

ITEM NO.23

Court 6 (Video Conferencing)

SECTION III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CONMT.PET.(C) No. 429/2020 in C.A. No. 14697/2015

K K AGARWAL

Petitioner(s)

VERSUS

SANJIV NANDAN SAHAI &amp; ANR.

Respondent(s)/  
Alleged Contemnors

IA No. 100916/2020 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 100917/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 100914/2020 - INTERVENTION APPLICATION

Date : 07-12-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE DINESH MAHESHWARI

HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Ravi Sharma, AOR

For Respondent(s) Ms. Madhvi Divan, ASG  
Mr. Gurmeet Singh Makker, AOR  
Mr. Balendu Shekhar, Adv.  
Mr. Abhishekh Atrey, Adv.

IA No.100914/2020 Mr. Maninder Singh, Sr. Adv.  
Mr. Shreshth Sharma, Adv.  
Mr. Pukhrambam Ramesh Kumar, AOR  
Ms. Parichita Chowdhury, Adv.  
Ms. Anupama Ng., Adv.  
Mr. Karun Sharma, Adv.

CERC Mr. Nikhil Nayyar, Sr. Adv.  
Mr. TVS Raghavendra Sreyas, AOR  
Ms. Gayatri Gulati, Adv.  
Ms. Sugandha Batra, Adv.  
Mr. Siddharth Vasudev, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Application for exemption from filing duly affirmed  
affidavit is allowed.

We have shown considerable restraint in this matter. Our restraint seems to be misunderstood!

The Civil Appeal in question dealt with the matter of appointment under the Electricity Regulatory Commission Act, 1998. Vide judgment dated 12<sup>th</sup> April, 2018, we rejected the challenge to the extent that a prayer had made that the Chairman of the Commission must be a man of law but simultaneously opined that *"thus, if the Chairman of the Commission is not a man of law, there should, at least, be a member who is drawn from the legal field."*

In the conspectus of the aforesaid, we observed in paras 107 and 110 as under:

"107. We are thus, of the view that it is mandatory to have a person of law, as a member of the State Commission. When we say so, it does not imply that any person from the field of law can be picked up. It has to be a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

108.XXX

109.XXX

110. We are, thus, of the unequivocal view that for all adjudicatory functions, the Bench must necessarily have at least one member, who is or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the

practice of law and who has the requisite qualifications to have been appointed as a judge of the High Court or a District Judge."

In view of the aforesaid position, in the concluding paragraph 114, we issued certain directions as under:

"114. In view of our observations above, we conclude as under:

- i. Section 84(2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so.
- ii. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.
- iii. That in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench.
- iv. The challenge to the appointment of the Chairman and Member of the Tamil Nadu State Commission is rejected as also the suo moto proceedings carried out by the Commission.
- v. Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time.
- vi. In case there is no member from law as a member of the Commission as required aforesaid in para 2 of our conclusion, the next vacancy arising in every State

Commission shall be filled in by a Member of law in terms of clause (ii) above."

We took care to protect the past orders by making our judgment apply prospectively. In sub-para (vi) we clearly directed that if there was no member from law as a member of the Commission, the next vacancy arising in every State Commission shall be filled by a member of law in terms of Clause (ii) above.

The Contempt proceedings arose because according to the petitioner, the directions of this Court were sought to be breached on account of appointments made to the Central Commission on 21.01.2019 and thereafter on 07.04.2020 without appointing a member from law. The Contempt Petition was listed before us on 27.07.2020, when we expressed a view that *prima facie* we were satisfied that it appears to be a case of willful disobedience of the judgment of this Court and directed issuance of notice. Thereafter, the matter has been heard from time to time and on 28.08.2020, we unequivocally expressed the view that the appointment of any member after our judgment could not take place without first appointing a member from law. We recorded the submission of the learned Solicitor General that a third time process for appointing of a person of law (the earlier two processes not having found any suitable person), is expected to be concluded in the month of September, 2020. We, however, noticed that the appointment contrary to our judgment cannot be permitted to prevail and, thus, the

person so appointment could not function without first appointing a person of law. The learned Solicitor General thus, stated that one or more person who is so appointed would be asked to proceed on leave till such time as the person from law is appointed. We took care to clarify that our order was not a reflection on the merit of the persons so appointed but it was necessary to ensure that the true intent and spirit of order passed by this Court was adhered to.

Since the Government seemed to be in a hurry to see that the functioning of the commission is not affected, we gave liberty in terms of the last direction, making it clear that if a person of law was so appointed within this period of time, the persons who would go on leave would be permitted to re-join.

All that anxiety was only before the Court and there appears to be little intent in the same as on 25.09.2020 and thereafter on 26.10.2020, we were still awaiting the appointment of the member from law. On 25.09.2020, the process to be undertaken was only set out as submitted by learned ASG, who was unable to give the exact time frame for appointment while emphasizing that the working of the Commission should not come to a standstill. We did not accept the plea while recording as under:

"We are, however, now persuaded. In view of the submission that is emphasised, there are many Tribunals which are non-functional or hardly functional because vacancies have been left un-filled. This is the larger issue which the Government must examine as when it

creates Tribunals, vacancies must be filled in time anticipating even the future vacancies. This has not happened. There are Tribunals even more important than the Tribunal in question in terms of their remits, where such a situation prevails. We thus see no reason why a different scenario has to prevail for the Tribunal in question, specially because the process as envisaged under our judgment has not been followed. We are thus not inclined to vary the arrangement made vide order dated 28th August, 2020 which shall continue till such time as the person of Law is so appointed."

On 26.10.2020, we had an applicant before us whose proceedings had been concluded and informed us that about 174 judgments were lying reserved. We called upon the Commission to place on record an affidavit setting out the accuracy of those facts, while once again recording the submission of learned Solicitor General that four weeks' more time is expected to complete the process and we observed:

"The great anxiety expressed on the last date seems to have vanished!"

The commission has placed an affidavit before us showing the summary of petitions where orders have been reserved by the Commission as annexure A-1 which number 177. The month wise breakup is as under:

	Month	Total
1	February 2020	5
2	March 2020	4
3	April 2020	0
4	May 2020	23
5	June 2020	41
6	July 2020	47
7	August 2020	57
	Total	177

We did put to learned senior counsel for the Commission that we are unable to appreciate orders pending from February 2020 *albeit* a small number of these orders ought to have been pronounced much earlier. Most of the orders are from the period May to August, 2020 till this Court's interdict.

A valiant endeavour has been made by Mr. Maninder Singh, learned senior counsel and Mr. Nikhil Nayyar, learned senior counsel to persuade us to lift the interdict to the extent of permitting the judgments to be pronounced as the consumers are affected. Unfortunately, the Government is showing no anxiety about the interests of the consumers or the Commission as it is taking its own sweet time. We would once again like to draw attention to what we had observed on 25.09.2020 and extracted aforesaid. We are, thus, not persuaded to lift the interdict despite the best persuasion of learned senior counsels.

We have to express our anguish with the manner in which the Government sought to act, contrary to a judgment of this Court. It is the legislative function to pass the Acts and the administrative function to implement the provision of that Act. It is left to the judiciary to interpret the law. The law was interpreted by our judgment. The Executive cannot be expected to act nor permitted to act in breach of the judgment of this Court. This would be invitation to anarchy! The mutual respect of the three pillars of democracy requires each of them to respect the role and functioning of the other.

In the present case, we have already expressed our *prima*

*facie* view of a willful disobedience of the orders of this Court. The passage of time also doesn't seem to have awoken the Government to the problem at hand and almost four months have passed since then. We are unable to come to the aid of the consumers because the Government does not seem to be interested in coming to the aid of the consumers or making the Commission functional, which is not an unusual scenario seeing the functioning of the other Tribunals and Commissions, on account of lack of appointments to deal with the matters.

Having expressed our anguish, we now specifically posed a question to learned Additional Solicitor General as to when should we keep the matter, so that the Government would have completed the task by then. Learned Additional Solicitor General requests the matter be kept on 20.01.2021, as according to her the matter is pending consideration before the ACC.

List on 20.01.2021.

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS

(ANITA RANI AHUJA)  
ASSISTANT REGISTRAR