

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 726 of 2017 (M/S)

(under Article 226 of the Constitution of India)

R.R. Bhatt

..... Petitioner

Versus

State of Uttarakhand

..... Respondent

Mr. U.K. Uniyal, Senior Advocate assisted by Mr. Sandeep Kothari, Advocate for the petitioner.

Mr. M.C. Pande, Dy. Advocate General with Ms. Indu Sharma, Brief Holder for the State.

Hon'ble Lok Pal Singh, J.

By means of present writ petition under Article 226 of the Constitution of India, following prayer has been made by the petitioner:

- (i) Declare the interference made by His Excellency, The Governor with the selection and appointment of the petitioner as Member of Uttarakhand Water Resources Management and Regulatory Commission, Ultra Vires to provisions of the Uttarakhand Water Management and Regulatory Act 2013 and non-est OR in the alternate.
- (ii) Issue a writ, order or direction in the nature of certiorari quashing the order dated 3.1.2017 reiterated on 4.1.2017.
- (iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to take all necessary steps for making the Uttarakhand Water Resource Management and Regulatory Commission functional.
- (iv) Issue any other relief, which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (v) Cost of petition may be awarded in favour of petitioner.

2. Brief facts of the case are that in exercise of power under Section-3 of Uttarakhand Water Management and Regulatory Act, 2013 (as amended in the year 2016) (hereinafter referred to as 'Act of 2013'), the State of

Uttarakhand had issued a notification on 14.09.2015, whereby the commission known as Uttarakhand Water Management and Regulatory Commission (for short 'Commission') has been constituted. For said purpose, the respondents-State Government had issued an advertisement on 21.07.2016 inviting applications for selection of the Chairperson and two members. The requisite qualification envisaged for the post of Chairperson is that a person should have a bachelor's degree from any recognized university with administrative experience of not less than 25 years, and he must have held the post of Chief Secretary of the State Government or the post of Secretary of Government of India or any post equivalent thereto and had experience relating to water resources in concerned Departments. For the post of Member of the Commission, a candidate should have ability, integrity and had adequate knowledge or experience or have shown capacity in dealing with, problems relation to engineering, finance, commerce, economics, law or management. Proviso stipulates that at least one Member who is either holding or have held a post not below the rank of Chief Engineer level or equivalent eligibility in the field of Hydropower Engineering at least 25 years of experience. It also stipulates that the Chairperson or any Member of the commission shall not hold any other office during his/her tenure as such.

3. Pursuant to the said advertisement, petitioner submitted his application form for the post of Member Technical. After receiving the application forms and after scrutinizing/processing the same, the Department has proceeded to shortlist 14 application forms with respect to the position of Chairperson of the Commission. Thereafter, out of 14 application forms, 13 candidates appeared before the Selection Committee. The name of the petitioner find place at Sl. No.1 in the list of selection committee. The

Committee recommended the name of Mr. Ravi Shankar for the post of Chairperson, who was the former Chief Secretary of the State Government. The name of the petitioner, a retired Chief Engineer, Level II, Irrigation Department, was recommended to be appointed as Member of the Commission. The selection process was recommended by the Selection Committee and approved by Hon'ble Chief Minister on 12.11.2016. After the approval of Hon'ble Chief Minister, a letter was sent to his Excellency, the Governor of Uttarakhand on 23.11.2016 in which a request has been made to provide date and time for the oath ceremony, so that oath be administered to Chairperson of the Commission, who in turn will subsequently administer the oath to the Members. Thereafter, the respondent State Government has issued the appointment letters and same were notified in the gazette on 16.11.2016, whereby the petitioner has been appointed as Member of Uttarakhand Water Management and Regulatory Commission. In the meantime, one Vinod Kumar Pant made a complaint to the Chief Secretary of the State of Uttarakhand on 21.11.2016 alleging therein that the selection committee was not constituted in accordance with the provisions contained in the Act of 2013. Thereafter, the matter was referred to the Law Department and the concerned Department has passed the order that the decision of the selection committee was taken by majority and such selection process is not vitiated by any irregularity as alleged. Thereafter, on 03.01.2017, His Excellency, the Governor of Uttarakhand has passed an order that the selection process be initiated afresh, inasmuch as, the provisions of Section-6 of Act of 2013 with regard to the constitution of committee has not been complied with.

4. At this juncture, it would be apt to reproduce Sections 3, 4 & 6 of Uttarakhand Water Management and Regulatory Act 2013, which reads as under:

Establishment of Authority

3. (1) The State Government shall by notification, establish a Commission within three months from the date of commencement of this Act, to be known as the Uttarakhand Water Resources Management and Regulatory Commission who shall exercise the powers conferred on, and to perform the functions assigned to him under this Act.
- (2) The Authority shall be a body Corporate.
- (3) The head office of the Authority shall be at Dehradun.
- (4) The Commission shall consist with a Chairperson and such number of Members not exceeding two as may be notified by the State Government.

Qualification for appointment of Chairperson and other member of Authority

- 4.(1) Only as such person shall be appointed as the Chairperson or Member with possesses the qualification mentioned hereunder:-

(a) Chairperson - The Chairperson shall be a person having bachelor's degree of any recognized university/institute with administrative experience of not less than 25 years, and must have held the post of Chief Secretary of the State Government or the Secretary of the Government of India or any post equivalent thereto and has experience of department related to water resources.

(b) Members- (i) The Member of the Commission shall be person of ability, integrity and standing who have adequate knowledge of, or experience in, or have shown capacity in dealing with, problems relation to engineering, finance, commerce, economics, law or management;

Provided that at least one Member shall be from amongst the member who are either holding or have a post not below the rank of Chief Engineer or equivalent and having qualification and at least 25 years of experience in the field of Hydropower Engineering.

(ii) One Member shall be an expert from the field of water resources economy having master's degree in Economics/Commerce/MBA with Finance/Accountancy. He must have at least 25 years of experience, having worked as a professor in a reputed institute of management or as a whole time director in a financial institution specified under Section 4-A of the Companies Act 1956 or as a whole time director in a scheduled bank within the meaning of the Reserve Bank of India Act, 1934 or have a substantial professional background of finance, regulation, tariff structuring etc.;

(iii) One Member shall be an expert in the field of drinking water and waste water management having bachelor's degree in Civil/ Mechanical /Public Health/ Environmental Engineering of any recognized University/Institute. He must have at least 25 years experience having worked in the field of urban/rural water supply/drainage/sewerage and wastage water management and having served as chief engineer or any post equivalent thereto with particular experience in ground water development for water supply and large water treatment plants;

(iv) One Member shall be an expert in the field of agriculture/land management having bachelor's degree in agriculture/agriculture engineering of any recognized University/Institute. He must have at least 25 years experience having worked in the field of agriculture/industry/teaching/research.

2. The Chairperson or any Member of the Authority shall not hold any other office during his/her tenure as such.
3. The Chairperson shall be the Chief Executive Officer of the Authority.
4. Where the Chairperson is unable to discharge his functions owing to absence, illness, death, resignation or any other cause or where any vacancy occurs in the office of the chairperson, any Members nominated by the Chairperson on his behalf and, in the absence of such nomination or where there is no Chairperson any member chosen by the member present among themselves, shall exercise power and discharge the duties of Chairperson.

Constitution and function of the Selection Committee.

6. (1) The State Government shall, by notification, constitute a selection committee, for the purpose of making appointments of the Chairperson and Members under sub-section (5) of Section 33. The committee shall consist of :-

- (a) Chief Secretary, Government of Uttarakhand-Ex officio Chairman.
- (b) Chairman, Central Water Commission or his nominee who shall be the member of the Central Water Commission-Ex Officio Member.
- (c) Principal Secretary/Secretary, as may be Finance, Government of Uttarakhand-Ex Officio Member.
- (d) Director, Indian Institute of Management, Kashipur-Ex Officio Member.
- (e) Principal Secretary/Secretary, as may be Irrigation, Government of Uttarakhand-Ex Officio Member Secretary.

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

(3) The Selection committee while making selection of the Chairperson and the Members, shall have due regard to performance record, ability, integrity, character qualifications and experience of the person proposed to be selected a Chairperson or other Member as the case may be.

(4) The Selection committee shall finalize the selection of the Member within two months from the date on which the reference is made to it.

(5) The Selection committee shall recommend a panel of three names for every vacancy referred to it.

(6) A person who is considered for selection as the Chairperson or a Member shall inform to the selection committee:-

(a) of any office, employment or consultancy agreement or arrangement which the person or his relative has in his own name or in any firm, association of person or body corporate, owned or otherwise controlled by any of them carrying on any of the following business:

(i) diversion of surface water, distribution of water, extraction of ground water or supply of water;

(ii) manufacture, sale, lease, hire or otherwise supply of or dealing machinery, plant equipment, apparatus or fitting related to water industry;

(iii) any entity providing any professional services to any of the businesses referred to in clause (i) and (ii) above.

b. Such other details and information as may be prescribed by the selection committee.

5. Learned senior counsel for the petitioner would submit that after approval of Hon'ble the Chief Minister dated 12.11.2016, the letter was sent on 23.11.2016 to His Excellency, the Governor of Uttarakhand who put steps ahead by passing the impugned orders dated 03.01.2017 and 04.01.2017 stating therein that the selection process be initiated afresh. He would further submit that the role of His Excellency, Hon'ble the Governor is limited to administer the oath to the Chairperson and His Excellency, the Governor of Uttarakhand should not have interfered in the matter on the complaint made by Shri Vinod Kumar Pant, who is the close relative of a former Chief Minister. It is contended that His Excellency, the Governor of Uttarakhand had no jurisdiction to examine the issues pertaining to the selection committee in view of provisions contained in Section 3 of the Act of

2013. Learned senior counsel would also submit that as per Section-6 of the Act of 2013, the selection committee was required to have five members and amongst such five members, one of the member should be Chairman, Central Water Commission or his nominee, who shall be member of the Central Water Commission and the Chairman, Central Water Commission has nominated the representative as per the availability of competent person and there is no way of compelling the Chairman to nominate only a member for participating in selection committee. He would further submit that the orders passed by office of His Excellency, the Governor of Uttarakhand are absolutely without jurisdiction. He would further submit that the orders dated 03.01.2017 and 04.01.2017 have been passed without affording any opportunity of hearing to the petitioner despite the fact that the appointment order was issued in favour of the petitioner.

6. A counter affidavit on behalf of respondent nos. 1 & 2 has been filed stating therein that His Excellency, the Governor of Uttarakhand sought report from the State Government with respect to some complaints. His Excellency, the Governor of Uttarakhand observed that in the selection committee constituted for the purpose of making selection to the post of Chairman and two Members, as per Section 6(1)(b) of the Act of 2013, the Chairman Central Water Commission or his nominee ought to have been included, but instead of Chairman, Central Water Commission or his nominee an officer of the level of Chief Engineer, B.P.M.O., Government of India was included, who was not the member of the Central Water Commission, which was not in accordance with law governing the field. It is also stated that clear provisions have not been followed, therefore, the entire selection process and the recommendation of the selection committee stood vitiated

and His Excellency, the Governor of Uttarakhand, therefore, directed for de-novo selection process.

7. Heard learned counsel for the parties and perused the material available on record.

8. Section 2(u) of the Act of 2013 provides the definition of selection committee that means a selection committee constituted under Section 6 of Chapter-II of the Act. The requisite qualifications of Chairperson and members have been given in Section 4 of the Act. As per Section 4(a) the requisite qualification for the post of Chairperson is that the candidate should have bachelor's degree of any recognized university/institute with administrative experience of not less than 25 years and he must have held the post of Chief Secretary of the State Government or the Secretary of the Government of India or any post equivalent thereto and has experience of department related to water resources. For the post of Member, the requisite qualification is that the person shall be expert in the field of water resources having bachelor's degree in Civil/Mechanical Engineering of any recognized university/institute and having experience of at least 25 years of service in the field of irrigation/water resources and having served as chief engineer or any post equivalent thereto. The contention of the petitioner is that he is working as Chief Engineer in the Irrigation Department and fulfills the requisite qualification for appointment on the post of Member in view of the qualifications prescribed under Section 4 (b) of the Act. Section 6 of the Act provides criteria for constitution and function of the selection committee. In view of the provisions contained in Section 6 of the Act, the Selection Committee shall consist of (a) Chief Secretary, Government of Uttarakhand-Ex officio Chairman; (b) Chairman, Central Water Commission or his nominee who shall be the member of the Central Water Commission-Ex officio Member; (c)

Principal Secretary to the Government of Uttarakhand in the Finance Department-Ex Officio Member; (d) Director, Indian Institute of Management, Kashipur-Ex Officio Member; (e) Principal Secretary to the Government of Uttarakhand in Irrigation Department-Ex Officio Member Secretary.

9. Perusal of record would reveal that petitioner while submitting his application, has referred that he is retired Chief Engineer (Civil). Perusal of record would further reveal that at one place the petitioner has mentioned that he is retired Chief Engineer (Civil) and at another place he has shown himself to be Chief Engineer (Level-II) Irrigation Department, Dehradun at the same time. Thus, the petitioner has nowhere contended that post of Chief Engineer (Level-II) is equivalent to the Chief Engineer, which is the mandatory qualification for holding the post of Member of the Commission. Section 6(1) of the Act of 2013 reveals that the selection committee shall be constituted for including the 5 members. The selection committee constituted of Shri Satrughan Singh, Chief Secretary, Government of Uttarakhand-ex officio (President); Shri Rajendra Kumar Jain (Chief Engineer Central Water Commission, Government of India), (nominated) Member-ex officio; Shri D.S. Garbyal, Secretary, (Finance) (nominated) Member-ex officio; Shri Anand Bardhan, Secretary, (Irrigation), Government of Uttarakhand, (nominated)-Ex officio Member Secretary. Perusal of the record would further reveal that Shri Rajendra Kumar Jain (Chief Engineer) Central Water Commission, Government of India has claimed himself to be representative of the Chairman, Central Water Commission nominated by the Chairman, Central Water Commission as ex officio member. Perusal of Section 6(b) of the Act 2013 would reveal that the Chairman, Central Water Commission or his nominee who shall be the member of Central Water Commission will be the Ex Officio Member, but on perusal of

the constitution of selection committee it would reveal that Shri Rajendra Kumar Jain, Chief Engineer, Central Water Commission, Government of India, who claimed himself to be a nominee of the Chairman of Central Water Commission is not a competent person to be nominated as Ex Officio-Member by the Central Water Commission. The petitioner has not placed the nomination of Shri Rajendra Kumar Jain on record to show that ever he was nominated as representative by the Chairman, Central Water Commission for participating in the selection process.

10. In the counter affidavit filed on behalf of respondent nos. 1 and 2, annexure-9 has been annexed, which depicts that Shri Rajendra Kumar Jain (Chief Engineer), B.P.M.O., Government of India, Central Water Commission himself has sent a letter to the Secretary, Irrigation, Government of Uttarakhand through fax on 04.10.2008. The same is extracted below:

To,

The Secretary Irrigation,
Government of Uttarakhand,
Dehradun
Fax No. 0135-2712096

Subject: Meeting of Selection Committee for selection of Chairperson and Members of Uttarakhand Water Resources Management & Regulatory Board

Sir,

Please refer to your letter No. 2528/11-2016-17(19)2015 dated 29.9.2016 on the above subject. The undersigned has been nominated by Chairman, Central Water Commission to attend the meeting of the Selection Committee on his behalf. Accordingly, the undersigned will participate in the meeting as nominee of Chairman, CWC.

2. In this context, you are requested to send the agenda of the meeting alongwith relevant papers by email to rkjaincwc@yahoo.com and/ or by fax at the earliest.

Yours faithfully

(Rajendra Kumar Jain)
Chief Engineer, BP MO
Central Water Commission
Telefax 011-26103569
(M) 9811581705

11. Perusal of the aforesaid letter would reveal that it is a letter sent by Shri Rajendra Kumar Jain himself and he has not annexed any nomination made in his favour. Thus, the nomination of Shri Rajendra Kumar Jain as ex-officio Member is again illegal. Firstly, Shri Rajendra Kumar Jain does not possess the requisite qualification so he cannot be nominated by the Chairman, Central Water Commission, Government of India as an ex-officio member of the selection committee. Secondly, there is no iota of evidence showing that he has ever been nominated by the Chairman, Central Water Commission, who was the competent authority to nominate a person in writing. Thus, the Selection Committee was not constituted properly in view of Clause 6 of the Act of 2013, as the Director, Indian Institute of Management, Kashipur, who is Ex-Officio Member has not participated in the meeting. It is nowhere stated that the Director, Indian Institute of Management, Kashipur was ever informed to participate as a member in the meeting of selection committee. Out of 5 members only Chief Secretary, Government of Uttarakhand; Secretary (Finance) Government of Uttarakhand and Secretary, (Irrigation) Government of Uttarakhand remained present but as there was no valid representative of the Chairman, Central Water Commission and the Director, Indian Institute of Management, Kashipur did not participate, therefore, it seems that the selection committee was not constituted as per the mandate of Section 6 of the Act of 2013.

12. Be that as it may, but the fact remains that the selection committee was not constituted as per the mandates of Section 6 of the Act of 2013. The position of the case would be otherwise, if the two members of the committee, namely, Chairman, Central Water Commission or his nominee and the Director, Indian Institute of Management,

Kashipur may not be with the majority but since they are not present at the time of selection thus, it will be considered that the selection of the committee was done on their choice and not as per the mandate of law. The constitution of committee as per law is one thing and contrary decision taken by the majority is another thing. When the committee was not constituted, as per law, the majority decision is of no relevance. It is settled position in law that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. Since the constitution of committee is in violation of mandatory provisions of Section 6 of the Act of 2013, the decision of majority in favour of the petitioner does not help him in any manner. This Court has no hesitation in saying that petitioner has not filed his application form disclosing the fact that he is holding the post of Chief Engineer (Level – II), which is equivalent to the post of Chief Engineer.

13. It appears to this Court that petitioner does not fulfill the qualification as per the mandate of Section 6 of the Act of 2013 as he has not proved that he is holding the post of Chief Engineer. However, he has worked as Chief Engineer (Level-II) and qualification of this post has not been cited anywhere showing its equivalence to the post of Chief Engineer. Since, the selection committee was not constituted as per provisions 6 of the Act of 2013, in these circumstances, I am of the view that His Excellency, the Governor of Uttarakhand, the Governor of Uttarakhand did not commit any illegality in non administration of the oath to Shri Ravi Shankar, whose name was recommended as Chairman of the Commission. Mr. Ravi Shankar whose name was recommended by the Selection Committee has not questioned the decision of His Excellency, the Governor of

Uttarakhand. The turn of the petitioner comes thereafter as the Chairman of the Commission has to administer oath to the Members. Since, the orders infact have been passed against Shri Ravi Shankar whose name was recommended for appointment on the post of Chairman of the Commission. The petitioner has no locus standi to maintain the writ petition. Besides this, since the selection committee was not constituted as per the provisions contained in Section 6 of the Act, 2013 and the name of the petitioner was recommended for appointment on the post of ex-officio Member of the Commission. Despite the fact that he does not possess the requisite qualification for such post, His Excellency, the Governor of Uttarakhand did not commit any illegality in passing the impugned orders, whereby directions were issued to initiate de novo selection process.

14. In exercise of jurisdiction under Article 226 of the Constitution of India, I do not find any illegality, perversity or jurisdictional error in the decision taken by His Excellency, the Governor of Uttarakhand in passing the impugned orders dated 03.01.2017 and 04.01.2017. Further no prejudice has been caused to the petitioner by passing of the aforesaid impugned orders. Thus, the writ petition is devoid of merit and same is hereby dismissed.

15. No order as to costs.

(Lok Pal Singh, J.)
03.03.2020