RAJESH AWASTHI

v.

NAND LAL JAISWAL & ORS.

(Civil Appeal No. 7600 of 2012)

OCTOBER 19, 2012

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Electricity Act, 2003:

s.85(5) – Selection of Chairperson of State Electricity Regulatory Commission – Selection Committee recommending to State Government two names asking the Government to ensure compliance of sub-s. (5) of s. 85 – Held: Power conferred under sub-s. (5) of s.85 of the Act has to be exercised by Selection Committee and not by the Government – The question as to whether the persons who have been named in the panel have got any financial or other interest which is likely to affect prejudicially their functions as Chairperson, is a matter which depends upon the satisfaction of Selection Committee and that satisfaction has to be arrived at before recommending any person for appointment as Chairperson to State Government – Selection Committee has given a complete go-by to that provision and entrusted that function to the State Government which is legally impermissible – State Government also, without application of mind and overlooking that statutory provision, appointed the appellant – In the instant case, there has been total non-compliance of the statutory provision by the Selection Committee which makes the decision making process vulnerable warranting interference by constitutional courts and, therefore, High Court is justified in holding that the appointment is non est in law – Constitution of India, 1950 – Art. 226.

Constitution of India, 1950:

Art. 226 – Writ of quo warranto – Held: A citizen can claim a writ of quo warranto and he stands in the position of a relater – A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions – In the instant case, the question as to whether, being Vice-President of the private company, the appellant had any financial or other interest which would prejudicially affect his function as Chairperson was an issue which the Selection Committee ought to have considered – The statutory requirements as prescribed in sub-r. (3) of r. 3 of 1999 Rules were also not followed over and above, the non-compliance of sub-s. (5) of s.85 of the Act – The expression "before recommending any person" in sub s. (5) of s. 85 clearly indicates that it is a mandatory requirement to be followed by the Selection Committee before recommending the name of any person for the post of Chairperson – The expression "before" clearly indicates the intention of the Legislature – Non-compliance of sub-s. (5) of s. 85 of the Act is not a procedural violation, and vitiates the entire selection process – High Court has rightly held that the appointment of appellant was in clear violation of sub-s. (5) of s.85 of the Act and, consequently, he has no authority to hold the post of Chairperson of the Commission – Electricity Act, 2003 – s.85(5) – U.P. Electricity Regulatory Commission (Appointment and Conditions of Service of the Chairperson and Members) Rules, 1999 – r.3(3) – Locus Standi.

Consequent upon the post of Chairperson, U.P. State Electricity Regulatory Commission falling vacant, applications were invited from eligible candidates and out of 30 applicants, the Selection Committee constituted u/ s 85 of the Electricity Act, 2003, selected two persons on merit, including the appellant and forwarded their names to the State Government with an asterisk against the name of the appellant that if he was appointed, the Government would first ensure the compliance of sub-s. (5) of s.85 of the Act. The Government appointed the appellant as Chairperson of the Commission on

29.12.2008, on which date the appellant sent a letter to the State Government stating that he had resigned from his previous assignment in the private sector on 27.12.2008. The respondent, who was the General Secretary, Jal Vidyut Unit, filed a writ petition before the High Court seeking a writ of quo warranto challenging the appointment of the appellant, inter alia, on the ground that the Selection Committee did not follow the provisions of sub-s. (5) of s.85 of the Act and the appellant could not have been selected as he was working with a private sector company and had financial and other interests in that company. The High Court allowed the writ petition, issued a writ of quo warranto and quashed the appointment of the appellant declaring the same as illegal and void.

Dismissing the appeal, the Court

HELD:

(Per Radhakrishnan, J)

1.1 The Electricity Act, 2003 is an Act enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff etc. [para 10] [898-E-F]

1.2 In view of s. 84 of the Electricity Act, 2003, the Chairperson shall be a person of ability, integrity and standing, who has adequate knowledge of, and has shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management. The Selection Committee, as per s.85, has to recommend a panel of two names for filling up the post

A of the Chairperson, but before recommending any person for the purpose it has to satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as Chairperson. [para 11] [899-D-F]

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Crowford vs. Spooner ***(1846) 6 Moore PC 1;*** *Attorney General v. Milne* **(1914-15) All England Report 1061;** *Nokes v. Dancaster Amalgamated Collieries Ltd.* **(1940) 3 All England Report 549 – referred to.**

C 1.3 The language used in sub-s. (5) of s.85 of the Act, calls for no interpretation. Words are crystal clear, unambiguous and when read literally, there is no doubt that the power conferred under sub-s. (5) of s.85 of the Act has to be exercised by the Selection Committee and D the Committee alone and not by the Government. Some of the words used in sub-s. (5) of s.85 are of considerable importance, such as "before recommending", "the Selection Committee shall satisfy" and "itself". The Legislature has emphasized the fact that 'the Selection E Committee itself has to satisfy', meaning thereby, it is not the satisfaction of the government what is envisaged in sub-s. (5) of s.85 of the Act, but the satisfaction of the Selection Committee. The question as to whether the persons who have been named in the panel have got any F financial or other interest which is likely to affect prejudicially their functions as Chairperson, is a matter which depends upon the satisfaction of the Selection Committee and that satisfaction has to be arrived at before recommending any person for appointment as G Chairperson to the State Government. The government could exercise its powers only after getting the recommendations of the Selection Committee after due compliance of sub-s. (5) of s.85 of the Act. In the instant case, the Selection Committee has given a complete go-by to that provision and entrusted that function to the H

State Government which is legally impermissible. The State Government also, without application of mind and overlooking that statutory provision, appointed the appellant. [para 15] [902-F-H; 903-A-D] A

2.1 It is true that suitability of a candidate for appointment does not fall within the realm of writ of quo warranto. However, a writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. In the instant case, the question which the Selection Committee ought to have considered, was as to whether, being Vice-President of the private company, the appellant had any financial or other interest which would prejudicially affect his function as chairperson. When the Selection Committee was constituted, the 1999 Rules were in force and the 2008 Rules came into force only on 1.1.2009. By virtue of s.85 of the Act, the then existing Rules 1999 were also safeguarded. Rule 3 of the 1999 Rules deals with the selection process for the post of Chairperson, which is almost *pari-materia* to the 2008 Rules. The statutory requirements as prescribed in sub-r. (3) of r. 3 of 1999 Rules were also not followed in the instant case, over and above, the non-compliance of sub-s. (5) of s.85 of the Act. [para 16, 18-20] [903-E-F; 904-C-E-G; 905-A] B C D E

Mor Modern Coop. Transport Coop. Transport Society Ltd. v. Govt. of Haryana **2002 (1) Suppl. SCR 87 = (2002) 6 SCC 269;** *B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees Associaition* **2006 (5) Suppl. SCR 462 = (2006) 11 SCC 731; and** *Hari Bansh Lal v. Sahodar Prasad Maht and others* **2010 (10) SCR 561 = (2010) 9 SCC 655 – relied on** F G

R. v. Speyer **(1916) 1 K.B. 595 – referred to**

2.2 The expression "before recommending any person" in sub s. (5) of s. 85 clearly indicates that it is a H

A **mandatory requirement to be followed by the Selection Committee before recommending the name of any person for the post of Chairperson. The expression "before" clearly indicates the intention of the Legislature. Non-compliance of sub-s. (5) of s. 85 of the Act is not a** B **procedural violation, as it affects the very substratum of the appointment. Non-compliance of mandatory requirements results in nullification of the process of selection unless it is shown that performance of that requirement was impossible or it could be statutorily** C **waived. [para 21] [905-D-G]**

State Bank of Travancore v. Mohammadv 1982 (1) SCR 338 = **(1981) 4 SCC 82 – relied on**

2.3 This Court is of the view that the appointment of D **the first respondent is in clear violation of sub-s. (5) of s.85 of the Act. Consequently, he has no authority to hold the post of Chairperson of the U.P. State Electricity Regulatory Commission; and the High Court has rightly held so. [para 22] [906-C]**

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University of Mysore & Anr. v. C.D. Govinda Rao & Anr. **(1964) 4 SCR 575,** *Mahesh Chandra Gupta vs. Union of India* **2009 (10) SCR 921 = (2009) 8 SCC 273 - cited.**

Per Dipak Misra, J (Concurring):

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1. A citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to G **hold the same as per law. A writ of quo warranto can be issued when there is violation of statutory provisions/ rules. Delay and laches do not constitute any impediment to deal with the lis on merits. [para 6] [908-F-G; 909-A]**

The University of Mysore v. C.D. Govinda Rao and

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another **1964 SCR 575 = 1965 AIR 491**; *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* **2003 (2) SCR 799 = 2003 (4) SCC 712**; *B.R. Kapur v. State of Tamil Nadu and another* **2001 (3) Suppl. SCR 191 = 2001 AIR 3435**; *Dr. Kashinath G. Jalmi and another v. The Speaker and others* **1993 (2) SCR 820 =1993 AIR 1873**; *Retd. Armed Forces Medical Association and others v. Union of India and others* **(2006) 11 SCC 731 (I)**; *Centre for PIL and another v. Union of India and another* **2011 (4) SCR 445 = 2011 (4) SCC 1**; *R.K. Jain v. Union of India* **1993 (3) SCR 802 = 1993 (4) SCC 119 – referred to.**

2.1. State Electricity Regulatory Commission is an expert body and in such a situation the selection has to be absolutely in accord with the mandatory procedure as enshrined u/s 85 of the Act. Section 85(5) of the Act has inherent inviolability and every word used therein has to be understood in the context regard being had to the legislative intendment. There has to be concentrated focus on the purpose of legislation and the text of the language, for any deviation is likely to bring in hazardous results. [para 18 and 21] [915-C-D; 916-C]

Utkal Contractors Joinery Pvt. Ltd. and others etc. v. State of Orissa and others **1987 AIR 1454 = 1987 (3) SCR 317**; *Atma Ram Mittal v. Ishwar Singh Punia* **1988 (2) Suppl. SCR 528 = 1988 (4) SCC 284**; *Popatlal Shah v. State of Madras* **1953 SCR 677 : AIR 1953 SC 274**; *Sangeeta Singh v. Union of India and others* **2005 (2) Suppl. SCR 823 = 2005 (7) SCC 484**; *Uttar Pradesh Power Corporation Limited v. National Thermal Power Corporation Limited and others* **(2011) 12 SCC 400**; *W.B. Electricity Regulatory Commission v. CESC Ltd.* **2002 (8) SCC 715; and** *ITC Limited v. State of Uttar Pradesh and others* **2011 (7) SCR 66 = 2011 (7) SCC 493 – referred to.**

Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg ***A G*** **1975 AC 591- referred to.**

A 2.2 In the present context, it has become necessitous to dwell upon the role of the Selection Committee. Section 85(1) of the Act provides for constitution of Selection Committee to select Members of the State Commission. The said Committee, as the composition B would show, is a high powered committee, which has been authorised to adjudge all aspects. In the case at hand the issue in singularity pertains to total non-compliance of the statutory command as envisaged u/s 85(5). Section 85(5) employs the term "recommendation", C (which means "suggest as fit for employment). [para 22 and 23] [916-D-E, G]

A. Pandurangam Rao v. State of Andhra Pradesh and others 1976 (1 SCR 620 =1975 AIR 1922 – relied on

D 2.3 In the instant case, on a perusal of the report of the Selection Committee it is manifest that the Committee has not recorded its satisfaction with regard to ingredients contained in s. 85(5) of the Act and left it to the total discretion of the State Government. The E Selection Committee is legally obliged to record that it has been satisfied that the candidate does not have any financial or other interest which is likely to affect prejudicially his functions as Chairman or Member, as the case may be. The said satisfaction has to be reached F before recommending any person for appointment. The abdication of said power tantamounts to breach of Rule of Law because it not only gives a go by to the warrant of law but also creates a dent in the basic index of law. Therefore, the selection is vitiated and it can never come within the realm of curability, for there has been statutory G non-compliance from the very inception of selection. The Selection Committee has failed to obey the mandate of the law as a consequence of which the appellant has been selected and, therefore, in the ultimate eventuate the selection becomes unsustainable. There has been total H

non-compliance of the statutory provision by the Selection Committee which makes the decision making process vulnerable warranting interference by the constitutional courts and, therefore, the High Court is justified in holding that the appointment is *non est* in law. [para 10, 23, 24 and 27] [910-B-C; 917-B-D; 918-A, F] A B

Chief Constable of the North Wales Police v. Evans **(1982) 1 W.L.R. 1155 – referred to.**

Case Law Reference:

C

(As per Radhakrishnan, J)

(1964) 4 SCR 575	**cited**	**para 6**
2009 (10) SCR 921	**cited**	**para 6**
2010 (10) SCR 561	**relied on**	**para 6**
2006 (5) Suppl. SCR 462	**relied on**	**para 6**
(1846) 6 Moore PC	**referred to**	**para 14**
(1914-15) All England Report 1061	**referred to**	**para 14**
(1940) 3 All England Report 549	**referred to**	**para 14**
2002 (1) Suppl. SCR 87	**relied on**	**para 16**
(1916) 1 K.B. 595	**referred to**	**para 20**
1982 (1) SCR 338	**relied on**	**para 21**

D E F

(As per Dipak Misra, J.)

G

2001 (3) Suppl. SCR 191	**referred to**	**para 4**
1964 SCR 575	**referred to**	**para 5**
1993 (2) SCR 820	**referred to**	**para 6**

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A	2003 (2) SCR 799	referred to	para 7
	(2006) 11 SCC 731 (I)	referred to	para 7
	2011 (4) SCR 445	referred to	para 8
B	1993 (3) SCR 802	referred to	para 8
	1987 (3) SCR 317	referred to	para 14
	1988 (2) Suppl. SCR 528	referred to	para 15
	1953 SCR 677	referred to	para 16
C	1975 AC 591	referred to	para 16
	2005 (2) Suppl. SCR 823	referred to	para 17
	(2011) 12 SCC 400	referred to	para 19
D	2002 (8) SCC 715	referred to	para 19
	2011 (7) SCR 66	referred to	para 20
	1976 (1) SCR 620	relied on	para 23
E	(1982) 1 W.L.R. 1155	referred to	para 26

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7600 of 2012.

From the Judgment and Order dated 10.01.2012 of the
F High Court of Judicature at Allahabad, Bench at Lucknow in Writ Peition No. 1428 (M/B) of 2011.

L. Nageswara Rao, Ravindra Shrivastava, Gaurav Bhatia, AAG, Shail Kr. Dwivedi, Gunna Venkateswara Rao, Sanjay
G Kumar Visen, Sathosh Krishnan, Prashant Bhushan. Devvrat, C.D. Singh, Ayesha Chaudhry, Prashant Chaudhary, Anoop Jain and Anshuman Srivastava for the Appearing Parties.

The Judgments of the Court was delivered by

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K.S. RADHAKRISHNAN, J. 1. Leave granted. A

2. We are, in this case, concerned with the question whether the High Court was justified in issuing a writ of *quo warranto* holding that the appellant has no authority in continuing as Chairperson of U.P. State Electricity Regulatory B Commission (for short 'the Commission') on the ground that the Selection Committee had not complied with sub-section (5) of Section 85 of the Electricity Act, 2003 (for short 'the Act').

3. The post of the Chairperson of the Commission fell C vacant on 21.10.2008. The government of Uttar Pradesh, in exercise of its powers conferred under Section 85(1) of the Act, constituted a Selection Committee vide notification dated 22.12.2008 consisting of three members headed by a retired judge of the High Court and two other members i.e. Chief D Secretary of the State of U.P. and Chairman of the Central Electricity Commission for finalizing the selection of the Chairperson. Applications were invited intimating various authorities including Ministry of GOI, CAG, CEA, all the Secretaries of Power working in different States in the country, E CBDT, PSUs power sectors etc. Thirty persons applied for the post including the appellant. The meeting of the Selection Committee was held on 26.12.2008 and Selection Committee selected two persons on merit, namely, the appellant and one Mr. Amit Kumar Asthana. Panel of two names was forwarded F by the Selection Committee to the government of U.P. with an asterisk against the name of the appellant stating that if he was appointed, the government would ensure first that the provisions of sub-section (5) of Section 85 of the Act would be complied with. The government appointed the appellant as the Chairman G of the Commission on 29.12.2008. The appellant on that date sent a letter to the State Government stating that he had resigned from his previous assignments on 27.12.2008 and severed all his links with the private sector as required under

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A Section 85 of the Act.

4. The first respondent herein who was the General Secretary, Jal Vidyut Unit, filed a writ petition before the High Court of Allahabad, Lucknow Bench seeking a writ of *quo* B *warranto,* challenging the appointment of the appellant on various grounds. Apart from the contention that the Selection Committee had not followed the provisions contained in sub-section (5) of Section 85 of the Act, it was also alleged that the appellant could not have been selected since he was C working as the Joint President of the J.P. Power Ventures Ltd at the time of selection, hence he had financial and other interests in that company which would prejudicially affect his functions as the Chairperson of the Commission. Further, it was also pointed out that the procedure laid down in U.P. Electricity D Regulatory Commission (Appointment and Conditions of Service of the Chairperson and Members) Rules, 1999 (for short 'the 1999 Rules') were also not complied with before initiating the selection process. The appellant questioned the *locus standi* of the first respondent and contended that he was E not an aspirant for the post and that the writ petition was filed after a period of more than two years after his assumption of charge as Chairperson of the Commission. Referring to the minutes of the Selection Committee dated 26.12.2008, it was pointed out that the selection was validly made and the F appellant was ranked first in panel on merit and sub-section (5) of Section 85 was also complied with. Further, it was stated that the appellant had no financial or other interests in J.P. Power Venture Ltd. so as to prejudicially affect his functions as Chairperson. In any view, it was pointed out that he had G resigned from that post on 27.12.2008.

5. The High Court after considering the rival contentions came to the conclusion that the Selection Committee had failed to follow the provisions of sub-section (5) of Section 85 of the H Act, hence the appointment was vitiated and the appellant had

no authority to hold the post of Chairperson. Further, it was also found that the Selection Committee had no power to delegate the powers conferred on it under Section 85(5) of the Act to the State Government. The court also held that the first respondent had sufficient *locus standi* to move the writ petition and the delay in approaching the court was not a ground, since a person who had been appointed contrary to a statutory provisions had no legal right to hold on to that post. The High Court, therefore, allowed the writ petition, issued a writ of quo warranto and quashed the appointment of the appellant declaring the same as illegal and void.

6. Shri L. Nageswara Rao, learned senior counsel appearing for the appellant submitted that the High Court has committed an error in holding that the appointment of the appellant was in violation of sub-section (5) of Section 85 of the Act. Learned senior counsel took us through the minutes of the Committee meeting held on 26.12.2008 and pointed out that the Selection Committee, after examination of the bio-data of 30 candidates, prepared a panel in which the appellant's name was shown as first in the order of merit. The Selection Committee, according to learned counsel, was very much aware of the fact that the appellant was the joint Vice President of J.P. Power Venture Ltd. and hence had put an asterisk against his name and reminded the State Government that if he was to be appointed, the provisions of sub-section (5) of Section 85 of the Act be first ensured. Learned senior counsel, therefore, submitted that there was substantial compliance of that provision and in any view it is only a curable defect, procedural in nature and a writ of quo warranto be not issued, being a discretionary remedy. Referring to the judgment of this Court in *University of Mysore & Anr. v. C.D. Govinda Rao & Anr.* (1964) 4 SCR 575, learned senior counsel submitted that the suitability arrived at by the Committee is not a matter amenable to proceedings under quo warranto. Learned senior

A counsel also referred to the judgments of this Court in *Mahesh Chandra Gupta vs. Union of India* (2009) 8 SCC 273, *Hari Bansh Lal v. Sahodar Prasad Maht and others* (2010) 9 SCC 655.

B 7. Learned senior counsel submitted that, in any view of the matter, writ of *quo warranto* will not lie where the breach in question is curable, hence procedural in nature. Assuming there is non-compliance of sub-section (5) of Section 85 of the Act, the matter can be relegated back to Selection Committee for C due compliance of that provision. Learned senior counsel also submitted that the writ of quo warranto is a discretionary remedy and hence such a course can be adopted by this Court. Reference was also made to the judgment of this Court in *B. Srinivasa Reddy v. Karnataka Urban Water Supply &* D *Drainage Board Employees Associaition* (2006) 11 SCC 731.

8. Mr. Prashant Bhushan, learned counsel appearing for the first respondent submitted that the High Court has rightly issued the writ of quo warranto after having found that the E appointment was made in gross violation of sub-section (5) of Section 85 of the Act. Learned counsel submitted that even the procedure laid down in 1999 Rules was also not complied with. Learned counsel referring to the bio-data of the applicants for the post of Chairperson tried to make a comparison of the merit F of other candidates and submitted that many of the candidates who had applied were far superior to the appellant. Learned counsel also submitted that the appellant was appointed due to extraneous reasons and the merit was not properly assessed, leave aside, the non-compliance of sub-section (5) G of Section 85 of the Act and 1999 Rules. Learned counsel also pointed out that since the appellant was Joint President of the J.P. Power Venture Ltd. - a private company at the time of selection, he was disqualified in occupying the post of Chairperson since he had financial and other interest which H would prejudicially affect his functions as Chairperson. Mr.

Ravindra Shrivastava, learned senior counsel appearing for the state of U.P. submitted that the appointment of the appellant was in violation of sub-section(5) of Section 85 of the Act and the 1999 Rules and the State is taking steps to conduct fresh selection after complying with the provisions of the Act and 2008 Rules, which is in force.

9. We heard learned counsel appearing on either side. The *locus standi* of the first respondent or the delay in approaching the writ court seeking a writ of quo warranto was not seriously questioned or urged before us. The entire argument centered around the question whether there was due compliance of the provisions of sub-section (5) of Section 85 of the Act. Section 85 is given for ready reference:

> **"SECTION 85: Constitution of Selection Committee to select Member of the State Commission:**
>
> (1) The State Government shall, for the purposes of selecting the Members of the State Commission, constitute a Selection Committee consisting of –
>
> (a) a person who has been a Judge of the High Court... . Chairperson;
>
> (b) the Chief Secretary of the concerned State... .Member;
>
> (c) the Chairperson of the Authority or the Chairperson of the Central Commission ... ... Member:
>
> Provided that nothing contained in this section shall apply to the appointment of a person as the Chairperson who is or has been a Judge of the High Court.
>
> (2) The State Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member and six months before the superannuation or end of tenure

A of the Chairperson or Member, make a reference to the Selection Committee for filling up of the vacancy.

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

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

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

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

E 10. The Electricity Act, 2003 is an Act enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers
F and supply of electricity to all areas, rationalization of electricity tariff etc. The Act also envisages the constitution of Central Electricity Authority, Regulatory Commission and establishment of Appellate Tribunal etc. The State Electricity Regulatory Commission (for short 'the State Commission') is constituted
G under sub-section (1) of Section 82 of the Act. Sub-section (5) of Section 85 of the Act states that the Chairperson and Members of the State Commission shall be appointed by the State Government on the recommendation of a Selection Committee as per Section 85 of the Act. Section 84 of the Act
H deals with the qualifications for appointment of Chairperson and

Members of the State Commission which reads as follows:

"84. **Qualifications for appointment of Chairperson and Members of State Commission:**

(1) The Chairperson and the Members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of, and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management.

(2) Notwithstanding anything contained in sub-section (1), the State Government may appoint any person as the Chairperson from amongst persons who is, or has been, a Judge of a High Court."

11. The Chairperson, therefore, shall be a person of ability, integrity and standing and has adequate knowledge of, and has shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management. The Selection Committee, as per Section 85, has to recommend a panel of two names for filling up the post of the Chairperson, but before recommending any person for appointment as the Chairperson, the Selection Committee has to satisfy itself that such person does have any financial or other interest which is likely to affect prejudicially his functions as Chairperson. The State Government under Section 82(5) of the Act has to appoint the Chairperson on the recommendation of the Selection Committee.

12. We have gone through the minutes of the Selection Committee meeting dated 26.12.2008 and also the bio-data of the applicants for the post of Chairperson of the State Commission. Reference to the bio data of some of the candidates is useful, hence given below:

Bio-data of applicants for the post of Chairperson U.P.E.R.C.

S. No. and name	Date of Birth	Educational Qualification			Retd. From	Post Holdings	Experience
		Academic	Professional	specialization			
1. S.K. Shukla	01-01-1950		BE (Mech. Engg.	ME (Prod. Engg.)		Director (Technical) Tehri Hydro Devpt. Corporation	33 years in T.H.D.C.
3. Anil Kumar Asthana	29-07-1952		B. Tech. (Electrical)	M.Tech (Power App. & Systems)		Chief Engr. System planning & Project appraisal CEA	33 Years in CEA Transmission opration
18. U.C. Misra	31-07-1949	B.E. Electri-cal Engg.)				Chairman Bhakra Beas Management Board	4.5 Years UPSEB, 15 Years NHPC, 16 Years PGCIL, 2 Years Chairman BBMB
20.	19-01-	Civil &				Joint President	3 Years

Rajesh Awasthi	1950	Municipal Engg. Graduate				J.P. Power Ventures	Central Designs Organization Government of Maharashtra, 7.5 Years Mining & Allied Machinery Co. Ltd., W.B., 24.5 Years NTPC, Joint President J.P. Power Ventures Ltd. from 17.11.08
21. S.M. Agarwal	15-06-1949	BSc.(Elec. Engg.)	M.Sc. (Elec Engg.)			D.G. (Trg. &HRD)UPPCL	36 Years UPSEB / UPPCL
24. Dr. Man Mohan	01-08-1946	B.E. (Elect.)	M.E. (Power System)	Ph.D. (Commercial Availability Index of Power Plant)		Member (Technical) Gujarat ERC	29.5 Years in CEA, 3 Years NTPC, 2 Years as Engr, Grade-I, Govt. of Libya, 4 Years in Gujrat ERC.

A 13. Illustrative bio-data of some of the candidates would indicate their academic qualifications, professional experience including the area of specialization. Appellant's qualification, experience and the fact that he was the Joint President of J.P. Power Ventures Ltd., was also indicated. The Selection B Committee has put an asterisk against his name and then left it to the government to ensure the compliance of sub-section (5) of Section 85 of the Act.

14. We will examine the meaning and content of Section 85(5) and whether it calls for any interpretation. Lord Brougham C in *Crowford v. Spooner* (1846) 6 Moore PC 1 has stated that "one has to take the words as the Legislature has given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question controlled D or altered". Viscount Haldane in *Attorney General v. Milne* (1914-15) All England Report 1061 has held that the language used "has a natural meaning, we cannot depart from that meaning unless, reading the statute as a whole, the context directs us to do so". Viscount Simon, L.C. in *Nokes v.* E *Dancaster Amalgamated Collieries Ltd.* (1940) 3 All England Report 549 has held "the golden rule is that the words of a statute must prima facie be given their ordinary meaning". Above principles have been repeated umpteen times by the House of Lords and this Court and hence, calls for no further F elucidation.

15. We are clear in our mind about the language used in sub-section (5) of Section 85 of the Act, which calls for no interpretation. Words are crystal clear, unambiguous and when read literally, we have no doubt that the powers conferred under G sub-section (5) of Section 85 of the Act has to be exercised by the Selection Committee and the Committee alone and not by the Government. Some of the words used in sub-section (5) of Section 85 are of considerable importance, hence, we give some emphasis to those words such as "before H recommending", "the Selection Committee shall satisfy" and

"itself". The Legislature has emphasized the fact that 'the Selection Committee itself has to satisfy', meaning thereby, it is not the satisfaction of the government what is envisaged in sub-section (5) of Section 85 of the Act, but the satisfaction of the Selection Committee. The question as to whether the persons who have been named in the panel have got any financial or other interest which is likely to affect prejudicially his functions as Chairperson, is a matter which depends upon the satisfaction of the Selection Committee and that satisfaction has to be arrived at before recommending any person for appointment as Chairperson to the State Government. The government could exercise its powers only after getting the recommendations of the Selection Committee after due compliance of sub-section (5) of Section 85 of the Act. The Selection Committee has given a complete go-by to that provision and entrusted that function to the State Government which is legally impermissible. The State Government also, without application of mind and overlooking that statutory provision, appointed the appellant.

16. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Coop. Transport Society Ltd. v. Govt. of Haryana* (2002) 6 SCC 269 held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy* (supra), this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in *Hari Bans Lal* (supra) wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

17. We are of the view that the principle laid down by this Court in the above-mentioned judgment squarely applies to the facts of this case. The appointment of the first respondent, in our considered view, is in clear violation of sub-section (5) of

A Section 85 of the Act. Consequently, he has no authority to hold the post of Chairperson of the U.P. State Electricity Regulatory Commission.

18. We express no opinion with regard to the contentions raised by the first respondent that the appellant had links with
B J.P. Power Ventures Ltd. According to the first respondent, the appellant had approved the higher tariff right to favour M/s J.P. Power Ventures Ltd., vide his order dated 27.8.2010. We have already found that the question as to whether, being Vice President of the J.P. Power, the appellant had any financial or
C other interest which would prejudicially affect his function as chairperson was an issue which the Selection Committee ought to have considered. We may point out that when the Selection Committee was constituted, 1999 Rules were in force and the present 2008 Rules came into force only on 1.1.2009. By virtue
D of Section 85 of the Act, the then existing Rules 1999 were also safeguarded. Section 3 of the 1999 Rules deals with the selection process for the post of Chairperson, which is almost *pari-materia* to the 2008 Rules. Sub-section (3) of Rule 3 is of some relevance, hence we extract the same:

E "3 (3) The convener shall sand requisition for the selection of any member for the aforesaid posts to different departments of State Governments and Central Govt., Public and Private Undertakings, Industrial Enterprises and to Organisation engaged in generation, distribution and
F supply of electricity, financial institutions, educational institutions and to the High Court and shall also invite applications directly from eligible persons by notifying the vacancy in the Government Gazette. The eligible persons may send their applications directly or through an officer
G or authority under whom he is for the time being working."

19. The above-mentioned statutory requirements were also not followed in the instant case, over and above, the non-compliance of sub-section (5) of Section 85 of the Act.

H 20. We fully agree with the learned senior counsel for the

appellant that suitability of a candidate for appointment does not fall within the realm of writ of quo warranto and there cannot be any quarrel with that legal proposition. Learned senior counsel also submitted that, assuming that the Selection Committee had not discharged its functions under sub-section (5) of Section 85 of the Act, it was only an omission which could be cured by giving a direction to the Selection Committee to comply with the requirement of sub-section (5) of Section 85 of the Act. Learned senior counsel submitted that since it is a curable irregularity, a writ of quo warranto be not issued since issuing of writ of quo warranto is within the discretion of the Court. Learned senior counsel made reference to the judgment of Court in *R. v. Speyer* (1916) 1 K.B. 595.

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

A commencement of this Act". We, therefore, find it difficult to accept the contention of learned senior counsel that this, being a procedural provision and non-compliance of sub-section (5) of Section 85 of the Act, is a defect curable by sending the recommendation back to the Selection Committee for
B compliance of sub-section (5) of Section 85 of the Act.

22. We are, therefore, in agreement with the High Court that the appointment of the appellant was in clear violation of sub-section (5) of Section 85 of the Act and, consequently, he has no authority to hold the post of the Chairperson of the
C Commission and the High Court has rightly held so. This appeal, therefore, lacks merits and the same is dismissed with no order as to costs.

DIPAK MISRA, J. 1. I have my respectful concurrence with the conclusion and the views expressed by my learned Brother
D Radhakrishnan, J. However, regard being had to the importance of the matter, I propose to record my views in addition.

2. As is evincible from the factual exposition, a writ of quo
E warranto has been issued by the High Court of Allahabad, Bench at Lucknow declaring that the appellant is not entitled to continue as the Chairperson of U.P. State Electricity Regulatory Commission (for short 'the State Commission') on the foundation that there had been total non-compliance of the
F statutory provision enshrined under sub-section (5) of Section 85 of the Electricity Act, 2003 (for brevity 'the Act').

3. As the facts have been stated in detail by my learned Brother, it is not necessary to repeat the same. Suffice it to state that the pleas of locus standi and delay and laches have not
G been accepted and a finding has been returned by the High Court that the selection of the appellant was in flagrant violation of the provisions of the Act and, therefore, his continuance in law is impermissible.

4. Before I proceed to deal with the justifiability of the order
H passed by the High Court, it is thought apposite to refer to

certain authorities that fundamentally deal with the concept of writ of quo warranto. In *B.R. Kapur v. State of Tamil Nadu and another*[1], in the concurring opinion Brijesh Kumar,J., while dealing with the concept of writ of quo warranto, has referred to a passage from Words and Phrases Permanent Edition, Volume 35, at page 647, which is reproduced below: -

> "The writ of "quo warranto" is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf. *Mc. Kittrick v. Murphy,* 148 SW 2d 527, 529, 530, 347 Mo. 484.
>
> (emphasis supplied)
>
> Information in nature of "quo warranto" does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. *State Ex. Inf. Walsh v. Thactcher,* 102 SW 2d 937, 938, 340 Mo. 865."
>
> (Emphasis supplied)

5. In *The University of Mysore v. C.D. Govinda Rao and another*[2], while dealing with the nature of the writ of quo warranto, Gajendragadkar,J. has stated thus: -

> "Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that

1. AIR 2001 SC 3435.
2. AIR 196 SC 491.

A the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against B the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of C public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly D invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and E that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

6. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he F stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in *Dr. Kashinath* G *G. Jalmi and another v. The Speaker and others*[3].

7. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*[4] it has been laid down by this Court that a writ of quo warranto can be issued when there is violation of statutory

3. AIR 1993 SC 1873.

H 4. (2003) 4 SCC 712.

provisions/rules. The said principle has been reiterated in Retd. *Armed Forces Medical Association and others v. Union of India and others*[5].

8. In the case of *Centre for PIL and another v. Union of India and another*[6] a three-Judge Bench, after referring to the decision in *R.K. Jain v. Union of India,*[7] has opined thus: -

> "Even in R.K. Jain case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction."

It is also worth noting that in the said case a view has been expressed that the judicial determination can be confined to the integrity of the decision making process in terms of the statutory provisions.

9. Regard being had to the aforesaid conception of quo warranto I may proceed to scrutinize the statutory provisions. Section 84 of the Act deals with qualifications for appointment of Chairperson and Members of State Commission. Section 85 provides for constitution of Selection Committee to select Members of the State Commission. Sub-sections (4) and (5) of Section 85 which are relevant for the present purpose read as follows: -

> "(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.
>
> (5) Before recommending any person for appointment as

5. (2006) 11 SCC 731 (I).

6. (2011) 4 SCC 1.

7. (1993) 4 SCC 119.

A the Chairperson or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member, as the case may be."

B 10. On a perusal of the report of the Selection Committee it is manifest that the Committee has not recorded its satisfaction with regard to ingredients contained in Section 85(5) of the Act and left it to the total discretion of the State Government.

C 11. On a scanning of the anatomy of Section 85(5) it is limpid that the Selection Committee before recommending any person for appointment as a Chairperson or a Member of the State Commission shall satisfy itself that the person does not have any financial or other interest which is likely to affect D prejudicially his functions as such Chairperson or Member, as the case may be. As the proceedings of the Selection Committee would reveal, it had not recorded its satisfaction prior to recommending the names of the two candidates. It is vivid that the Selection Committee abandoned its function and E simply sent the file to the State Government. It has been argued with vehemence by Mr. Nageswara Rao, learned senior counsel for the appellant that when two names were chosen from amongst certain persons it has to be inferred that there was recommendation after due satisfaction as per statutory F requirement.

12. On a plain reading of the provision it is clear as crystal that the Selection Committee is obliged in law to satisfy itself with regard to various aspects as has been stipulated under sub-section (5) of Section 85 of the Act. It is perceptible that G the said exercise has not been undertaken. It is worthy to note that the Act has a purpose. It has been enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting H competition therein, protecting interest of consumers and supply

of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto. Ergo, the provisions engrafted in the Act have their sacrosanctity.

13. Presently, it is requisite to survey some of the statutory provisions. Section 82 of the Act provides for constitution of the State Commission. Section 2(64) defines the State Commission. It is as follows: -

> "(64) "State Commission" means the State Electricity Regulatory Commission constituted under sub-section (1) of section 82 and includes a Joint Commission constituted under sub-section (1) of section 83;"

Section 86 deals with the functions of the State Commission. Keeping in view the functions attributed to the State Commission by the legislature I think it condign to reproduce the said provision in entirety: -

> **"86. Functions of State Commission.** – (1) The State Commission shall discharge the following functions, namely: -
>
> (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:
>
> Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;
>
> (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other

A sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

B (d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote cogeneration and generation of electricity C from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in D the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

E (g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

(i) specify or enforce standards with respect to quality, F continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;

(k) discharge such other functions as may be assigned G to it under this Act.

(2) The State Commission shall advise the State Government on all or any of the following matters, namely: -

H (i) promotion of competition, efficiency and economy

in activities of the electricity industry;

(ii) promotion of investment in electricity industry;

(iii) reorganization and restructuring of electricity industry in the State;

(iv) matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government;

(3) The State Commission shall ensure transparency while exercising its powers and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3."

14. On an x-ray of the Preamble of the Act and the important functions ascribed to the State Commission I have no scintilla of doubt that the selection of Chairperson or a member is extremely important, more so, when there is a statutory prescription about the manner in which the Selection Committee is required to act. I may state here that though the language is plain, unambiguous, clear and leads to a singular construction, yet I think it apt to reproduce a passage from *Utkal Contractors Joinery Pvt. Ltd. and others etc. v. State of Orissa and others*[8] wherein Chinnappa Reddy, J. has observed thus:-

"A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary

8. AIR 1987 SC 1454.

A Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. *Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead.* B *No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important.*"

C (emphasis supplied)

15. In *Atma Ram Mittal v. Ishwar Singh Punia*[9], Sabyasachi Mukherji, J. (as his Lordship then was) emphasizing on the intention of the legislature, stated thus: -

D "Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject matter, the effects and E consequence, or the spirit and reason of the law."

16. In the said case reference was made to the decision in *Popatlal Shah v. State of Madras*[10] wherein it has been laid down that each word, phrase or sentence is to be construed in the light of purpose of the Act itself. A reference was made to F the observations of Lord Reid in *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A G*[11] wherein the Law Lord has observed as under: -

"We often say that we are looking for the intention of the Parliament, but this is not quite accurate. We are seeking G the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning

9. (1988) 4 SCC 284.

10. 1953 SCR 677: AIR 1953SC 274.

H 11. 1975 AC 591.

of what they said." A

17. In *Sangeeta Singh v. Union of India and others*[12] emphasis was laid on the language employed in the statute and in that context it has been opined as follows: -

> "5. It is well-settled principle in law that the court cannot B read anything into a statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Similar is the position for conditions stipulated in advertisements." C

18. I have referred to the aforesaid pronouncements only to highlight that Section 85(5) of the Act has inherent inviolability and every word used therein has to be understood in the context regard being had to the legislative intendment. There has to be concentrated focus on the purpose of legislation and the text D of the language, for any deviation is likely to bring in hazardous results.

19. At this juncture I may profitably refer to *Uttar Pradesh Power Corporation Limited v. National Thermal Power Corporation Limited and others*[13] wherein, after referring to the E decision in *W.B. Electricity Regulatory Commission v. CESC Ltd.*[14], this Court has stated thus: -

> "12. Looking to the observations made by this Court to the effect that the Central Commission constituted under F Section 3 of the Act is an expert body which has been entrusted with the task of determination of tariff and as determination of tariff involves highly technical procedure requiring not only working knowledge of law but also of engineering, finance, commerce, economics and management, this Court was firmly of the view that the G issues with regard to determination of tariff should be left

12. (2005) 7 SCC 484.

13. (2005) 7 SCC 484.

14. (2002) 8 SCC 715. H

A to the said expert body and ordinarily the High Court and even this Court should not interfere with the determination of tariff."

20. Be it noted, emphasis has also been laid on functioning of regulatory bodies in *ITC Limited v. State of Uttar Pradesh* B *and others*[15].

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

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

23. It is seemly to state the aforementioned provision employs the term "recommendation". While dealing with the concept of recommendation, a three-Judge Bench of this Court F in *A. Pandurangam Rao v. State of Andhra Pradesh and others*[16] has stated that the literal meaning of the word "recommend" is quite simple and it means "suggest as fit for employment". In the present case the Selection Committee as per the provision was obliged to satisfy itself when the G legislature has used the word "satisfied". It has mandated the Committee to perform an affirmative act. There has to be recording of reasons indicating satisfaction, may be a

15. (2011) 7 SCC 493.

H 16. AIR 1975 SC 1922

reasonable one. Absence of recording of satisfaction is contrary to the mandate/command of the law and that makes the decision sensitively susceptible. It has to be borne in mind that in view of the power conferred on the State Commission, responsibility of selection has been conferred on a high powered Selection Committee. The Selection Committee is legally obliged to record that it has been satisfied that the candidate does not have any financial or other interest which is likely to affect prejudicially his functions as Chairman or Member, as the case may be. The said satisfaction has to be reached before recommending any person for appointment. It would not be an exaggeration to state that the abdication of said power tantamounts to breach of Rule of Law because it not only gives a go by to the warrant of law but also creates a dent in the basic index of law. Therefore, the selection is vitiated and it can never come within the realm of curability, for there has been statutory non-compliance from the very inception of selection.

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

A law". But, in the case at hand the Selection Committee has failed to obey the mandate of the law as a consequence of which the appellant has been selected and, therefore, in the ultimate eventuate the selection becomes unsustainable.

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

26. I emphasize on the decision making process because D in such a case there is exercise of power of judicial review. In *Chief Constable of the North Wales Police v. Evans,*[17] Lord Brightman observed thus: -

> "....Judicial review, as the words imply, is not an appeal E from a decision, but a review of the manner in which the decision was made...."

27. In view of the aforesaid analysis, I conclude that there has been total non-compliance of the statutory provision by the Selection Committee which makes the decision making F process vulnerable warranting interference by the constitutional courts and, therefore, the High Court is justified in holding that the appointment is non est in law.

28. Consequently, the appeal, being sans substratum, G stands dismissed without any order as to costs.

R.P. Appeal dismissed.

17. (1982) 1 W.L.R. 1155.