

(35)
~~982~~
Punjab VAT Tribunal

CWP No.2636 of 2013 (O&M)

[1]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2636 of 2013 (O&M)
Date of Decision:03.04.2013

H.C.Arora, Advocate,

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice A.K.Sikri, Chief Justice
Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. H.C.Arora, Advocate-petitioner in person.

Mr. P.S.Bajwa, Addl. A.G., Punjab.

A.K.Sikri, C.J. (Oral):

In this writ petition filed in public interest, the petitioner has made the following prayers:-

"(ii) and to issue a writ of mandamus or any other appropriate writ, direction or order for directing the respondents no.1 and 2 to fill up the three vacant posts of Members of the Punjab VAT Tribunal, Chandigarh, in consultation with the Hon'ble Punjab and Haryana High Court, as envisaged under the directions issued by the Hon'ble Supreme Court of India in S.P.Sampath Kumar Vs. Union of India, AIR 1987 SC 346 and another recent judgment in Civil Appeal No.7208 of 2012, titled as State of Gujarat and another Vs Gujarat Revenue Tribunal Bar Association and another, decided on 16.10.2012;

AND to restrain the respondents no.1 and 2 from making any appointments to the post of Chairman or Members of the Punjab VAT Tribunal, Chandigarh, without consultation with the Hon'ble High Court, during the pendency of the instant writ petition"

Ca
Chairman of the Punjab VAT Tribunal has already been appointed.

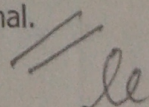
In the reply filed by the respondents, it is also stated that the

State Government has no intention to appoint the members of the Punjab VAT Tribunal at this juncture and at the same time it is also submitted that as and when the State Government feels the necessity of appointing a member of the Tribunal, it would do so keeping in view the guidelines laid down by the Apex Court in the cases relied upon by the petitioner, as mentioned in para 11 of this petition. Similarly, the appointment of the Chairman of the Tribunal, on completion of the tenure of the present Chairman, would be made in accordance with the law laid down by the Apex Court in consultation with this Court.

Thus, as far as the procedure for appointment of Chairman and Members of the Tribunal is concerned, in view of the stand taken in the affidavit that the same will be done following the guidelines laid down by the Supreme Court and the Chairman would be appointed in consultation with this Court, grievance raised in this petition has been redressed. However, we find that the averment in the affidavit that the State Government has no intention to appoint the member of the Tribunal at this juncture may not be correct. Section 4(2) of the Punjab Value Added Tax Act, 2005 deals with the constitution of the Tribunal which reads as under:-

"(2) The Tribunal shall consist of a Chairman and three other members to be appointed by the State Government."

The aforesaid provision stipulates that in constitution of the Tribunal, which is to be consist of not only a Chairman but three other members as well, the State Government cannot take a decision not to appoint the other three members of the Tribunal.



It is not disputed that the functions to be performed by the Tribunal are quasi judicial in nature. In similar context, dealing with appointment of Chief Information Commissioner and Members under the Right to Information Act, 2005, the Supreme Court in **Namit Sharma vs. Union of India**, JT 2012(9) SC 196, after examining the functions and duties which are to be performed by the Chief Information Commissioner and Members of the Commission, held that those functions are of quasi judicial nature and, therefore, the Chief Information Commissioner should be a person of judicial mind, expertise and experience in that field. Though the similar provisions for appointment were not declared as unconstitutional, the Court deemed it appropriate to read down the said provision to save it from the vice of unconstitutionality by recommending that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioner. The Chief Information Commissioner at the Centre or State level should normally be the Chief Justice of the High Court or Judge of the Supreme Court of India. Following discussion in this behalf needs to be quoted:

"102. The independence of judiciary stricto sensu applies to the Court system. Thus, by necessary implication, it would also apply to the tribunals whose functioning is quasi-judicial and akin to the court system. The entire administration of justice system has to be so independent and managed by persons of legal acumen, expertise and experience that the persons demanding justice must not only receive justice, but should also have the faith that justice would be done.

103. The above detailed analysis leads to an ad libitum conclusion that under the provisions and scheme of the Act of 2005, the persons eligible for appointment should be of public eminence, with knowledge and experience in the specified fields and should preferably have a judicial background. They should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the Commission, in its day-to-day working. The Commission satisfies abecedarians of a judicial tribunal which has the trappings of a court. It will serve the ends of justice better, if the Information Commission was manned by persons of legal expertise and with adequate experience in the field of adjudication. We may further clarify that such judicial members could work individually or in

Benches of two, one being a judicial member while the other being a qualified person from the specified fields to be called an expert member. Thus, in order to satisfy the test of constitutionality, we will have to read into Section 12(5) of the Act that the expression 'knowledge and experience' includes basic degree in that field and experience gained thereafter and secondly that legally qualified, trained and experienced persons would better administer justice to the people, particularly when they are expected to undertake an adjudicatory process which involves critical legal questions and niceties of law. Such appreciation and application of legal principles is a sine qua non to the determinative functioning of the Commission as it can tilt the balance of justice either way. Malcolm Gladwell said, "the key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are lacking in the latter". The requirement of a judicial mind for manning the judicial tribunal is a well accepted discipline in all the major international jurisdictions with hardly with any exceptions. Even if the intention is to not only appoint people with judicial background and expertise, then the most suitable and practical resolution would be that a 'judicial member' and an 'expert member' from other specified fields should constitute a Bench and perform the functions in accordance with the provisions of the Act of 2005. Such an approach would further the mandate of the statute by resolving the legal issues as well as other serious issues like an inbuilt conflict between the Right to Privacy and Right to Information while applying the balancing principle and other incidental controversies. We would clarify that participation by qualified persons from other specified fields would be a positive contribution in attainment of the proper administration of justice as well as the object of the Act of 2005. Such an approach would help to withstand the challenge to the constitutionality of Section 12(5).

104. As a natural sequel to the above, the question that comes up for consideration is as to what procedure should be adopted to make appointments to this august body. Section 12(3) states about the High-powered Committee, which has to recommend the names for appointment to the post of Chief Information Commissioner and Information Commissioners to the President. However, this Section, and any other provision for that matter, is entirely silent as to what procedure for appointment should be followed by this High Powered Committee. Once we have held that it is a judicial tribunal having the essential trappings of a court, then it must, as an irresistible corollary, follow that the appointments to this august body are made in consultation with the judiciary. In the event, the Government is of the opinion and desires to appoint not only judicial members but also experts from other fields to the Commission in terms of Section 12 (5) of the Act of 2005, then it may do so, however, subject to the riders stated in this judgment. To ensure judicial independence, effective adjudicatory process and public confidence in the administration of justice by the Commission, it would be necessary that the Commission is required to work in Benches. The Bench should consist of one judicial member and the other member from the specified fields in terms of Section 12(5) of the Act of 2005. It will be incumbent and in conformity with the scheme of the Act that the appointments to the post of judicial member are made 'in consultation' with the Chief Justice of India in case of Chief Information Commissioner and members of the Central Information Commission and the Chief Justices of the High Courts of the respective States, in case of the State Chief Information Commissioner and State Information Commissioners of that State Commission. In the case of appointment of members to the respective Commissions from other specified fields, the DoPT in the Centre and the concerned Ministry in the States should prepare a panel, after due publicity, empanelling the names proposed at least

three times the number of vacancies existing in the Commission. Such panel should be prepared on a rational basis, and should inevitably form part of the records. The names so empanelled, with the relevant record should be placed before the said High Powered Committee. In furtherance to the recommendations of the High Powered Committee, appointments to the Central and State Information Commissions should be made by the competent authority. Empanelment by the DoPT and other competent authority has to be carried on the basis of a rational criteria, which should be duly reflected by recording of appropriate reasons. The advertisement issued by such agency should not be restricted to any particular class of persons stated under Section 12(5), but must cover persons from all fields. Complete information, material and comparative data of the empanelled persons should be made available to the High Powered Committee. Needless to mention that the High Powered Committee itself has to adopt a fair and transparent process for consideration of the empanelled persons for its final recommendation. This approach, is in no way innovative but is merely derivative of the mandate and procedure stated by this Court in the case of L. Chandra Kumar (supra) wherein the Court dealt with similar issues with regard to constitution of the Central Administrative Tribunal. All concerned are expected to keep in mind that the Institution is more important than an individual. Thus, all must do what is expected to be done in the interest of the institution and enhancing the public confidence. A three Judge Bench of this Court in the case of Centre for PIL and Anr. v. Union of India & Anr. [(2011) 4 SCC 1] had also adopted a similar approach and with respect we reiterate the same.

105. Giving effect to the above scheme would not only further the cause of the Act but would attain greater efficiency, and accuracy in the decision-making process, which in turn would serve the larger public purpose. It shall also ensure greater and more effective access to information, which would result in making the invocation of right to information more objective and meaningful.

106. For the elaborate discussion and reasons afore-recorded, we pass the following order and directions:

1. The writ petition is partly allowed.

2. The provisions of Sections 12(5) and 15(5) of the Act of 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to 'read into' these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, we hold and declare that the expression 'knowledge and experience' appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, we state that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of these provisions and, in fact, is the essence thereof.

3. As opposed to declaring the provisions of Section 12(6) and 15(6) unconstitutional, we would prefer to read these

provisions as having effect 'post-appointment'. In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels.

4. There is an absolute necessity for the legislature to reword or amend the provisions of Section 12(5), 12(6) and 15(5), 15(6) of the Act. We observe and hope that these provisions would be amended at the earliest by the legislature to avoid any ambiguity or impracticability and to make it in consonance with the constitutional mandates.

5. We also direct that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law. Such rules should be framed with particular reference to Section 27 and 28 of the Act within a period of six months from today.

6. We are of the considered view that it is an unquestionable proposition of law that the Commission is a 'judicial tribunal' performing functions of 'judicial' as well as 'quasi-judicial' nature and having the trappings of a Court. It is an important cog and is part of the court attached system of administration of justice, unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to the machinery of administration.

7. It will be just, fair and proper that the first appellate authority (i.e. the senior officers to be nominated in terms of Section 5 of the Act of 2005) preferably should be the persons possessing a degree in law or having adequate knowledge and experience in the field of law.

8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a 'judicial member', while the other an 'expert member'. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners, Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

9. The appointment of the judicial members to any of these posts shall be made 'in consultation' with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

10. The appointment of the Information Commissioners at both levels should be made from amongst the persons empanelled by the DoPT in the case of Centre and the concerned Ministry in the case of a State. The panel has to be prepared upon due advertisement and on a rational basis

as afore- recorded.

11. The panel so prepared by the DoPT or the concerned Ministry ought to be placed before the High-powered Committee in terms of Section 12(3), for final recommendation to the President of India. Needless to repeat that the High Powered Committee at the Centre and the State levels is expected to adopt a fair and transparent method of recommending the names for appointment to the competent authority.

12. The selection process should be commenced at least three months prior to the occurrence of vacancy.

13. This judgment shall have effect only prospectively.

14. Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of Article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precedence, i.e., judgments of the High Court and the Supreme Court of India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that the Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgments of the courts dealing with the subject and principles applicable, in a given case.

It is not only the higher court's judgments that are binding precedents for the Information Commission, but even those of the larger Benches of the Commission should be given due acceptance and enforcement by the smaller Benches of the Commission. The rule of precedence is equally applicable to intra appeals or references in the hierarchy of the Commission."

C / Thus, we dispose of this writ petition with directions to the respondents to appoint three other members of the Punjab VAT Tribunal as well, within a period of three months from today. Needless to mention that the said appointments shall be done keeping in view the guidelines laid down by the Apex Court, as stated by the respondents in para 6 of the affidavit.

(A.K.Sikri)
Chief Justice

April 03, 2013
vinod*

(Rakesh Kumar Jain)
Judge