

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16611 of 2021

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Veterans Forum for Transparency in Public Life through its General Secretary namely Wing Commander (Retd.) Bishwanath Prasad Singh, aged about 71 years, Male, Son of Late R.N. Singh, R/o PNT Colony No.2, Dahiyawan, Chapra, PS-Chapra, District-Saran.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department, Government of Bihar, Patna.
3. The Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.
4. The Additional Secretary to the Government, Food and Consumer Protection Department, Govt. of Bihar, Patna.
5. Three Men Selection Committee through its Chairman, Minister, Food and Consumer Protection Department, Govt. of Bihar, Patna.
6. The Secretary, Co-operative Department, Govt. of Bihar, Patna.
7. The Special Secretary to the Government, Food and Consumer Protection Department, Govt. of Bihar, Patna.
8. Vidyanand Vikal Son of Late Raghubir Ram Resident of Village-Khanet, P.O.-Panwar, P.S.-Pawna, District-Bhojpur.

... ... Respondent/s

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National Food Security Act, 2013 – Section 16(3)

Bihar State Food Commission Rules, 2014 – Rule 5

Public Interest Litigation through which appointment of 8th Respondent as the chairman of Bihar State food Commission was questioned and the writ of quo-warranto was prayed.

Allegations are that aboveaid appointment was made without any public advertisement, there was no transparency in the selection conducted, the appointee was a politician, bio-data of the 8th Respondent was received before the selection commenced and the, the 8th Respondent was the sole candidate.

Held that 8th respondent being as a politician does not disable him from being appointed as the chairman; Held further that Union of India vs Namita Sharma; (2013)10 SCC 359 bars only MPs and MLAs from being appointed when they chose to remain in the houses of the legislature.

Held further that there can be no disability found on a politician, especially going by the qualifications required for the appointment of the chairperson of the instant commission. The mere fact that the 8th Respondent's bio-data was available with the department even prior to calling for recommendations, does not disqualify him.

Further held that no illegality can be found if the bio-data was forwarded to the concerned department prior to appointment.

It was further held that there was no mandate on the state to carry out public advertisement, especially when a selection committee was appointed.

No reason to entertain the PIL.

PIL was dismissed.

[Para 3,9,10,11,12,13 and 14]

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... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate Ms. Ritika Rani, Advocate Mr. Ritu Raj, Advocate
For the Respondent/s	:	Mr.S. Raza Ahmad, AAG-5 Mr. Vishambhar Prasad, AC to AAG-5 Mr. Rajesh Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-08-2023

The above Public Interest Litigation has been filed
challenging the appointment of the 8th Respondent as the
Chairman of the Bihar State Food Commission (hereinafter



referred to as the 'Commission'), seeking a writ of *quo warranto*.

2. We have heard Shri Dinu Kumar, learned counsel for the petitioner and Shri S.Raja Ahmad, learned Government Advocate for the respondents-State.

3. Learned counsel for the petitioner submits that the appointment of the 8th Respondent is in conflict with Section 16(3) of the National Food Security Act, 2013 and Rule 5 of the Bihar State Food Commission Rules, 2014. The appointment has been made without any public advertisement and there is absolutely no transparency in the selection conducted. It is argued that the 8th Respondent is a politician and is not qualified to be appointed to the post which requires some expertise and experience in the matter of providing for food and nutrition to the downtrodden. It is pointed out that the bio-data of the 8th Respondent was received even before the selection commenced. There was no person in consideration other than the 8th Respondent. Learned counsel would rely on the decisions of the Hon'ble Supreme Court in **Namita Sharma vs. Union of India; (2013) 1 SCC 745** and **Techi Tagi Tara v. Rajendra Singh Bhandari & Ors.; (2018) 11 SCC 734**, to contend that the appointment made is quite in contravention of the principles laid down in the aforesaid decisions.



4. The learned Government Advocate, on the other hand, takes serious umbrage at the submissions that the 8th Respondent is a politician and hence, disentitled to be appointed to the post. The 8th Respondent has wide experience in public affairs and was also the Chairman of the Scheduled Caste Commission of Bihar and has a long history of public service, which makes him imminently suitable for the post. The appointment to the post of the Commission statutorily created does not go by public advertisement and hence, a Selection Committee was appointed for proper recommendation. The Selection Committee had called for recommendations from various Departments, which was not fruitful. It was in the above circumstance that the 8th Respondent was appointed which cannot be faulted and he has the necessary experience and expertise to handle the post of Chairman of the Commission.

5. By Annexure-2 dated 06.04.2017, a Selection Committee is constituted whose Chairman was the Minister of the Food & Consumer Protection Department, with the Principal Secretaries of the Food & Consumer Protection Department and of the Co-operative Department as its Members. The post of Chairman fell vacant on the death of the earlier Chairman on 19.06.2019. On 03.12.2019, Annexure-6 letter was issued to the



Secretary of the General Administration Department; Home (Special) Department; Social Welfare Department, Co-operative Department, Health Department, Agriculture Department and Human Rights Commission to make recommendations for the post. On the recommendation of the Selection Committee, Annexure-8 notification was issued by which the 8th Respondent was appointed, under Section 7 of the Bihar State Food Commission Rule, 2014, as the Chairman of the Commission. It is very evident that there was no recommendations made from the various Departments and in that circumstance, the 8th Respondent was appointed.

6. The essential qualification for appointment as Chairman of the Commission as is prescribed in the National Food Security Act, 2013, reads as follows:-

“16(3)(a) who are or have been member of the All India Services or any other civil Services of the Union or State or holding a civil post under the Union or State having knowledge and experience in matters relating to food security, policy making and administration in the field of agriculture, civil supplies, nutrition, health or any allied field; or

(b) of eminence in public life with wide knowledge and experience in agriculture, law, human rights, social service, management, nutrition, health, food policy or public administration; or

(c) who have proven record of work relating to the improvement of the food and nutrition rights of the poor.

7. This Court fully agrees with the submission of



the Government Advocate that it is not proper for the petitioner to categorise the 8th Respondent as a politician and thus, for that reason alone, deem him to be disabled from being appointed as the Commission.

8. The Counter affidavit filed on behalf of the State specifically refers to the experience of the 8th Respondent in social work, human rights etc and the 8th Respondent having occupied the post of Chairman of the Bihar State Scheduled Caste Commission. The bio-data of the 8th Respondent, produced at page 76-77, also speaks of the vast experience in social work and public affairs.

9. The petitioner has relied on two decisions of the Hon'ble Supreme Court to challenge the selection. **Namita Sharma** (supra) was concerned with the appointment of the Chief Information Commissioner under the Right to Information Act, 2005. The Chief Information Commissioner and the Information Commissioner under Section 12(5) and the State Commissioners under Section 15(5), were to be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. It was also stipulated that they shall not be Members of the Parliament



or Members of the Legislature of any State or Union Territory. The Hon'ble Supreme Court having considered the issue raised, held that Sections 12(5) and 15(5) of the Right to Information Act, 2005 are constitutionally valid, but, however, only by reading into the expression 'knowledge and experience', to mean and include a basic degree in the respective field and the experience gained thereafter. The said decision, however, was reviewed in **Union of India v. Namita Sharma; (2013) 10 SCC 359** and the provisions were held to be constitutionally valid without the rider and it was held so in Paragraphs 39.4 and 39.5, which are as follows:-

“39.4. We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Sections 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners.

39.5. We further direct that the Committees under Sections 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to citizens as part of their right to information under the Act after the appointment is made.”



Though MP's and MLA's were not to be Chairpersons it was declared that the prohibition is only in so far as such persons, if appointed, continuing in the houses of the peoples' representatives. This imminently shuts out the argument of the learned counsel for the petitioners against the 8th Respondent; that he is a politician.

10. **Techi Tagi Tara** (supra) was again a case in which the Hon'ble Supreme Court considered the appointment of persons to the State Pollution Control Board, which was with the avowed object of protection and improvement of environment and safeguarding of forest and wild life. The Chairman of the State Board, under Section 4(2) of the Water (Prevention and Control of Pollution) Act, 1974 and Section 5(2) of the Air (Prevention and Control of Pollution) Act, 1981, was to be a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions, dealing with the matters aforesaid. The learned Judges noticed many decisions of the Supreme Court and specifically the Menon Committee and held that expert and professional appointment to the State Pollution Control Boards should be geared towards establishing a professional body with



multifarious tasks intended to preserve and protect the environment; consisting of experts. The learned Judges directed the States to frame appropriate guidelines or recruitment rules within six months considering the institutional requirements of the SPCBs and the law laid down by the statute.

11. The decisions cited at the Bar, according to us, do not vitiate the appointment of the 8th Respondent, who has wide experience in public affairs and dealing with the down trodden and the marginalised people among the citizenry. We also have to notice that it is the politician who works among the masses and are often chosen by the citizenry to be their representatives in the Legislature and the Parliament; giving them the authority to govern this land. There can be no disability found on a politician, especially going by the qualifications required for the appointment of the Chairperson of the instant Commission.

12. As far as the selection process is concerned, the counter affidavit of the State has specifically referred to the recommendations called for, from the various Departments. Only in the context of there being no recommendation from any of the Departments that the 8th Respondent was appointed. The mere fact that the 8th Respondent's bio-data was available with the Department even prior to calling for recommendations, does not



disqualify him.

13. The Selection Committee itself was constituted in 2017 and it has *ex officio* members. The existing Chairperson expired and there was a vacancy in the Commission. The fact that a bio-data was forwarded by the 8th Respondent to the concerned Department, does not necessarily bring forth any illegality. The fact that the only person in the selection was the 8th Respondent was merely fortuitous and there is no mandate on the State to carry out public advertisement, especially when a Selection Committee was appointed which could devise the method by which the search of suitable hands could be made and recommendations given to the Government.

14. We find absolutely no reason to entertain the Public Interest Litigation and reject the same.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	08.08.2023
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