Dr. Amaragouda L Patil vs Union Of India on 12 February, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

REPO

2025 INSC 201

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.301–303 OF 2025
[ARISING OUT OF SLP (C) NOS.20360-20362 OF 2024]

DR. AMARAGOUDA L PATIL … APP

Versus

UNION OF INDIA & ORS. … RESPOND

JUDGMENT

DIPANKAR DATTA, J.

1. A manifestly flawed process of selection, which was rightly interdicted by the writ court, has since been reversed by the writ appellate court premised on a fundamentally incorrect understanding of the Government of India (Allocation of Business) Rules, 19611 framed under Article 77 of the Constitution of India and an utterly mistaken notion of the scope of interference in matters relating to selection and appointment. It has, thus, not surprised us at all that Mr. Vikramjeet Banerjee, learned Additional Solicitor General, representing the first respondent-Union of Business Rules UoI Bharuka, learned senior counsel appearing for the third respondent, have made little effort to sustain the selection of the third respondent with reference to and/or relying on the said appellate judgment. Instead, the effort has been more towards sustaining the selection and appointment of the third respondent by highlighting the limited scope of judicial review in matters where the experts in the relevant field are the selectors and the process of selection is conducted by them. Much of this later, while we deal with their contentions.

2. The present lis concerns appointment to the high office of ‘Chairperson’ of the National

Commission for Homeopathy3.

3. Facts giving rise to these three appeals from the appellate judgment and order of the Division Bench of the High Court of Karnataka 4, which are undisputed, lie in a narrow compass.

I. The National Commission for Homeopathy Act, 20205 is an enactment of recent origin. Section 4(1) of the NCH Act ordains that the Commission shall be comprised of a Chairperson, seven ex-officio Members and nineteen part-time Members. Section 4(2) specifically mandates that the Chairperson of the Commission shall be a person of outstanding ability, proven administrative capacity and integrity, possessing a postgraduate degree in Homoeopathy from a recognised University and having experience of not less than twenty years in the field of Homoeopathy, out of which at least ten Commission High Court NCH Act years shall be as a leader in the area of healthcare delivery, growth and development of Homoeopathy or its education (emphasis supplied by us). The Explanation to Section 4 defines the term “leader” as the Head of a Department or the Head of an Organisation (emphasis supplied by us). Section 5, inter alia, prescribes that the Central Government shall appoint the Chairperson on the basis of the recommendation of a Search Committee consisting of the Cabinet Secretary as the Chairperson [clause (a)], three expert members to be nominated by the Central Government [having qualifications as described in clauses (b) and

(c)], a nominee of the Central Government [having qualifications as described in clause (d)] and the Secretary to the Government of India6, in charge of AYUSH to be the convenor-member [clause

(e)].

II. Vide Notification F. No. 21011/12/2020-EP(III) dated January 16, 2021, the Ministry of AYUSH invited applications for the post of Chairperson of the Commission. Inter alia, the Notification while indicating the eligibility criteria provided that the applicant must have not less than 20 years of experience in the field of Homeopathy, out of which at least 10 years as the Head of the Department or Head of an Organisation in the area of Health Care delivery, growth and development of Homeopathy or its education. GoI This was entirely in consonance with the relevant statute and all concerned understood what the requirements were. III. Responding to this notification, 37 (thirty-seven) aspirants applied for appointment to the office of the Chairman. The appellant and the third respondent, who was serving as the Director General, Central Council for Research in Homeopathy7 were two of the several aspirants.

IV. For a ready reference, the profile of the third respondent is reproduced hereinbelow:

Office/Institution /Organisation	Post Held	From	To
CCRH	Research Assistant	07.09.1987	21.12.1995
CCRH	Research Assistant	22.12.1995	01.01.1996

	Officer		
CCRH	Research Officer	01.01.1996	07.05.2008
CCRH	Assistant Director	May 2008	June 2014
CCRH	Deputy Director (Tech.)	10.06.2014	27.12.2016
CCRH	Deputy Director General	28.01.2016	13.09.2020
CCRH	Director General	14.09.2020	Till the Date of Application

V. The Search Committee, constituted for selection and appointment of the Chairperson of the Commission, upon scrutiny of the applications received from the several aspirants in response to the Notification dated January 16, 2021, resolved in its meeting held on May 7, 2021 to recommend a panel of three aspirants in order of merit. In such panel, the third respondent figured at the top. VI. The recommendation was accepted and after seeking the requisite approvals, the Central Government vide Notification No. S.O. 2694(E) dated July 5, 2021 constituted the Commission in purported compliance with the provisions of the NCH Act and, inter alia, conveyed the appointment of the third respondent as the first Chairperson of the Commission.

VII. The third respondent accepted the appointment and commenced a new innings of his life as Chairperson of the Commission. Since the term of his appointment is for 4 (four) years, the appellant is due to demit office on July 4, 2025.

VIII. Aggrieved by the selection and appointment of the third respondent as Chairman as well as his non-appointment in such office, the appellant preferred a writ petition8 before the High Court. The primary and the sole ground of challenge to such appointment was that the third respondent, despite not satisfying the eligibility criteria, came to be selected and appointed. According to the appellant, the third respondent lacked the requisite experience of working for 10 (ten) years as a 'leader' in terms of the Explanation to Section 4 of the NCH Act and, therefore, could not have entered the zone of consideration.

4. The Single Judge of the High Court, vide judgment and order dated January 10, 2024, accepted the contention of the appellant and held that the third respondent "did not possess the requisite

experience as a 'leader' and therefore, his appointment as the Chairperson cannot be accepted as being in conformity with the provisions of the statutes". The appointment of the third respondent was, accordingly, quashed. However, the Single Judge did not accept the contention of the appellant that he was eligible and meritorious and hence a direction should be issued to appoint him. It was reasoned that once an appointment is found to be illegal, all that the Court can do is to direct the Search Committee to re-do the process of appointment as per the statutory procedure. While allowing the writ petition, the Single Judge directed the Central Government to take necessary action to appoint a Chairperson of the Commission afresh, in the manner prescribed by the statute and also keeping in mind the observations made regarding the eligibility of the candidates vis-à-vis the meaning of the word 'leader'.

5. Aggrieved, the UoI and the third respondent carried the said judgment and order in separate appeals. The appellant filed a cross-objection challenging that part of the order of the Single Judge by which his contention, as noticed above, was rejected.

6. The Division Bench, vide judgment and order dated July 31, 2024 overturned, the decision of the Single Judge and allowed the intra-court appeals. It was, inter alia, held by the Division Bench that:

> "20. The workflow of the AYUSH Department, Government of India (Allocation of Business Rules, 1961) provides for organizational set up. The same is reflected at Page No.433 of the appeal. As per the Allocation of Business Rules, the Assistant Director is having independent control over the particular division. When the organizational set up does not provide for a head of the department, it is for the Court to examine whether a particular post would be head of that division. On consideration of the organizational set up in that view, Assistant Director though below the rank of Director General, the work and responsibilities entrusted to the Assistant Director are independent.
>
> 21. The Search Committee having examined the qualification and eligibility found that the different positions held by the appellant would be in the capacity of the head of the department. It is not open to the Court to substitute its opinion unless mala fides are being demonstrated in the process of selection. ... "

7. Consequently, the appeals of the UoI and the third respondent were allowed and the cross-objection dismissed. By presenting these three appeals, the said judgment and order has been called in question by the appellant.

8. Noticing the observations made in the judgment rendered by the Single Judge, to nullify the selection of the third respondent, we had called upon Mr. Banerjee to place before us the relevant file pertaining to the selection in question in a sealed cover.

9. The file, which was placed, reveals that the third respondent had not submitted supporting documents to support his claim of possessing the requisite experience. The Search Committee after considering the application of the third respondent had, thus, remarked that it was "not clear"

whether the third respondent possesses experience of 10 (ten) years as 'Head of a Department' or 'Head of an Organisation'. It was also observed that the third respondent "may be eligible subject to submission and Verification of documents of experience as Head of Department from Competent Authority, cadre clearance & Certification of not having Major/Minor Penalties."

10. While perusing the file, we came across a Departmental Order9 of the Secretary to the Government of India10, Ministry of AYUSH, dated May 6, 2021. The second and final paragraph of the letter reads as follows:

> "In this regard, I have got the matter examined in the Ministry of Ayush and after verifying the documents of experience, it is confirmed that Dr. Anil Khurana, DG, CCRH is having the requisite experience of 10 years equivalent to Head of Department. He, therefore, fulfils the eligibility requirements for the post in terms of the provisions of the Act." (emphasis supplied by us)

> 11. Since we could not trace in the file the precise 'documents of experience' which the Secretary, GoI in the aforesaid letter claimed to have verified, Mr. Banerjee was requested to throw light on it. He expressed regret having not been provided access to the file since the officers of the Ministry felt that it was directly to be placed before the Court in a sealed cover. However, at the same time, he submitted (upon receiving instructions from the officers present in Court) that the 'documents of experience', if not in the file, could lie somewhere else in a separate file.

Assuring that such documents would also be placed before the Court, Mr. Banerjee added a caveat that access to the file and the other documents to be produced may not be allowed to counsel for the appellant. D.O. Secretary, GoI

12. Having proceeded to hear the parties, we closed arguments and while reserving judgment on January 23, 2025, we required the officers of the UoI, who were present in Court, to produce the 'documents of experience' referred to in the D.O. of the Secretary, GoI.

13. Next morning, a sealed envelope was handed over to the Court Master for being placed before us. Such envelope had the handwritten inscription "Documents of Experience" as well as reference to these appeals. We record having devoted sufficient attention to all the papers in the file as well as the bunch of documents in the sealed envelope which, of course, on the ground of confidentiality claimed by Mr. Banerjee, was not given access to Mr. Kamath, learned senior counsel for the appellant. However, nothing much turns on such non-accessibility since, the reasons to follow would demonstrate how the selection process suffers from gross illegality and, thus, has to fall through for serious breach of the statutory requirements, thereby supporting what we have said at the beginning of this judgment.

14. We have recorded above, what was the initial reaction of the members of the Search Committee. Had it been a clean and clear case where the members had no reason to object to the candidature of the third respondent, the present exercise need not have been undertaken, thereby yielding no

difference in the outcome of the selection process.

15. At the outset, we cannot but express our dismay at the manner of appreciation of the organizational set up of CCRH11 by the writ appellate reproduced at the end of the judgment.

court and construing it to be part of the Business Rules. The page bearing the organizational set up of CCRH admittedly was part of the CCRH's Annual Report of 2012-2013. Neither Mr. Banerjee nor Mr. Bharuka has attempted to justify the appellate judgment with reference to the Business Rules and, in fact, submitted that the Division Bench proceeded on a mistaken notion. We do not see it as a mistake, but as a blunder; and, for reasons of propriety, say no more.

16. We would assume, as submitted by Mr. Banerjee, that while issuing the D.O., the Secretary, GoI (who himself was a member of the Search Committee) must have looked into the 'documents of experience' and what the same recorded must have weighed with the Chairperson and the members of the Search Committee to ultimately hold the third respondent eligible in all respects. However, two aspects appear to be truly striking. We may, at once, say that although in normal circumstances the first aspect of discussion might not have made a significant impact, it becomes relevant and the situation does call for a little deliberation in light of the initial observations made by the Search Committee regarding qualifications of the third respondent.

17. What has struck us, on perusal of the minutes of the meeting held on May 7, 2021, is that the Search Committee made no reference at all in its resolution to the D.O. dated May 6, 2021. Anyone, reading the minutes, would have no idea at all that at a previous stage of the process the members of the Search Committee themselves had doubted whether the third respondent was duly qualified or not and how such doubt came to be cleared. No explanation is proffered in regard to this omission.

Obviously, this could not have been an inadvertent error.

18. According to Mr. Banerjee, the Secretary, GoI had referred to in the D.O. that the 'documents of experience' had been considered; and, having regard thereto, the Court ought not to sit in appeal over the satisfaction reached by the members that the third respondent was duly qualified.

19. The bunch of documents handed over to us have been duly looked into.

We record having perused each and every page. What the bunch contains are documents mainly comprising office orders detailing the third respondent's work allocation along with certain certificates of conferences attended and papers authored by him. Our examination of the documents yielded no conclusive evidence to prove the third respondent's experience. On the contrary, there is one document in the bunch which is sufficient to seal the fate of the third respondent. We propose to refer to this document at a later stage of this judgment.

20. We preface further discussion recording our consciousness of what the law is. It is not for the Court to sit in appeal over decisions of selecting bodies, whatever be the nature of the post/office. If the selection made by the selectors, who are experts in the field, is laid to a challenge, a merit review

is forbidden; what is permissible is, inter alia, a limited scrutiny of ascertaining the eligibility of the aspirants and the procedure followed, that is, whether a duly qualified aspirant has been selected and whether the procedure followed was fair and in consonance with statutory rules or not. However, merely because the Search Committee is chaired by the Cabinet Secretary and such committee consists of experts, does not automatically make its recommendation immune from judicial scrutiny; rather, in an appropriate case warranting such scrutiny, the writ court would be justified in its interference with the process.

21. What appears to be disturbing is the total lack of procedural fairness in the present case. If indeed a doubt had lingered in the mind of the members of the Search Committee as to whether an aspirant is eligible in terms of the requirements of the statute, is it not the duty of the Search Committee, in order to remain above board, to write even a single sentence and record its satisfaction in the minutes that the doubt has been cleared? The answer to this question cannot be in the negative.

22. We would not have given this aspect too much of an importance had the UoI been able to justify by placing relevant documents that the Secretary, GoI had, indeed, given a correct opinion as regards eligibility of the third respondent upon looking into all relevant documents. The contents of the D.O. as well as the relevant file and the other documents in the sealed cover are far from revealing what specific documents the Secretary, GoI had looked into for concluding, with a measure of assurance, that the third respondent possessed the required 10 years' experience as 'Head of a Department'. When attention to this was drawn, we were presented with the bunch of documents which, as stated before, cause more harm than good to the cause of the UoI and the third respondent. We have no hesitation to hold, based on reasons assigned hereafter, that there was no material before the Search Committee on the basis of which the third respondent could have been held to be eligible, having had 10 years' experience as the 'Head of a Department'.

23. This is considered sufficient to nullify the selection. But, having regard to the erudite arguments advanced at the Bar, we have ourselves proceeded to examine whether the common contention advanced by the UoI and the third respondent of the latter having the requisite experience, is acceptable or not.

24. The explanation to Section 4 serves as a guiding principle in this dispute, which defines the meaning of 'leader' as 'Head of a Department' or 'Head of an Organisation'. What remains undefined in the NCH Act is the meaning of 'Head'.

25. When there is doubt as to the meaning of a word in the provisions of a statute, the rules of statutory interpretation call upon us to interpret the words in a statute by giving a purposive interpretation having regard to the subject and object of the enactment. This Court in Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate12, observed that:

> "9. ...Secondly, the definition clause must be read in the context of the subject-matter and scheme of the Act, and consistently with the objects and other provisions of the Act. It is well settled that 'the words of a statute, when there is a doubt about their

> meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained'. (Maxwell, Interpretation of Statutes, 9th Edn., p. 55)."

26. An examination of the NCH Act reveals that it was enacted to provide for various aspirational objectives, inter alia, a medical education system AIR 1958 SC 353.

that improves access to quality and affordable medical education, ensuring availability of adequate and high quality homoeopathy medical professionals in all parts of the country, promoting equitable and universal healthcare, making services of homoeopathy medical professionals accessible and affordable to all the citizens as well as promoting national health goals. Section 10 of the Act provides for the powers and functions of the Commission and, inter alia, provides that the Commission is responsible for laying down policies for maintaining high quality and standards in the education of homeopathy and to make necessary regulations in this behalf, laying down policies for regulating medical institutions, medical research and to make necessary regulations in this behalf, assessing the requirements in healthcare, as well as framing guidelines and policies for the necessary and proper functioning of the Commission, Autonomous Boards and the State Medical Councils of Homeopathy. Under Section 9 of the Act, the Chairperson shall preside at the meeting of the commission.

27. Therefore, the appointment of the Chairperson, who is the head of the Commission carries significant importance and affects various stakeholders in the field of homeopathy. Apart from this, the appointment falls within the field of public employment covered under Article 16 of the Constitution read with Article 14 thereof.

28. Section 4 clearly lays down that the candidate must have minimum twenty years of experience in the field of homeopathy, out of which at least ten must be as a 'leader'. These eligibility requirements cannot be waived off by the administration, since they are mandatory requirements. This Court in Alka Ojha v. Rajasthan Public Service Commission13 laid down that the qualifications prescribed in the Rules and the advertisement were mandatory:

> "14. The use of the word 'shall' in Rule 11 makes it clear that the qualifications specified in the Schedule are mandatory and a candidate aspiring for appointment as Motor Vehicle Sub-Inspector by direct recruitment must possess those qualifications and must have working knowledge of Hindi written in Devnagri script and knowledge of Rajasthani culture. A conjoint reading of Rule 11, the relevant entries of the Schedule and Para 13 of the advertisement shows that a person who does not possess the prescribed educational and technical qualifications, working experience and a driving licence authorising him to drive motorcycle, heavy goods vehicles and heavy passenger vehicles cannot compete for the post of Motor Vehicle Sub-Inspector.

> 15. The question whether the candidate must have the prescribed educational and other qualifications as on the particular date specified in the Rule or the advertisement is no longer res integra…" (emphasis supplied)

29. No precedent has been placed before us which previously considered the meaning of the term 'Head of a Department' or 'Head of an Organisation' nor are we aware of any such decision and are therefore tasked with providing a definition to these terms in line with the relevant facts of this case. 'Head' in general parlance can be considered to mean an elevated position among other subordinate roles, often in the position of leadership. With no specific legal definition of the noun 'Head', taking into account the object and subject of the NCH Act read with Section 4, 'Head' must refer to a position held by an incumbent who performs the role of a leader and is tasked with making substantive decisions for the department/organisation. Any claim for being 'Head of a Department' or 'Head of an Organisation' is strengthened if the incumbent exercises (2011) 9 SCC 438.

administrative or supervisory responsibilities. However, this is not the only factor to be considered. Any such determination must be on a case- to-case basis.

30. In the instant case, the contention of the third respondent, supported by the UoI is that he was in a position that would grant him the position of 'Head' since May 2008. They contend that as per the organisational set up of CCRH, the Assistant Director (Homeopathy) is responsible for various sections and cells of the organisation. However, a perusal of the organisational set up reveals that the Assistant Director is not the 'Head' of the Technical Section. The 'Head' of the Technical Section is clearly the Deputy Director General who controls the entire Technical Section. The Assistant Director (Homeopathy) reports to the Deputy Director General. The office orders brought on record show that the third respondent was tasked with certain responsibilities, albeit including administrative and supervisory duties; however, he was not given tasks that resemble the duties associated with the 'Head of a Department'. Discharge of mere supervisory duties will not result in being referred to as the 'Head of a Department', if the overall organisational set up does not reveal such a position. Moreover, the third respondent was not the only Assistant Director (Homeopathy) in the said organisation, weakening the stance raised by him considerably.

31. We may now shift our attention to the document which we have referred to in paragraph 19 (supra). It is an Office Order No. 906/2012-13 dated July 11, 2012 issued by the Director General, CCRH in exercise of power delegated to him under the memorandum of Association and Rules, Regulations and Bye-Laws thereof [Rule 50(i)]. Thereby, the third respondent was declared as the "Head of Office" while he was holding the post of AD (H) [that is, Assistant Director (Homeopathy)].

32. The aforesaid office order has to be read together with two other office orders, referred to by Mr. Kamath. The first is Office Order No. 638/2011 dated October 5, 2011 issued by the Director General in-charge, CCRH requiring Dr. Vikram Singh, Deputy Director, (Homeo), working in CCRH, to hand over the entire charge of the Technical Section to the third respondent. The second is Office Order No.23/2014 issued by the Director General, CCRH January 22, 2014 on reallocation of duties among Technical Officers of CCRH, in supersession of all previous orders, to take effect from January 27, 2014. In terms thereof, the third respondent was made the second in command "after

DG and Vigilance" and one Dr. B.S. Arya was made the "Head of Office".

33. All these office orders, read cumulatively, leads one to the only logical and perceivable conclusion that the third respondent was the "Head of Office" from July 2012 to January, 2014 or, at the very least, was never the "Head of Office" prior to July, 2012. Also, he became second in command only from January 27, 2014.

34. Therefore, even if we choose to liberally construe the term 'Head of a Department' and consider October 5, 2011 as the date on which the work of the Technical Section was transferred to the third respondent, he fell short of the requirement of 10 years' experience as the 'Head of a Department' by a little less than a year. He had experience of 9 years, 3 months and 11 days on the date of the Notification dated January 16, 2021; 9 years 4 months and 10 days on the date of his application, i.e., February 15, 2021; and exactly 9 years 9 months on the date of his appointment as the Chairperson on July 5, 2021.

35. On the basis of the three above referred office orders, the position seems to be clear as crystal that the third respondent was never the "Head of a Department" at least any time before taking over entire charge of the Technical Section in terms of the Office Order dated October 5, 2011 and, therefore, fell short of the requisite experience.

36. The conclusion recorded by the Secretary, GoI that the third respondent did have the requisite experience as 'Head of a Department', which is nothing but his ipse dixit, is plainly suspect and vulnerable on the face of all these three orders and has to be declared to be a conclusion which suffers from gross perversity.

37. This apart, the D.O. dated May 6, 2021 reflected an opinion of the Secretary, GoI of the third respondent's requisite experience of 10 years being equivalent to 'Head of a Department'. We are left to wonder who determined equivalence and how such equivalence was determined.

38. It is apt to reproduce the decision rendered in N.P. Verma v. Union of India14, wherein this Court on the aspect of equivalence held:

> "20. As against this, the contention of HPCL is that the two Committees that were appointed by the Chairman of HPCL considered the different methods of fitment and equivalence of different pay scales of ESSO, LIL and CORIL with the pay scales of IOC. Except the bare allegation, no material has been produced before us on behalf of 1989 Supp (1) SCC 748.
>
> HPCL to show that the said Committees had, as a matter of fact, considered the question of equation of posts on the basis of the principle as laid down by the Central Government while referring the matter to the Tandon Committee, namely, functional similarity and co- equal responsibility. In the affidavits filed on behalf of HPCL, no particulars have been given with regard to the functional equivalence or otherwise of the different grades of these officers of CORIL, ESSO and LIL. It is also not stated

> what happened to the consideration by the Government of the Tandon Committee's Report. There can be no doubt that the Government is not bound to accept the recommendation of the Tandon Committee but, at the same time, the equation of posts has to be made on the principle of functional equivalence and co-equal responsibility. As no materials have been produced in that regard on behalf of HPCL, it is difficult for us to hold that the different grades of posts have been compared before placing the officers of these companies in the IOC/HPCL scales of pay. While it is not within the domain of the court to make the equation of posts for the purpose of integration, it is surely the concern of the court to see that before the integration is made and consequent fitment of officers in different grades/scales of pay is effected, there must be an equation of different posts in accordance with the principle stated above. As there is no evidence or material in support of such equation of posts, it is difficult to accept the rationalisation scheme with regard to the placing of the officers of CORIL in different IOC/HPCL grades of pay." (emphasis supplied)

39. What follows from the aforesaid view taken by this Court is that there should be some material on the basis whereof equivalence is determined. Generally speaking, equivalence of two posts may be attempted to be determined by factors such as (1) qualifications and requirements; (2) job responsibilities and duties; (3) work environment and conditions including workload and pressure; (4) accountability and impact; and (5) evaluation of the above and comparison.

40. Even though not doubting the authority and competence of the Secretary, GoI to determine such equivalence (assuming that he is competent by reason of the office he holds), such determination lacks creditworthiness in the absence of any material, far less cogent material, having been placed before us for our consideration. We have no hesitation to hold that the determination made is not backed by any concrete evidence and is, therefore, wholly without any basis.

41. The instant case showcases an egregious departure from the mandatory requirements prescribed in Section 4 of the NCH Act and the advertisement for the said position and leaves no option but to interfere with the said selection of the third respondent. The Division Bench faulted the Single Judge by noting that the scope of interference in service matters is extremely limited and that unless mala fides are shown, the Court must not interfere. While we are in agreement with the broad proposition of the law that interference in matters relating to selection and appointment must be limited and the Court must not generally substitute the findings of the Search Committee, we respectfully disagree with the Division Bench that this was not a case to interfere in, considering, the clear violation of the applicable statutory rules.

42. A Constitution Bench in University of Mysore v. C.D. Govinda Rao15, perhaps the first decision in the long line of decisions following it on judicial review in matters of selection by individuals holding high positions, provides a clear picture on the scope of interference, albeit limited, in matters of the present kind. Hon'ble P.B. Gajendragadkar, J. (as the Chief Justice of India then was) speaking for the Constitution Bench observed :

> "12. .....Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts 1963 SCC OnLine SC 15.
>
> should be slow to interfere with the opinions expressed by the experts.
>
> There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be.....What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that Appellant 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified." (emphasis supplied)

43. This case pertains to eligibility of the third respondent and therefore scope of judicial review, even though limited, is open. Hon'ble S.H. Kapadia, J. (as the Chief Justice of India then was) speaking for the Court in Mahesh Chandra Gupta v. Union of India16 neatly delineated the applicability of judicial review in cases of eligibility and suitability, thus:

> "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...." (emphasis supplied) (2009) 8 SCC 273.

44. In Veer Pal Singh v. Ministry of Defence17, this Court held that:

> "10. Although, the courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the

> basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable."

45. We are, at this stage, also reminded of what this Court in Distt.

Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi18 observed. The instructive passage therefrom is quoted below:

> "6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact." (emphasis supplied)

46. It would also be pertinent to highlight that though the third respondent averred in his application (in pursuance to the Notification) that he was the head of the department/organisation since May 2008, a contention which we have rejected, it is also plain and clear that he misrepresented his work experience for being considered for the coveted position of (2013) 8 SCC 83 (1990) 3 SCC 655 Chairperson of the Commission. What the consequence of an illegal appointment could be, needs no emphasis.

47. The only escape route, which could have potentially saved the selection of the third respondent from interference, is conferment of a power by the statute on the appointing authority to relax the essential qualification(s). Responding to our query, Mr. Banerjee frankly submitted that the NCH Act did not confer any such power of relaxation on the appointing authority. This obliterates the final beacon of hope for the third respondent.

48. The Division Bench has referred to the case of Tajvir Singh Sodhi v.

State of Jammu and Kashmir19 delivered by this Court to hold that the scope of interference is limited. Paragraph 66 has been referred to, which reads thus:

> "66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert

> domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene."

49. While there can be no gainsaying that interference should be limited, particularly when a merit review is sought as in Tajvir Singh Sodhi (supra), the decision does acknowledge that interference could still be made if there are proven allegations of malfeasance or violations of statutory rules, laying bare inherent arbitrariness in the process. This decision too reinforces the legal position that if any of the grounds on 2023 SCC OnLine SC 344.

which judicial review of administrative action is shown to exist, interference on such ground would be well-nigh permissible. It is not an arena in which intervention is completely barred.

50. In the case of Sushil Kumar Pandey v. High Court of Jharkhand20, this Court while considering the departure from the statutory rules midway through the selection procedure held that the statutory rules must be given primacy in any selection process.

"22. We find from Rule 18 of the 2001 Rules, the task of setting cut- off marks has been vested in the High Court but this has to be done before the start of the examination. Thus, we are also dealing with a situation in which the High Court administration is seeking to deviate from the Rules guiding the selection process itself. We have considered the High Court's reasoning for such deviation, but such departure from statutory rules is impermissible. We accept the High Court administration's argument that a candidate being on the select list acquired no vested legal right for being appointed to the post in question. But if precluding a candidate from appointment is in violation of the recruitment rules without there being a finding on such candidate's unsuitability, such an action would fail the Article 14 test and shall be held to be arbitrary. The reason behind the Full Court Resolution is that better candidates ought to be found. That is different from a candidate excluded from the appointment process being found to be unsuitable."

51. We hold that in the matter of essential qualifications prescribed by the statute, there should neither be any deviation from the statutory requirements nor the advertisement inviting applications while conducting any selection process, unless power to relax the qualifications is shown to exist.

52. Having said that, there is one other aspect which needs to be briefly dealt with. The Division Bench observed that unless mala fides are proved, the Courts should adopt a hands-off approach. Broadly (2024) 6 SCC 162.

speaking, there could be little quarrel with such proposition. However, bearing in mind the facts and circumstances, we hold that the Division Bench grossly erred in failing to consider that mala fides, in the sense of malice in fact, i.e., actual malice, is not the only condition for interference; it is open to a Court to interfere when legal malice or malice in law is demonstrated to exist.

53. In Kalabharati Advertising v. Hemant Vimalnath Narichania21, this Court discussed the concept of 'malice in law'. Profitable reference may be made to the following passages:

> "25. The State is under obligation to act fairly without ill will or malice— in fact or in law. 'Legal malice' or 'malice in law' means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for 'purposes foreign to those for which it is in law intended'. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. ...
>
> 26. Passing an order for an unauthorised purpose constitutes malice in law. ... "

54. Again, in the case of R.S. Garg v. State of U.P.22, this Court applied this principle to service disputes by holding as follows:

> "26. "Malice" in its legal sense means malice such as may be assumed for a wrongful act done intentionally but without just cause or excuse or for one of reasonable or probable cause. The term "malice on fact" would come within the purview of the aforementioned definition. Even, however, in the absence of any malicious intention, the principle of malice in law can be invoked as has been described by Viscount Haldane in Shearer v. Shields [1914 AC 808 : 83 LJPC 216 : 111 LT 297 (HL)] AC at p. 813 in the following terms:
>
> 'A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with (2010) 9 SCC 437 (2006) 6 SCC 430 an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently.' ....."

55. Furthermore, in the case of Swaran Singh Chand v. Punjab SEB23, this Court held that non-compliance of the State's own directions would constitute malice in law. We quote the relevant passage hereunder:

> "8. It is furthermore well settled that when the State lays down the rule for taking any action against an employee which would cause civil or evil consequence, it is imperative on its part to scrupulously follow the same. Frankfurter, J. in Vitarelli v. Seaton [3 L Ed 2d 1012 :
>
> 359 US 535 (1958)] stated: (US pp. 546-47) 'An executive agency must be rigorously held to the standards by which it professes its action to be judged. ... Accordingly, if

> dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. ... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.' ...
>
> 18. In a case of this nature the appellant has not alleged malice of fact. The requirements to comply with the directions contained in the said Circular Letter dated 14-8-1981 were necessary to be complied with in a case of this nature. Non-compliance wherewith would amount to malice in law.....Thus, when an order suffers from malice in law, neither any averment as such is required to be made nor strict proof thereof is insisted upon. Such an order being illegal would be wholly unsustainable." (emphasis supplied)

56. Based on the above, there is little doubt that the State, here the UoI, has exercised a power for a purpose which is foreign to that for which the power in law is intended. Viewed from this perspective, the act of appointing the third respondent as Chairperson despite he not having the requisite experience suffers from malice in law. (2009) 13 SCC 758

57. We hasten to add that whenever appointment to a public office is sought to be made, irrespective of the nature of the office, the rules prescribing mandatory eligibility criteria must be applied in a strict manner; after all, every public appointment under Article 16 of the Constitution must be fair, non-arbitrary and reasonable. Tested on this touchstone, the appointment of the third respondent fails to pass muster.

58. Mr. Banerjee has appealed to the conscience of the Court referring to the third respondent having effectively and capably discharged the duties and performed the functions of his office over the last 42 (forty-two) months and that less than 6 (six) months remain for him to demit office.

59. Having regard to the dictum in M. Tripura Sundari Devi (supra), it amounts to a fraud on the public to make appointments in departure of either the statutory requirements or a public advertisement. Fraud unravels everything. This Court, under the Constitution, is the protector of the rights of citizens; to allow a proven fraud to be continued is unthinkable since it goes against reason as well as morality. We are afraid, Mr. Banerjee's appeal to our conscience does not commend acceptance.

CONCLUSION

60. The appeals, insofar as they are directed against the impugned judgment and order of the Division Bench reversing the judgment and order of the Single Judge, are accepted. While we set aside the former, the latter is restored, meaning thereby, the appointment of the third respondent stands quashed. The third respondent shall step down from the office of Chairperson of the Commission forthwith. By forthwith, we mean a week from date to enable him complete his pending assignments without, however, taking any policy decision or decision involving finances. Fresh

process be initiated for appointment to the office of Chairperson of the Commission expeditiously. We hope and trust that the selection process will be taken to its logical conclusion, in accordance with law.

61. Benefits received by the third respondent are not touched; however, no future benefit shall enure to him on the basis of the service rendered by him as Chairperson, which stands quashed, beyond seven days from date.

62. The appeal preferred by the appellant questioning rejection of his cross-

objection is, however, dismissed.

63. No order as to costs.

.....J (DIPANKAR DATTA) .....J (MANMOHAN) New Delhi.

12th February, 2025.

ORGANISATIONAL SET UP OF CCRH