of the subjects mentioned in the Section—that is, either in engineering, finance, commerce, economics, law, or management. The present petitioner, a Graduate Engineer, with MBA in Finance, has dealt with commercial and economic issues during his postings, has also performed legal functions deciding cases under the Public Premises (Eviction of Unauthorised Occupants) Act, and as on date is performing the job of management in PGIMER, Chandigarh. Therefore, the petitioner, in the wisdom of the Selection Committee, was considered suitable for the post of Chairman along with another person in the panel, and the State has the option to choose either of them instead of rejecting the panel by terminating the selection process.

26. It has been submitted that the reasons mentioned for rejection in the file notings are beautifully vague.

27. It has been submitted that the objection with regard to the irregularity in the process was clarified by the Law Department, and thereafter the process was continued. Furthermore, there is an implied ratification of the advertisement by the Selection Committee, as the Selection Committee had interviewed the persons called who had responded in pursuance of the advertisement for interview.

Thus, this objection already stood overruled, and for that reason alone the Government proceeded further with the process. The plea of procedural irregularity or illegality is therefore a flimsy ground to scuttle the lawful process completed by the Selection Committee.

28. It has been further submitted that seniority has no place in the qualifications prescribed under Section 84(1) of the Electricity Act, 2003. It requires capability, capacity, and adequate knowledge for dealing with problems relating to the subjects contained in that Section. In case seniority were to be considered as an essential qualification and parameter, there was no necessity to summon or call other candidates when three senior IAS officers including (a retired Chief Secretary and the existing Chief Secretary) were in the fray as applicants and aspirants for the post of the Chairman.

29. It has been submitted that for arriving at the decision through impugned notings N-141 to N-146, the initial notings must have been submitted by the Chief Secretary who himself was a candidate.

30. It has been submitted that the Chief Secretary was himself one of the applicants, and when he was not selected, he managed to scuttle the process by using his position in the

Government on the basis of flimsy and irrelevant grounds other than justifiable and legal grounds.

31. It has been submitted by learned Senior Counsel for the petitioner that the reasons assigned in Notes N-142 and N-143 in Annexure P-6 are vague, arbitrary, not applicable in the present case, and irrelevant. The requirement, of being a senior IAS officer or belonging to the apex scale of the IAS cadre, is alien to the eligibility criteria provided under Section 84(1) of the Electricity Act, 2003, and sitting like an appellate authority over the recommendations of the Selection Committee is not within the domain of the Government. Therefore, the objection of the State, that the proceedings of the Selection Committee are non-speaking without disclosing reasons, or arbitrary, is not sustainable.

32. In response to Note N-141, it has been submitted that there is no requirement of exclusive or essential experience in the power sector under Section 84(1) of the Electricity Act, 2003. Different experience in different fields has been recognized as the criteria for becoming eligible to be appointed as Chairman or member of the State Commission, and suitability and eligibility under Section 84(1) is to be assessed by the Selection Committee, and not by the Government.

33. It has been submitted that in view of the vast experience of the petitioner, including deciding 3,000 cases and managing as the apex executive officer of PGIMER, it is indicative that the petitioner is a suitable candidate to be appointed as Chairman. Referring to the details of postings and experience recorded supra, learned Senior Counsel for the petitioner has submitted that the petitioner fulfils the requirements of eligibility under Section 84 of the Electricity Act, 2003, and thus the impugned termination of the selection process is not sustainable, because a valid process cannot be cancelled on the whims and fancies of the concerned authority or the Government.

34. It has been further submitted that the recommendations were made on 14.09.2025, and within one day's time they were rejected and the selection process was terminated illegally.

35. It has been submitted that in the present case there is a statutory selection process provided under the Electricity Act, 2003 through a Selection Committee, which cannot be tinkered with by the Government in conflict with the intention of the lawmakers, who have assigned the selection of the Chairman and members of the Regulatory Commission to a Selection Committee headed by a person who has been a Judge of the High Court. The only exception

is the appointment of a Judge of the High Court as Chairman of the State Commission under Section 84(2), where no process is to be completed through the Selection Committee, and the Government on its own can appoint a person who is or has been a Judge of the High Court as Chairman of the State Commission.

36. It has been submitted that the Government has been given the choice to select either of the two persons recommended by the Selection Committee, but not to reject the panel on the ground of suitability by adjudging the same at the Government level.

Submission on behalf of Respondents-State:

37. It has been submitted by Mr. Rajiv Atma Ram, learned Senior Advocate appearing for the respondents, that who is eligible for the post of Chairman or member of the Regulatory Commission has been provided not only in Section 84, but in Section 85 as well. Section 85(5) provides that before recommending any person, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairman or member, as the case may be. In the present case, this satisfaction was to be ascertained by the Selection Committee before making the recommendation, but no

such satisfaction has been recorded by the Selection Committee, and this defect is incurable.

38. To substantiate his plea, he has placed reliance on the judgment of the Hon'ble Supreme Court in ***Rajesh Awasthi v. Nand Lal Jaiswal and Others,*** **(2013) 1 SCC 501**. Following paras have been referred:-

> "K.S. Radhakrishnan, J.
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> 21. We are of the view that non-compliance of sub-section (5) of Section 85 of the Act is not a procedural violation, as it affects the very substratum of the appointment, being a mandatory requirement to be complied with, by the Selection Committee before recommending a person for the post of Chairman. We are of the view that non-compliance of sub-section (5) of Section 85 of the Act will vitiate the entire selection process since it is intended to be followed before making the recommendation to the State Government. Non-compliance of mandatory requirements results in nullification of the process of selection unless it is shown that performance of that requirement was impossible or it could be statutorily waived. The expression "before recommending any person" clearly indicates that it is a mandatory requirement to be followed by the Selection Committee before recommending the name of any person for the post of Chairman. The expression "before" clearly indicates the intention of the Legislature. The meaning of the expression "before" came for consideration before this Court in State Bank of Travancore v. Mohammad (1981) 4 SCC 82 where the words "any debt due at and before the commencement of this Act to any banking company" as occurring in section 4(1) of the Kerala Agriculturist Debt Relief Act, 1970, were construed by the Supreme Court to mean "any debt due at and before the commencement of this Act". We, therefore, find it difficult to accept the contention of learned senior counsel that this, being a procedural provision and non-compliance of sub-section (5) of Section 85 of the Act, is a defect curable by sending the recommendation back to the Selection Committee for compliance of sub-section (5) of Section 85 of the Act.
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> Judgment
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> Deepak Misra, J.

14. On an x-ray of the Preamble of the Act and the important functions ascribed to the State Commission I have no scintilla of doubt that the selection of Chairman or a member is extremely important, more so, when there is a statutory prescription about the manner in which the Selection Committee is required to act. I may state here that though the language is plain, unambiguous, clear and leads to a singular construction, yet I think it apt to reproduce a passage from **Utkal Contractors Joinery Pvt. Ltd. and others etc. v. State of Orissa and others**, AIR 1987 SC 1454 wherein Chinnappa Reddy, J. has observed thus: -

> "A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important."
>
> (emphasis supplied)

xx xx xx

21. I have referred to the aforesaid authorities singularly for the purpose that regulatory commission is an expert body and in such a situation the selection has to be absolutely in accord with the mandatory procedure as enshrined under Section 85 of the Act.

22. In the present context, it has become necessitous to dwell upon the role of the Selection Committee. Section 85(1) of the Act provides for constitution of Selection Committee to select Members of the State Commission. The said Committee, as the composition would show, is a high powered committee, which has been authorised to adjudge all aspects. I may hasten to add that I am not at all delving into the sphere of suitability of a candidate or the eligibility, for in the case at hand the issue in singularity pertains to total non-compliance of the statutory command as envisaged under Section 85(5).

23. It is seemly to state the aforementioned provision employs the term “recommendation”. While dealing with the concept of recommendation, a three- Judge Bench of this Court in A. Pandurangam Rao v. State of Andhra Pradesh and others[16] has stated that the literal meaning of the word “recommend” is quite simple and it means “suggest as fit for employment”. In the present case the Selection Committee as per the provision was obliged to satisfy itself when the legislature has used the word “satisfied”. It has mandated the Committee to perform an affirmative act. There has to be recording of reasons indicating satisfaction, may be a reasonable one. Absence of recording of satisfaction is contrary to the mandate/command of the law and that makes the decision sensitively susceptible. It has to be borne in mind that in view of the power conferred on the State Commission, responsibility of selection has been conferred on a high powered Selection Committee. The Selection Committee is legally obliged to record that it has been satisfied that the candidate does not have any financial or other interest which is likely to affect prejudicially his functions as Chairman or Member, as the case may be. The said satisfaction has to be reached before recommending any person for appointment. It would not be an exaggeration to state that the abdication of said power tantamounts to breach of Rule of Law because it not only gives a go by to the warrant of law but also creates a dent in the basic index of law. Therefore, the selection is vitiated and it can never come within the realm of curability, for there has been statutory non-compliance from the very inception of selection.

24. It is necessary to state here that in many an enactment the legislature has created regulatory bodies. No one can be oblivious of the fact that in a global economy the trust on the regulators has been accentuated. Credibility of governance to a great extent depends on the functioning of such regulatory bodies and, therefore, their selection has to be in total consonance with the statutory provisions. The same inspires public confidence and helps in systematic growth of economy. Trust in such institutions helps in progress and distrust corrodes it like an incurable malignancy. Progress is achieved when there is good governance and good governance depends on how law is implemented. Keeping in view the objects and reasons and preamble of the Act and the functions of the Commission, it can be stated with certitude that no latitude can be given and laxity can have no allowance when there is total violation of the statutory provision pertaining to selection. It has been said long back “a society is well governed when the people who are in the helm of affairs obey the command of the law”. But, in the case at hand the Selection Committee has failed to obey the mandate of the law as a consequence of which the appellant has been selected and, therefore, in the ultimate eventuate the selection becomes unsustainable.

> 25. It is manifest in the selection of the appellant that there is absence of “intellectual objectivity” in the decision making process. It is to be kept in mind a constructive intellect brings in good rationale and reflects conscious exercise of conferred power. A selection process of this nature has to reflect a combined effect of intellect and industry. It is because when there is a combination of the two, the recommendations as used in the provision not only serves the purpose of a “lamp in the study” but also as a “light house” which is shining, clear and transparent.”

39. Learned Senior Counsel for the respondents has also placed reliance on the judgment of the Hon'ble Supreme Court ***Shailender Kumar Patel vs. State of Chhattisgarh & Ors.***, **Civil Appeal No.238 of 2026** decided on 20.08.2026 (2026 INSC 902). Referred paras are as under:-

> “37. In the backdrop of the above, the following questions arise for consideration before this Court:
>
> i. Whether a candidate selected and recommended by the Commission acquires an indefeasible right to appointment merely by virtue of such selection and recommendation?
>
> ii. Whether, notwithstanding the recommendation made by the Commission, the Respondent-State, as the Appointing Authority, was competent to verify and reassess the Appellant's eligibility prior to issuance of the final appointment order, particularly in view of the stipulation contained in the Commission's communication dated 07.10.2021?
>
> iii. Whether the Appellant fulfils the teaching criteria and whether the findings of the committee as to the eligibility of the Appellant are otherwise legally sustainable?
>
> xx xx xx
>
> 43. It is settled law that a recommended candidate does not have an indefeasible right to appointment and the Appointing Authority retains certain discretion in the matter of appointments. The mere inclusion of a candidate's name in a select list or in a recommendation by the selection body/Commission does not create a vested right to appointment. Selection undoubtedly confers upon the candidate a right to fair, non-arbitrary and

equitable consideration for appointment, but it does not by itself crystallise into an absolute right to be appointed to the post.

xx xx xx

46. This right to reject the recommendation of the Commission can pertain to all stages of the recruitment process, as below:

> (i) Even if the selection process is lawful and the select list is valid, the Appointing Authority can still decline to make an appointment under the select list because of a change in government policy insisting on higher standards of competence. [See State of Haryana v. Subash Chander Marwaha, (1974) 3 SCC 220, wherein it was held that where appointments are made by selection from a number of eligible candidates, it is open to the Government to fix a score which is much higher than the one required for more eligibility, with a view to maintain high standards of competence, as it essentially a matter of administrative policy, and if the State Government thinks that in the interest of judicial competence, persons securing less than 55% of marks in the competitive examination should not be selected for appointment, those who got less than 55% have no right to claim that the selections be made of also those candidates who obtained less than the minimum fixed by the State Government].
>
> (ii) The Appointing Authority can also refuse to make an appointment if the selection process is vitiated by illegalities such as fraud, manipulation, nepotism, leakage of exam papers, rigging of exam results, corruption, adoption of unfair means, etc., the facts of which must be well established.
>
> (iii) The Appointing Authority may decline to appoint any recommended candidate if, on necessary verification of documents, it finds that the candidate is not eligible. We will deal with this issue in detail hereinafter, as this is the principal issue involved in this proceeding.

xx xx xx

53. The Appellant's principal submission is that once the Commission declared him eligible, permitted him to participate in the interview process, and ultimately recommended his name for appointment to the post of Registrar, the issue of eligibility stood conclusively determined by virtue of Rule 10 of the Service Rules, 1983 and could not thereafter be reopened by the Respondent-State. Rule 10 of the Service Rules, 1983, provides as follows:

> “10. Commission's decision about the eligibility of candidates Final.— The decision of the Commission as to the eligibility or otherwise of a candidate for selection shall

> be final and no candidate to whom a certificate of admission has not been issued by the Commission shall be interviewed by them."
>
> xx xx xx

59. The Respondent-State sought to overcome this legal hurdle by contending that the recommendation letter dated 07.10.2021 issued by the Commission contained a stipulation that granted them the authority to re-examine the Appellant's eligibility, which in our view appears to be without any substance. The relevant portion of the communication dated 07.10.2021 of the Commission reads as follows:

> "Before issuing the appointment letter, verification of all original educational certificates and other documents of the candidates and, in case of candidates belonging to the physically handicapped category, their disability certificates, shall compulsorily be undertaken. Further action regarding appointment shall be taken only after verification and satisfaction regarding the eligibility of the candidate for the post."
>
> (emphasis added)

This communication, in our view, has to be read in the light of Rule 10. The words 'verification' and 'satisfaction' in the communication must be understood within the scope of the constitutional scheme and the statutory rules and cannot render Rule 10 redundant or otiose. The executive order cannot have the effect of diluting a statutory provision. We have already held that the Appointing Authority, having final discretion to appoint a recommended candidate, must also be satisfied that the candidate is eligible, as only someone who is eligible can hold a public post.

But as discussed above, such discretion of the Appointing Authority is circumscribed by the constitutional scheme and the relevant statutory provisions. Thus, verification as contemplated under the aforesaid communication could have been undertaken only to verify the genuineness of the documents, or if the Commission had made a patently wrong determination, or if new materials were brought on record clearly showing that the candidate is not eligible.

Thus, if, at the time of verification, it is found that the documents were fraudulently acquired or forged, that there was patent illegality in the determination by the Commission,

> or that new documents or materials emerged that clearly show the candidate is not eligible, the Appointing Authority may decline to accept the Commission's recommendation. But in light of Rule 10, it is not open to them to conduct a de novo examination of the question of eligibility of the Appellant but to refer it back to the Commission. We, therefore, find substance in the Appellant's contention that the Respondent-State lacked the ability to independently reopen the question of eligibility after the same had been verified by the Commission in the light of Rule 10 of the Service Rules, 1983.
>
> We must also note that in respect of other recommended candidates, appointments have been made, thus showing that there were no issues with the selection process. But the appointment of the Appellant was held up, as the Appointing Authority treated him as ineligible. In our view, the Appointing Authority could not have re-determined this aspect at this stage and reject the recommendation for the reasons discussed above.

40. It has been submitted on behalf of the respondents that there is no application of mind by the Selection Committee, as the recommendation does not deal with the eligibility criteria or comparative merits of the 12 candidates, and it is silent about the comparative merits of all candidates, reflecting only two names to be suitable without giving details of the merits of the other candidates.

41. It has been further submitted on behalf of the respondents that the experience of the petitioner prior to 2014 was on posts lower than the IAS cadre post, and therefore that career cannot be treated as the standing of the petitioner.

42. It has been submitted that the petitioner is a Mechanical Engineer, whereas in the Regulatory Commission, experience as an Electrical Engineer would have been relevant so as to handle

situations while performing duties as Chairman of the Regulatory Commission, and thus there is neither ability nor standing of the petitioner to treat him suitable for the post of Chairman. It has been further submitted that standing includes experience as well as seniority, but the same has been ignored by the Selection Committee while recommending the panel of select candidates.

43. In this regard, learned Senior Counsel has referred judgment passed in ***Jitender @ Kalla vs. State (Govt. of NCT of Delhi) and Anr.***, **2025 AIR SC 3124.** Following paras are relevant:-

> "19. The learned Solicitor General appeared on behalf of the Secretary General of the Supreme Court of India, as also in his capacity as the Solicitor General of India. Appearing on behalf of the Secretary General of the Supreme Court of India, the learned counsel took us through Para 74 of the judgement in Indira Jaising-1. He submitted that in the light of the experience gained by the Supreme Court of India, since the designation procedure prescribed in Indira Jaising-1 was conceived, several predicaments have arisen, which show that the system has not yielded the results it intended to achieve. He submitted that the assessment conducted by a permanent committee, as proposed by Indira Jaising-1, should be discontinued. In support of this submission, he relied on Sub-Section (2) Section 16 of the Advocates Act, 1961 which reads thus:
>
> > "Section 16. Senior and other advocates.
> >
> > (1)….
> >
> > (2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, 1[standing at the Bar or special knowledge or experience in law] he is deserving of such distinction"
>
> xx xx xx
>
> 46. Learned counsel Mr. Anilendra Pande, appearing for the Supreme Court Arguing Counsel Association (unregistered), submitted that the designation system should be all-inclusive,

ensuring consideration for Advocates from rural backgrounds, backward classes, and marginalized communities.

xx xx xx

65. We have noted that in Sub-section (2) of Section 16, as it existed prior to 31st January, 1974, the criteria was ability, experience and standing at the Bar. After the amendment with effect from 31st January, 1974, the criterion of ability and standing at the Bar remain. What is added is special knowledge or experience in law. The intention of the Legislature, as reflected in the amendment, is that mere experience in the profession cannot be the criterion. Therefore, the experience simpliciter is done away with and replaced by "experience in law". In the point-based format, 20 points have been provided for practice beyond 20 years and 10 or more points for 10 to 20 years. There is no doubt that no Advocate can be said to have standing contemplated by Sub-section (2) of Section 16, unless he has spent a sufficiently long time in the profession.

66. There can be many members of the Bar who have a long presence in the profession. There are many members of the Bar who continue to practice for a long time, though their appearances are minimal. Only the number of years spent in practice cannot be a major criterion for designation by any stretch of imagination. Let us test with an example i.e. a member of the Bar, who has not performed or is not up to the mark, can get 20 points out of 100 only on the ground that he or she has continued to be a member of the Bar for more than 20 years. Therefore, in our view, assigning points on the basis of experience in terms of the number of years is something which will require reconsideration as it does not serve the object sought to be achieved by this Court. Moreover, the length of practice cannot be a rational criterion. On the contrary, it will help those who do not deserve designation as they will get points on the basis of the number of years in practice.

xx xx xx

75. We have already held in paragraph 60 that considering the object of the exercise undertaken by this Court, the directions issued in Indira Jaising-1 and 2 were never intended to be final. Indira Jaising-1 specifically records need for reconsiderations by suitable additions/deletions in the light of the experience to be gained over a period of time. Even Indira Jaising-2 reiterates this position and holds that the process of improvement is continuous, based on our experience. What we have held in earlier paragraphs shows that the system of 100 point-based assessment has not achieved the desired objectives. Moreover, the experience shows that the points-based assessment is not flawless. We have realized that with experience. Therefore, paragraph 73.7 deserves deletion in exercise of powers reserved in paragraph 74 of Indira Jaising-1 read with paragraph 51 in Indira Jaising-2. When we do this, it will not amount to review or recall of the decisions. After

finding that the point-based assessment is not workable, we will be failing in our duty if we fail to do what we are expected to do in the light of paragraph 74 of Indira Jaising-1.

76. On plain reading of Sub-section (2) of Section 16, the Legislature never contemplated an Advocate making an application seeking designation. The scheme of Sub-section (2) of Section 16 indicates that designation has to be conferred by the Supreme Court or the High Courts. The scheme of Sub-section (2) of Section 16 indicates that an individual Judge of the Supreme Court or the High Court, as the case may be, cannot recommend any Advocate for designation as the decision is a collective decision of the Full Court. Even if an Advocate deserving of a designation does not apply for designation, on the basis of the discussion in the house, the Full Court can always recommend his/her designation, subject to his/her consent. For that purpose, the recommendation in writing of an individual Judge is not warranted.

xx xx xx

80. Another question is whether a number of years of practice or minimum income should be a criterion. It all depends on the situation in every State. If a condition of minimum income is introduced, the process will cease to be inclusive. Income is one of the several factors to be considered. The requirement of a minimum practice of 10 years should be retained as the standing at the Bar can be assessed only if the Advocate has practiced for a reasonably long time.

xx xx xx

87. We, therefore, pass following orders:

(i) We direct that the directions contained in paragraph 73.7 of Indira Jaising-1 as amended by Indira Jaising-2 shall not be implemented."

44. It has been submitted on behalf of the respondents that the Selection Committee cannot determine suitability, as it is the appointing authority which has to determine suitability. In support of this submission, reliance has been placed on the judgments of the

Hon'ble Supreme Court in ***Mahesh Chandra Gupta vs. Union of India & Ors.***, **(2009) 8 SCC 275**. Following judgments are relevant:-

> 39. At this stage, we may state that, there is a basic difference between "eligibility" and "suitability". The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of "suitability". Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under Article 217(2)(b).
>
> 40. This dichotomy between suitability and eligibility finds place in Article 217(1) in juxtaposition to Article 217(2). The word "consultation" finds place in Article 217(1) whereas the word "qualify" finds place in Article 217(2). This dichotomy is succinctly brought out in the Constitutional Law of India by H.M. Seervai, Fourth Edition, at page 2729, which is quoted hereinbelow:-
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> > "From Article 217(1) as enacted in 1950 the following things are clear. First, Art. 217(1) provided for the appointment of only permanent High Court Judges. They were permanent in the sense that they continued to hold their office till they attained the age of 60 years. They were not "permanent" as opposed to Addl. Judges who held office for a period not exceeding 2 years, because in 1950 our Constitution did not provide for Addl. Judges. Secondly, Art. 217(2) prescribed the qualifications which a person must possess before he could be appointed a High Court Judge. Thirdly Art. 217(1) provided the procedure to be followed before a person was appointed a High Court Judge. That procedure was designed to test the fitness of a person to be appointed a High Court Judge: his character, his integrity, and his competence in various branches of the law, and the like. In recruiting a person from the Bar, his experience in different kinds of litigation would also be taken into account. The thing to note is that Art. 217 (1) provides for a once for all test of a person's fitness to be a High Court Judge. A person who has passed that test is subject to no other test of fitness but will continue to hold his office till he attains the age of retirement which had been fixed at 60 years till 1963. But once appointed, his performance on the Bench may be good, bad or indifferent. His judgments and orders may be subject to appeal in High Court, and are certainly subject to appeal to the Supreme Court under Art. 136 if not under other Articles of Chap. IV of part VI."

41. The appointment of a Judge is an executive function of the President. Article 217(1) prescribes the constitutional requirement of "consultation". Fitness of a person to be appointed a Judge of the High Court is evaluated in the consultation process (see Basu's Commentary on the Constitution of India, Sixth Edition, p. 234). Once this dichotomy is kept in mind, then, it becomes clear that evaluation of the worth and merit of a person is a matter entirely different from eligibility of a candidate for elevation. Article 217(2), therefore, prescribes a threshold limit or an entry point for a person to become qualified to be a High Court Judge whereas Article 217(1) provides for a procedure to be followed before a person could be appointed as a High Court Judge, which procedure is designed to test the fitness of a person to be so appointed: his character, his integrity, his competence, his knowledge and the like.

42. Hence, Article 217(1) and Article 217(2) operate in different spheres. Article 217(1) answers the question as to who "should be elevated" whereas Article 217(2) deals with the question as to who "could be elevated". Enrolment of an advocate under the 1961 Act comes in the category of who "could be elevated" whereas the number of years of actual practice put in by a person, which is a significant factor, comes in the category as to who "should be elevated".

43. One more aspect needs to be highlighted. "Eligibility" is an objective factor. Who could be elevated is specifically answered by Article 217(2). When "eligibility" is put in question, it could fall within the scope of judicial review. However, the question as to who should be elevated, which essentially involves the aspect of "suitability", stands excluded from the purview of judicial review.

44. At this stage, we may highlight the fact that there is a vital difference between judicial review and merit review. Consultation, as stated above, forms part of the procedure to test the fitness of a person to be appointed a High Court Judge under Article 217(1). Once there is consultation, the content of that consultation is beyond the scope of judicial review, though lack of effective consultation could fall within the scope of judicial review. This is the basic ratio of the judgment of the Constitutional Bench of this Court in the case of Supreme Court Advocates-on-Record Association (supra) and Re.

45. Lastly, it may also be stated that the present case arises from a writ petition filed under Article 226 of the Constitution by way of a writ of quo warranto and not a writ of certiorari.

Significance of Explanation (a) and Explanation (aa) inserted in Article 217(2) vide Forty-fourth Constitutional Amendment Act.

46. One of the questions which arises for determination before us is: whether by insertion of Explanation (aa) appended to Article 217(2)(b), the effect of judgment of this Court in Prof. C.P.

Agarwal's case (supra) stands nullified? To answer the above question, we need to refer to Article 124(3) (which has been quoted hereinabove).

47. Article 124 deals with establishment and Constitution of Supreme Court. Article 124(3) prescribes qualifications for appointment of a person as a Judge of the Supreme Court. Article 124(3)(b) inter alia states that a person shall not be qualified for appointment as a Judge of the Supreme Court unless he has been for at least 10 years an advocate of a High Court. This sub-clause has to be read with Explanation-II which is similar to Explanation (aa) appended to Article 217(2)(b).

48. Commenting on Explanation-II, H.M. Seervai in Constitutional Law of India, First Edition, p. 1012, has this to say:

> "The qualification for appointment as a judge of the Supreme Court is the holding of a judge's office for at least five years in a High Court or in two or more High Courts in succession; or at least ten years' standing as an advocate of a High Court or two or more High Courts in succession; or distinction achieved as a jurist [Art. 124(3)]. In computing the period during which a person has been an advocate, any period during which he has held judicial office not inferior to that of a District Judge after he become an advocate, is to be included [Art. 124 (3) Expl. II]. It is clear that the explanation is not attracted if a person has been an advocate for ten years before accepting any judicial appointment, for that by itself is a sufficient qualification for appointment as a judge of the Supreme Court."
>
> (emphasis supplied)

49. In our view, Explanation (aa) appended to Article 217(2) is so appended so as to compute the period during which a person has been an advocate, any period during which he has held the Office of a Member of a Tribunal after he became an advocate. As stated by the learned Author, quoted above, if a person has been an advocate for ten years before becoming a member of the Tribunal, Explanation (aa) would not be attracted because being an advocate for ten years per se would constitute sufficient qualification for appointment as a Judge of the High Court.

50. Before concluding on this point, we may state that the word "standing" connotes the years in which a person is entitled to practice and not the actual years put in by a person in practice (see Halsbury's Laws of England, Fourth Edition Reissue, Volume 3(1), paragraphs 351 and 394 of the Chapter under the Heading `Barristers'.) Under Section 220(3)(a) of the Government of India Act, 1935, qualifications were prescribed for appointment as a Judge of a High Court. A Barrister of at least ten years standing

> was qualified to be appointed as a Judge of the High Court. As stated above, the word `standing' connotes the years in which a person is entitled to practice, not the actual years put in by that person in practice.
>
> 51. In Re. Lily Isabel Thomas reported in AIR 1964 SC 855 this Court equated "right to practice" with "entitlement to practice" (see para 11). In our view, Article 217(2)(b), therefore, prescribes a qualification for being appointed a Judge of the High Court. The concept of "actual practice" will fall under Article 217(1) whereas the concept of right to practice or entitlement to practice will fall under Article 217(2)(b). The former will come in the category of "suitability, the latter will come in the category of "eligibility".

45. Learned Senior Counsel for the respondents has also placed reliance on the judgment of the Hon'ble Supreme Court ***Union of India vs. Maj. Gen. Manomoy Ganguly,*** **2018(9) SCC 65**. Relevant paras are as under:-

> 40. When we read the aforesaid para (i) as a whole, we find force in the submission of the appellant that the word ‘inter se’ applies both to seniority as well as suitability. Therefore, ‘inter se suitability’ is also to be assessed inasmuch as this assessment is ‘in the light of their earlier experience of serving in a particular service’. As far as consideration on the parameters of ‘inter se seniority’ is concerned, it would mean that a person who is senior gets precedence. To this extent, there is no quarrel. Question is as to what meaning is to be assigned to ‘inter se suitability’. Two questions arise from the above. First, what is the meaning of ‘suitability’. Second, how the expression ‘inter se suitability’ is to be construed, i.e. whether it should be understood as choosing a ‘more suitable’ officer for appointment as DGsMS. As far as inter se suitability is concerned, all the eligible officers in the rank of Lt. General (& Equiv), having regard to their earlier experience of serving in particular services, they are to be considered for appointment as DGsMS of services (i.e. DGMS (Army)).
>
> 41. Let us first consider the meaning of ‘suitability’.
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> 42. In English parlance, the word ‘suitable’ is assigned the meaning as ‘appropriate, fitted for the purpose or acceptable’. The concise Oxford Dictionary defines the word suitable as ‘well fitted for the purpose; appropriate’. This ordinary meaning is to be given effect to as a general guide, unless this expression is given special meaning in a statute or rule in administrative instructions. In R (Quintavalle) v. Human Fertilisation Authority7, the House of Lords

remarked that “the word ‘suitability’ is an empty vessel which is filled with meaning by context and background.

43. In service jurisprudence, where the word ‘suitable’ is normally examined from the point of view as to whether a particular person is suitable to hold a particular post, it is construed as ‘fit’ to hold that post. It would mean that the job profile and job requirement of a particular post would be seen and then, going by the calibre, competence, attributes, skill and experience of the candidate, it would be ascertained as to whether such a person would be able to discharge the duties of the post i.e. whether he is suited to carry out the functions of the post, to the satisfaction of his employer.

44. It, thus, follows from the above that the person to be eligible should quality the following conditions:

(i) the officer should be in the rank of Lt. General (& Equiv);

(ii) such an officer should be holding the post of Comdt AM 7 (2005) UKHL 28 C&C; and

(iii) he should have a minimum remainder service of one year from the date of occurrence of the vacancy.

45. Adverting to the second question, the prefix ‘inter se’ has also to be given some meaning as it cannot be rendered otiose. Therefore, whereas while assessing ‘suitability’, it has to be seen that a particular officer is not unfit for the post, when it comes to ‘inter se suitability’, it has reference to assessing the suitability of all eligible officers and thereafter finding who is more suitable to occupy such a post. We have to keep in mind that these are very high ranking posts and, therefore, the competent authority is supposed to choose a more suitable officer for such posts. We are of the opinion that for expressing such an intention, the Circular could have been worded more appropriately and with clarity to avoid such doubts. However, since the word ‘inter se’ is used, it implies that the intention behind laying down this criteria was to give these posts to a better suited person after evaluating their inter se suitability. Of course, while doing this exercise seniority of an officer is also to be given due weightage, meaning thereby if the senior most person is competent to hold the post, he is to be given preference. Therefore, we conclude that the view of the AFT that the post of DGMS (Army) is to be filled by the officer on the strength of ‘seniority-cum-suitability’, where seniority is a decisive factor and suitability is a secondary factor, is not correct. In the entire discussion resting with the aforesaid view, the Tribunal ignored the fact that it is not only seniority and suitability simpliciter but ‘inter se’ seniority and suitability. The expression ‘inter se’ is totally ignored and there is no discussion thereupon at all, which has led the AFT to take wrong view insofar as interpretation of the

> criteria laid down in the Circular dated 10 th July, 1992 is concerned, which talks of 'inter se seniority and suitability'.

46. It has been submitted on behalf of the respondents that suitability is not justiciable, as eligibility is to be determined objectively, whereas suitability is subjective. Determination of suitability depends upon subjective satisfaction, and therefore the subjective satisfaction of the appointing authority cannot be questioned in judicial review. Judicial review can lie against a decision determining eligibility, but suitability, being determined on subjective satisfaction, cannot be subjected to judicial review, particularly when reasons for rejection are assigned and contained in Annexure P-6, and in the recommendations (Annexure P-5) the satisfaction of the Selection Committee as required under Section 85(5) is absent, and no reasons have been given for ignoring senior IAS officers and including the petitioner and another person of lower standing in the select panel.

47. It has also been contended on behalf of the respondents that the application of the petitioner was required to be routed through the Government of India, but it was directly sent to the Secretary (Personnel) to the Government of Himachal Pradesh, and therefore, for not submitting the application through proper channel, the application of the petitioner was liable to be rejected.

48. Lastly, it has been submitted on behalf of the respondents that the Government is not a post office. There were three senior IAS officers belonging to the batches of 1987, 1988, and 1990 having experience of manning the post of Chief Secretary, whereas the petitioner is an IAS officer of the 2014 batch having lesser experience than the other senior IAS officers. As there was no standard, no determination of eligibility, no verification and satisfaction under Section 85(5) of the Act, no criteria, no comparison of inter se merit, and no basis for making recommendations in the select list, the recommendations were not deserving of acceptance. Since the Government has the right to assess suitability before making an appointment, the impugned rejection of the select panel and termination of the process for appointment of Chairman of the State Commission deserves to be sustained, as no ground has been made out for judicial review of the impugned decision.

49. To substantiate the plea that mere selection does not confer any indefeasible legal right for appointment, the respondents have placed reliance on the pronouncements of the Apex Court in ***Dr. Rai Shavendra Bahadur vs. Governing Body,*** **AIR 1962 SC 1210**; ***State of Haryana vs. Subhash Chander Marwaha,*** **(1974) 3 SCC 220**; ***Mani Subrat Jain vs. State of Haryana,*** **(1977) 1 SCC**

486. It has been further submitted that the judgments referred to by the petitioner in ***Shankarsan Dash vs. Union of India,*** **(1991) 3 SCC 47**, ***R.S. Mittal vs. Union of India***, **(1995) Supp. 2 SCC Pg. 230**; ***Dinesh Kumar Kashyap vs. South East Central Railway,*** **(2019) 12 SCC 798**, and ***State of Assam vs. Arabinda Rabha*****, (2025) 7 SCC 705**, in fact, support the respondents instead of the petitioner.

Rebuttal on behalf of Petitioner:

50. In response, learned Senior Counsel for the petitioner has submitted that standing means holding some substantial position, and the petitioner is not ineligible for having lower seniority than other candidates. The Selection Committee is not required to give reasons for the suitability of the recommended panel or non-suitability of others, nor can the basis or criteria of suitability be questioned on that ground.

51. In rejoinder, Mr. Patwalia, learned Senior Counsel for the petitioner, has submitted that the role of the Selection Committee is to determine suitability, and such role cannot be assumed by the Government under the garb of its decision-making power as the appointing authority. The selection is finalized under Section 85(3) and the panel is recommended under Section 85(4), and the

Government has to select one of the persons recommended in the panel unless there is patent illegality on the face of it. In any case, the Government cannot usurp the role of determining suitability, which has been assigned to the Selection Committee. In the present case, rejecting the panel recommended by the Selection Committee headed by a retired Judge of the High Court does violence to the Act. The State is considering itself as an appellate authority, which is impermissible under the scheme of the Act. Permitting the State to continue with its decision would amount to rewriting the statute by the Government, whereas the statute has vested the power of selection of two persons to be recommended in the panel in the Selection Committee.

52. To substantiate the plea raised on behalf of the petitioner, reliance has been placed ***Dalpat Abasabeh Solunke and Ors. vs. Dr. B.S. Mahajan & Ors*., (1990) 1 SCC 305**. Following are the referred paras:-

> 12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candida tes. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can

> be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

53. Learned Senior Counsel for the petitioner has also placed reliance on the judgment of the Hon'ble Supreme in ***East Coast Railway & Anr. vs. Mahadev Appa Rao & Ors., (2010) 7 SCC 678***. Referred paras are as under:-

> "8. The High Court was also of the view that no reasons for cancellation of the test having been recorded even on the file contemporaneously maintained for that purpose, the same could not be supplied in the affidavit filed in reply to the Writ Petition challenging the said order, especially when the cancellation of the test was not according to the High Court necessitated by any irregularity in the conduct of the test or any mala fides vitiating the same. In the absence of any such infirmity the cancellation of the examination was arbitrary and unsustainable, declared the High Court.
>
> 9. 8. There is no quarrel with the well-settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the Court where the validity of any such order is under challenge. The legal position in this regard is settled by the decisions of this Court in Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC 16) wherein this Court observed :
>
> > "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant

> to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. "
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> xx xx xx
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> 14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter."

54. Learned Senior Counsel for the petitioner has also placed reliance on the judgment of the Hon'ble Supreme in ***Shankasan Dash Vs. UOI (Shankarsan Dash Vs. Union of India),*** reported in **(1991) 3 SCC 47**. Referred paras are as under:-

> 7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899.

8. In State of Haryana v. Subhash Chander Marwaha and Others, (supra) 15 vacancies of Subordinate Judges were advertised, and out of the selection list only 7, who had secured more than 55% marks, were appointed, although under the relevant rules the eligibility condition required only 45% marks. Since the High Court had recommended earlier, to the Punjab Government that only the candidates securing 55% marks or more should be appointed as Subordinate Judges, the other candidates included in the select list were not appointed. They filed a writ petition before the High Court claiming a right of being appointed on the ground that vacancies existed and they were qualified and were found suitable. The writ application was allowed. While reversing the decision of the High Court, it was observed by this Court that it was open to the Government to decide how MANY appointments should be made and although the High Court had appreciated the position correctly, it had ``somehow persuaded itself to spell out a right in the candidates because in fact there were 15 vacancies''. It was expressly ruled that the existence of vacancies does not give a legal right to a selected candidate. Similarly, the claim of some of the candidates selected for appointment, who were petitioners in Jitendra Kumar and Others v. State of Punjab and Others, was turned down holding that it was open to the Government to decide how many appointments would be made. The plea of arbitrariness was rejected in view of the facts of the case and it was had that the candidates did not acquire any right merely by applying for selection or even after selection. It is true that the claim of the petitioner in the case of Miss Neelima Shangla v. State of Haryana was allowed by this Court but, not on the ground that she had acquired any right by her selection and existence of vacancies. The fact was that the matter had been referred to the Public Service Commission which sent to the Government only the names of 17 candidates belonging to the general category on the assumption that only 17 posts were to be filled up. The Government accordingly made only 17 appointments and stated before the Court that they were unable to select and appoint more candidates as the Commission had not recommended any other candidate. In this background it was observed that it is, of course, open to the Government not to fill up all the vacancies for a valid reason, but the selection cannot be arbitrarily restricted to a few candidates notwithstanding the number of vacancies and the availability of qualified candidates; and there must be a conscious application of mind by the Government and the High Court before the number of persons selected for appointment is restricted. The fact that it was not for the Public Service Commission to take a decision in this regard was emphasised in this judgment. None of these decisions, therefore, supports the appellant.

55. Learned Senior Counsel for the petitioner has also placed reliance on the judgment of the Hon'ble Supreme in ***R.S. Mittal Vs. Union of India***, reported in **1995 Supp (2) SCC 230**. Referred para is as under:-

> 10. xx xx xx
>
> It is no doubt correct that a person on the select- panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select-panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select-panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgod within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.

56. Learned Senior Counsel for the petitioner has submitted that the Hon'ble Supreme in ***K. Manjusree Vs. State of Andhra Pradesh & Anr.***, reported in **(2008) 3 SCC 512** has held that changing the rules of the game after the game was played, is impermissible and deprives the candidates of their legitimate right of the consideration under the previous Rules. It has been submitted that same preposition has been reiterated by the Hon’ble Apex Court

Shashi Bhushan Prasad vs. State of Bihar & Ors., SLP(Civil) No.7527 of 2023.

57. In ***Sivananda C.T. & Ors. vs. High Court of Kerala & Ors,*** **(2024) 3 SCC 214**, it has been contended by the Hon'ble Supreme Court that an individual who claim benefit or entitlement based on the doctrine of legitimate expectation has to establish: (i) The legitimacy of the expectation and (ii) that denial of legitimate expectation led to violation of Article 14. The principles of good administration require that the decision of public authorities must withstand the test of consistency, transparency and predictability to avoid being termed as arbitrary and violative Article 14. Further a Public Authority must objectively demonstrate by placing relevant material before the court that its decision was in the public interest but not to frustrate a claim of legitimate expectation.

58. Learned Senior Counsel for the petitioner has also placed reliance on the judgment of the Hon'ble Supreme in ***Tej Prakash Pathak vs. Rajasthan High Court,*** **(2025) 2 SCC 1**. Referred paras are as under:-

> 21. To effectively analyse and adjudicate upon the questions referred, we would divide our discussion into following parts:
>
> 21.1 (a) When the recruitment process commences and comes to an end;

22.2(b) Basis of the doctrine that 'rules of the game' must not be changed during the course of the game, or after the game is played;

22.3(c) Whether the decision in K. Manjusree (supra) is at variance with earlier precedents on the subject;

22.4(d) Whether the above doctrine applies with equal strictness qua method or procedure for selection as it does qua eligibility criteria;

22.5(e) Whether procedure for selection stipulated by Act or Rules framed either under the proviso to Article 30910 of the Constitution or a Statute could be given a go-bye;

22.6(f) Whether appointment could be denied by change in the eligibility criteria after the game is played.

xx xx xx

39. The law in this regard is already settled by a Constitution Bench of this Court in Shankarsan Dash in the following terms:

> "7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted".

xx xx xx

63. In Section (C) above, we have already noticed the Constitution Bench decision of this Court in Shankarsan Das (supra) where it was held:

> "7. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the license of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

> 64. Thus, in light of the decision in Shankarsan Das (supra), a candidate placed in the select list gets no indefeasible right to be appointed even if vacancies are available. Similar was the view taken by this Court in Subash Chander Marwaha (supra) where against 15 vacancies only top 7 from the select list were appointed. But there is a caveat. The State or its instrumentality cannot arbitrarily deny appointment to a selected candidate. Therefore, when a challenge is laid to State's action in respect of denying appointment to a selected candidate, the burden is on the State to justify its decision for not making appointment from the Select List.
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> xx xx xx
>
> 65.6 Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.

59. Learned Senior Counsel for the petitioner has also placed reliance on the judgment of the Hon'ble Supreme in ***State of Assam & Ors. vs. Arabinda Rabha & Ors.,*** **(2025) 7 SCC 705**. Referred paras are as under:-

> 59. We are conscious of the line of decisions of this Court and have noted some of them here, which lay down the law that mere empanelment/enlistment does not result in accrual of any indefeasible right in favour of such empanelled/selected candidate as well as the law that the employer may, in its wisdom, either decide to cancel the select list or not carry on the process further resulting in the notified/advertised vacancy/vacancies not being filled up pursuant to the selection process, which has been conducted. What it means is that an empanelled/selected candidate can claim no right of appointment, if the State has cogent and germane grounds for not making the appointment. However, at the same time, it is also the law that the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. Shankarsan Das (supra) cautions that the State has no licence to act in an arbitrary manner. In R.S. Mittal v. Union of India19, a coordinate bench held that when a person has been selected by the Selection Board and 1995 Supp (2) SCC 230 there is a vacancy which can be offered to him, keeping in

> view his merit position, then, ordinarily, there is no justification to ignore him for appointment and that there has to be a justifiable reason to decline to appoint a person who is on the select panel. The position in law finds reiteration in a decision of recent origin in Dinesh Kumar Kashyap v. South East Central Railway20, where the majority held that the employer must give cogent reasons for not appointing selected candidates.
>
> 60. Any decision taken not to appoint despite there being vacancies and a valid select list, obviously, is in the nature of a policy decision. It has to be borne in mind that securing public employment is the dream of many, who put their heart and soul to prepare for it. Nowadays, aspirants undertake rigorous study sessions as well as training modules to equip themselves, which also comes at a heavy cost. That apart, since every process of recruitment necessarily involves substantial expenses which are borne from the public exchequer and at the same time the aspirants for the posts (who, as per their own estimation, have performed sufficiently well and therefore stand a good chance of being appointed upon figuring in the select list) cherish fond hopes of a bright and secure future, the law is clear that the policy decision not to carry the process forward must be taken bona fide, there has to be justifiable reason if the (2019) 12 SCC 798 process is abandoned mid-way, and such decision must not suffer from the vice of arbitrariness or the whims of the decision maker. This acts as a check on the employer's power deciding against not making any appointment from the select list despite availability of vacancy/vacancies on the advertised/notified public post(s). A writ court may, upon reaching the requisite satisfaction, intervene in such manner and make such directions as the facts and circumstances warrant. We, therefore, do not find it acceptable that the aspirants, not having an indefeasible or vested right of appointment, do not also have the right to question any decision adverse to their interest affecting achievement of their goals to secure public employment. Whether, and to what extent, any relief should be granted, must depend on the facts of each case.

Relevant Provisions of Electricity Act, 2003:

60. Before proceeding further, the relevant provisions of Sections 82, 84, and 85 of the Electricity Act, 2003, relevant for consideration of the issues involved in the petition, read as under:-

> **Section 82. (Constitution of State Commission)**: --- **(1) Every State Government shall, within six months from the**

appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:

Provided that the State Electricity Regulatory Commission, established by a State Government under section 17 of the Electricity Regulatory Commissions Act, 1998 and the enactments specified in the Schedule, and functioning as such immediately before the appointed date, shall be the State Commission for the purposes of this Act and the Chairman, Members, Secretary, and other officers and other employees thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts:

Provided further that the Chairman and other Members of the State Commission appointed, before the commencement of this Act under the Electricity Regulatory Commissions Act, 1998 or under the enactments specified in the Schedule, may on the recommendations of the Selection Committee constituted under sub-section (1) of Section 85 be allowed to opt for the terms and conditions under this Act by the concerned State Government.

(2) The State Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the State Commission shall be at such place as the State Government may, by notification, specify.

(4) The State Commission shall consist of not more than three Members, including the Chairman.

(5) The Chairman and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee referred to in section 85.

xx xx xx

Section 84. (Qualifications for appointment of Chairman and Members of State Commission): --- **(1) The Chairman and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management**.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairman from amongst persons who is, or has been, a Judge of a High Court: Provided that no appointment under this sub-section shall

be made except after consultation with the Chief Justice of that High Court.

(3) The Chairman or any other Member of the State Commission shall not hold any other office.

(4) The Chairman shall be the Chief Executive of the State Commission.

Section 85. (Constitution of Selection Committee to select Members of State Commission): --- **(1) The State Government shall, for the purposes of selecting the Members of the State Commission, constitute a Selection Committee consisting of –**

(a) a person who has been a Judge of the High Court…. Chairman;

(b) the Chief Secretary of the concerned State……. ….Member; (c) the Chairman of the Authority or the Chairman of the Central Commission …….. Member:

Provided that nothing contained in this section shall apply to the appointment of a person as the Chairman who is or has been a Judge of the High Court.

(2) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairman or a Member and six months before the superannuation or end of tenure of the Chairman or Member, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the Chairman and Members within three months from the date on which the reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) Before recommending any person for appointment as the Chairman or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairman or Member, as the case may be.

(6) No appointment of Chairman or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.

Consideration, Analysis and Conclusion:

61. One ground cited for rejecting the panel as recommended is that there were complaints regarding the process adopted for the notification and advertisement issued, as well as other legal and technical matters brought on record. However, except citing solitary ground, regarding requirement of ratification of advertisement by Selection Committee, no other complaint has been referred to in the reply or brought on record. The irregularity brought on record is that the Selection Committee was constituted after advertising the post, whereas the Selection Committee had to be formed first, the vacancies were to be referred to the Selection Committee, and thereafter the advertisement was to be issued. It was asserted that since the advertisement had already been issued, the same had to be ratified by the Selection Committee, and thus there was a procedural error with regard to the issuance of the advertisement, which, as per the advice of the Law Department, could be ratified by the Selection Committee; however, the Committee did not ratify the same, and therefore the procedural error remained in the selection proceedings.

62. As evident from the reply itself, in Section 85 of the Electricity Act, 2003, there is no provision directing the constitution

of the Selection Committee prior to the advertisement of the post. There is only a provision that the State Government shall make a reference to the Selection Committee for filling up the vacancy within one month from the occurrence of any vacancy by reason of death, resignation, or removal of the Chairman or member, and six months before the superannuation or end of tenure of the Chairman or member, whereupon the Selection Committee shall finalize the selection of the Chairman or member within three months from the date on which reference is made to it.

63. There is no specific provision warranting the constitution of the Selection Committee first and thereafter advertising the post. Even otherwise, such a defect cannot be a ground for rejection of the panel when the Government itself permitted the continuation of the process by constituting the Selection Committee, and thereafter the Selection Committee considered the applications received in pursuance of the advertisement published prior to its constitution, which amounts to ratification of the advertisement by the Selection Committee. Had there been any objection on the part of the Selection Committee regarding the advertisement of the post prior to its constitution, or any reservation in proceeding further in furtherance of the said advertisement, the Selection Committee would not have considered the applications placed before it by the

Secretary (Power) to the Government of Himachal Pradesh received in response to the advertisement in reference.

64. It is also apt to record that this discrepancy, if so considered, was well within the knowledge of the Government, and the matter was referred to the Law Department, which had opined that this defect was curable by ratification of the advertisement by the Selection Committee. There is an implied ratification of the advertisement expressed in conduct by the Selection Committee. In case the State was still considering it a serious defect, it ought to have withdrawn the advertisement so as to enable the Selection Committee to issue a fresh advertisement. But that was not done. Now, after the completion of the selection process, such a curable defect cannot be taken as a ground for rejection of the panel recommended by the Selection Committee, solely for the reason that the persons so recommended are not being considered suitable by the Government, which is not within the domain of the Government. Therefore, the plea justifying the rejection of the panel on this ground is not only a vague excuse, but arbitrary in nature, and thus not sustainable.

65. The plea of the respondents that no criteria was applied and no reasons were assigned for the recommendations is also

contrary to the record. From the proceedings of the meeting held on 14.09.2025, whereby the panel of two candidates, as required under Section 85(4) of 2003 Act, was recommended by the Committee, it is clearly evident that the Selection Committee recommended the names after examination of the educational qualifications and experience of the 12 candidates who appeared before it, interaction with them, due assessment of their abilities and knowledge, and after due deliberations, keeping in view the requirements prescribed under Section 84(1) of the Act, as well as the particulars furnished by the candidates in their bio-data submitted along with their applications in response to the advertisement.

66. Under the Electricity Act, 2003, there is no requirement to submit a result sheet showing the comparative merit of all applicants along with the recommendations. Section 85(4) of the Act provides that the Selection Committee shall recommend a panel of two names for every vacancy referred to it. It does not mandate that the Selection Committee shall submit complete details of the comparative merit of all candidates who appeared before it.

67. With regard to the recording of satisfaction under Section 85(5) of the Act concerning any financial or other interest likely to affect prejudicially the functions of the selected candidate as

Chairman or member of the State Commission, there is an unambiguous and clear reference in the proceedings recommending the names of the selected candidates, stating that it was apprised to the Committee that the candidates had submitted declarations in the form of undertakings along with their applications to the effect that they did not have any financial or other interest likely to affect prejudicially their functions as Chairman of the State Commission. It was duly recorded by the Committee that all applicants had submitted their applications along with the requisite declarations. The recommendations were arrived at after perusal of the applications submitted by the applicants, with reference to the particulars furnished in their applications including bio-data, and the declarations submitted along with the applications. Thus, on this count as well, no ground is made out for rejection of the panel recommended by the Selection Committee.

68. Moreover, aforesaid ground has been taken for the first time in the reply filed by the respondents. It does not find mention either in Annexure P-6 or in the impugned notification (Annexure P-4). Therefore, this objection appears to be an afterthought in order to justify the rejection of the panel recommended by the Selection Committee, and is not available to the respondents to justify their decision of terminating the selection process.

69. Section 84(1) of the Electricity Act, 2003 prescribes the eligibility criteria and qualifications for appointment of the Chairman, which does not restrict the field of knowledge or capacity in dealing with problems relating to electricity generation, transmission, or supply only; rather, it provides that adequate knowledge and capacity in dealing with problems relating to engineering, finance, commerce, economics, law, or management shall be the qualification for such appointment, along with ability, integrity, and standing. Therefore, the plea of the respondents that the petitioner was not having experience in the power sector and thus was not suitable is misconceived. Had such been the intention of the legislature, it would have been specifically provided in this Section that only persons having experience, adequate knowledge, and capacity in the field of the power sector shall be eligible to be appointed as Chairman of the State Commission. In such an eventuality, as provided under Section 84(2), no person who is or has been a Judge of the High Court could ever have been appointed as Chairman of the State Commission, whereas, as informed during arguments, in a number of States, persons who have been Judges of the High Court have indeed been appointed as Chairmans. Their eligibility and qualification to be appointed as Chairman is drawn from Section 84(1), which provides "law" as one of the distinct fields

in which adequate knowledge and capacity to deal with problems is sufficient for appointment as Chairman of the State Commission.

70. No doubt, along with other requisite qualifications, ability, integrity, and standing are also mandatory requirements for appointment. However, this provision nowhere provides that only senior scale IAS officers shall possess ability, integrity, and standing. Had it been so, it would have been specifically provided in the Section, and the advertisement would have been published inviting applications exclusively from senior IAS officers serving in the senior/Apex scale or higher posts of the administration. It is another issue as to whether such senior IAS officers would necessarily have adequate knowledge or capacity to deal with problems relating to the power sector.

71. The judgments referred to on behalf of the respondents with regard to standing on the basis of seniority are misconceived and not applicable to the present case. In the present case, eligibility has to be considered and determined strictly on the basis of the provisions of Section 84(1) of the Act, whereas in the judgments referred to by the respondents, there were specific statutory rules providing for taking into consideration seniority for determining

suitability, eligibility, and standing for appointment to a particular post.

72. In view of the eligibility and qualifications prescribed for appointment as Chairman and member of the State Commission, the ground for rejection of the panel on the premise that earlier this position was manned by apex scale IAS officers having experience in policy making, or by senior technocrats with full exposure to policy matters in the electricity sector, cannot be a valid ground for rejection of the select panel. Similarly, the fact that the previous Chairman of the Commission was Chairman of the Bhakra Beas Management Board (BBMB) before assuming charge of Chairman of the State Commission is not a valid ground, but rather an arbitrary excuse to reject the recommendations of the Selection Committee. Neither in the advertisement nor in the provisions of the Act is there any such requirement as has been referred to in Note N-143 of Annexure P-6.

73. Section 84(1) of the Act does not contemplate the appointment of Chairman only from amongst senior officers, apex scale IAS officers, senior technocrats, or persons who have remained heads of certain institutions prior to assuming charge of the State Commission. Had that been the intention, the legislature would have incorporated a specific clause under Section 84

providing that senior officers shall be given preference for appointment as Chairman of the State Commission. That is not the intent of the Act.

74. The rejection of the select panel on the ground that the recommended candidate does not enjoy the status of those who held the position in the past is arbitrary.

75. Applications for appointment of Chairman/member of State Commission are invited from the open market, and it is erroneous to presume that senior officers with more years of experience would necessarily possess more knowledge or capacity than junior officers with experience of lesser period. There may be Secretary-level officers or officers who have served in high-ranking positions for longer period, but not possessing adequate knowledge or capacity to deal with problems relating to engineering, finance, commerce, economics, law, or management, whereas there may be relatively junior officers with experience with lesser period, but possessing adequate knowledge and capacity to deal with such problems.

76. Length of experience/standing does not matter as a standalone metric in the field of knowledge. What matters is how much the subject matter has been understood by the person.

Similarly, seniority in service or age of person is also not only a basic parameter to assess his standing, adequate knowledge and/or capacity to deal with issues/subject matter/problems, related to relevant field(s). It may be a relevant factor but cannot be sole criteria.

77. Practical skill, adaptability and proven impact outweigh time based tenure. In a classic Advaita Vedanta text, the Ashtavakra Geeta, this core philosophy is beautifully illustrated during conversation between Ashtavakra and King Janaka by the statement that true wisdom is not measured by the greyness of one's hair but by the clarity of one's understanding. A young person can possess more knowledge and capability, while an elder may not acquire that much despite more length of experience.

78. The scheme for constitution of the State Commission, including the appointment of the Chairman and its members, clearly indicates that the Legislature has vested the task of selection in the Selection Committee constituted under Section 85(1) of the Act. Section 82 provides for the constitution of the State Commission consisting of not more than three members, including the Chairman, with the further provision under Section 82(5) that the Chairman and members of the State Commission shall be appointed by the State

Government, but on the recommendations of the Selection Committee referred to in Section 85. The appointing authority is the State Government, but the selection of the Chairman and members has been entrusted to the Selection Committee.

79. Section 85(1) provides for the constitution of a Selection Committee headed by a person who has been a Judge of the High Court as Chairman, with two members—namely, the Chief Secretary of the concerned State and the Chairman of the Central Electricity Authority or Chairman of the Central Commission. As provided under Section 82(4), the Commission shall consist of not more than three members, meaning thereby that the Commission can be a single-member Commission or have two members only, as there is an upper cap on the number of members including the Chairman, but no minimum strength has been prescribed under the Act.

80. It is also apt to record that Section 85(6) provides that no appointment of Chairman or other member shall be invalid merely by reason of any vacancy in the Selection Committee. Once constituted, the Selection Committee does not suffer any invalidity in recommending a panel for appointment merely because there was a vacancy. In the present case, the Committee was constituted consisting of a retired Judge of the High Court as Chairman, and the

Chief Secretary of the State and the Chairman of the Central Electricity Authority as members. Since the Chief Secretary was himself an applicant and aspirant for appointment as Chairman, as informed, he recused himself from the proceedings of the Selection Committee. In view of the express provisions of Section 85(6), the recommendations made by the Selection Committee were and are valid.

81. Section 85(4) provides that the Selection Committee shall recommend a panel of two names for every vacancy referred to it. Thereafter, as provided under Section 82(5), the Chairman or member, as the case may be, of the State Commission shall be appointed by the State Government. The Act nowhere provides for the rejection of a recommended panel, made by the Selection Committee after adopting due process in terms of the Act and taking into consideration the qualifications provided under Section 84(1).

82. The scheme of the Act clearly indicates that the Government has no role in determining the suitability of a candidate. No doubt, the Government can question a recommendation if an ineligible candidate is recommended by the Selection Committee. However, the domain to judge the suitability of persons to be included in the panel for recommendation of appointment as

Chairman or member of the State Commission vests exclusively in the Selection Committee. By making a provision for appointing a person who has been a Judge of the High Court as Chairman of the Selection Committee, statutory sanctity has been attached to the selection process completed by it.

83. The Act nowhere provides that the Government can refer back the panel recommended by the Selection Committee or reject it on the ground that, in the opinion of the Government, there were other senior persons, (including its former or present Chief Secretaries), senior to the person recommended who were not included in the panel. The intention of the Legislature is not to appoint the Chairman and members of the State Commission at the whims, fancies, or liking of the State Government; and therefore, that power has been vested in the Selection Committee.

84. The impugned decision of the Government is not based on legal and valid grounds, and has been arrived at on the misconceived notion that it can sit over the recommendations as an appellate authority to comment upon and redetermine the suitability of candidates by referring to their seniority, higher pay scale, or higher positions than the persons recommended by the Selection Committee.

85. From the minutes of the Selection Committee, it is evident that the Committee considered every aspect related to candidates like bio-data, educational qualifications, experience, knowledge, assessment of abilities, capabilities and knowledge during interactions and through due deliberations, as well as the undertakings and declarations submitted by the applicants as required under the Act, including the recommended candidates. While eligibility can be considered on the basis of set parameters of academic qualifications, the suitability of a candidate has to be judged on the basis of qualifications prescribed under Section 84(1), which involves subjective satisfaction. In the present case, the right of arriving at such subjective satisfaction vests with the Selection Committee, and not with the Government. Had the determination of suitability been intended to be vested in the Government, there would have been no occasion to provide for the constitution of a high-powered Selection Committee, headed by a person, who has been Judge of the High Court, and the recommendation of a panel of two candidates by such Committee, leaving the Government only the choice thereafter to appoint the Chairman or member out of the select panel. The discretion of the Government is available for choosing either of the two recommended candidates, but not for rejecting the panel on the ground that other applicants, in the opinion

of the Government, were more suitable, more capable, or senior to the persons included in the panel.

86. The plea that the application of the petitioner was not routed through the proper channel in order to justify the rejection of the recommended panel is equally unsustainable. The application was submitted by the petitioner to his immediate controlling authority, which forwarded the same to the Secretary (Power) to the Government of Himachal Pradesh. The Secretary (Power), accepting the application as having been routed through the proper channel, placed it along with the applications of other candidates before the Selection Committee. In case there was any defect in processing the application, the same ought to have been pointed out at the initial stage, and in that event, either the alleged mistake would have been rectified or the application would have been rejected for want of routing through the proper channel. Having accepted and processed the application and placed it before the Selection Committee, this plea taken by the respondents is of no assistance to them.

87. In the aforesaid factual matrix, the pleas raised by the respondents that mere inclusion of a candidate's name in the select list does not confer any indefeasible right to seek appointment and

judgment cited in support of their plea, are not attracted, because the rejection of the selection panel is based upon flimsy, arbitrary, and vague grounds which are not available and permissible to the Government for taking the impugned decision.

88. No doubt, personal mala fide has not been alleged in the writ petition, however, it is a case of legal mala fide where the provisions of the Act have been misconceived, and power, beyond that which is vested in the State, has been presumed and exercised, resulting in taking a decision which is not sustainable in the eyes of law.

89. In case the plea of the respondents is accepted and the impugned decision is not interfered with, it shall amount to re-writing of the statute and insertion of a provision which otherwise has not been provided either expressly or impliedly. Instead, such power has been excluded not only impliedly but expressly by restricting the domain of the Government under Section 82(5) to make appointment of the Chairman or Member of the State Commission on the recommendations of the Selection Committee, and by providing no other provision granting discretion to the State to accept or reject the panel so recommended by the Selection Committee.

90. After taking into consideration the rival contentions of the parties, the case law cited by them, and the provisions of the Act, we are of the considered opinion that the action of the respondents is arbitrary, and arbitrariness is an antithesis of the equality clause contained in Article 14 of the Constitution of India. Thus, the impugned decision is not sustainable being arbitrary, irrational, and beyond the domain of the Government.

91. In view of the aforesaid discussion, we are of the considered opinion that the impugned decision is not sustainable, and accordingly, the writ petition is allowed in the following terms:

(i) Decision dated 16.09.2025 (Annexure P-6) and Notification dated 03.10.2025 (Annexure P-4) are quashed and set aside.

(ii) Respondents are directed to complete the process of appointment of Chairperson of the H.P. Electricity Regulatory Commission (HPERC)/ State Commission on the basis of recommendations dated 14.09.2025 (Annexure P-5) on or before 10.11.2026.

92. Petition is disposed of in aforesaid terms along with pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

28th October, 2026
(Pardeep)