

High court of karnataka

Bench:justice m. Nagaprasanna

Date of decision:18 november 2023

Writ petition no.25010 of 2022 (gm – res)

Sri ashok d. Sanadi ... Petitioner

Vs

- 1 . The chief secretary government of karnataka
- 2 . Chairperson selection committee
- 3 . The principal secretary department of women and Child development and Empowerment
4. The director Department of women and Child development
5. Sri k.naggana gowda ... Respondents

(BY SRI SPOORTHY HEGDE N., HCGP FOR R1 TO R4;
SRI G.B.SHARATH GOWDA, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE PROCEEDINGS DATED 21/10/2022 AND SUBSEQUENT ORDERS PASSED ON THE STRENGTH OF SAID PROCEEDINGS AS ANNEXURE-H; DIRECT THE R2 TO CONDUCT THE FRESH SELECTION PROCESS ACCORDANCE WITH LAW AND PROCEDURE PRESCRIBED UNDER THE SAID ACT.

Legislation:

Commissions for Protection of Child Rights Act, 2005

Karnataka State Commission for Protection of Child Rights Rules, 2010

Articles 226 and 227 of the Constitution of India

Sections 17, 18, 19, 36 of the Commissions for Protection of Child Rights Act, 2005

Rule 3, 6 of the Karnataka State Commission for Protection of Child Rights Rules, 2010

Subject: Challenge to the appointment of the 5th respondent as Chairperson of the Karnataka State Commission for Protection of Child Rights.

Headnotes:

Writ Petition – Appointment of Chairperson for Karnataka State Commission for Protection of Child Rights – Petitioner challenging the appointment of the 5th respondent and seeking annulment and fresh selection process – Court considering the validity of the appointment under statutory requirements. [Para 1, 7, 9]

Qualifications and Eligibility – Requirements under the Commissions for Protection of Child Rights Act, 2005 and Karnataka State Commission for Protection of Child Rights Rules, 2010 – Examination of the 5th respondent's eligibility as Chairperson based on political affiliation and experience in child rights. [Para 8, 10, 11]

Selection Committee's Decision – Role of the Selection Committee in assessing candidates' qualifications and experiences – Court's limited scope of review over the Committee's decision – Upholding the autonomy and integrity of the selection process. [Para 12, 13, 14]

Judicial Review – Limits of Court's intervention in the selection process for public employment – Reference to the Supreme Court's judgment in the case of *Tajvir Singh Sodhi v. State of Jammu and Kashmir* emphasizing non-interference unless there is proven arbitrariness or statutory violation. [Para 14]

Decision – Dismissal of the writ petition for lack of merit – Upholding the appointment of the 5th respondent as Chairperson of the Karnataka State

Commission for Protection of Child Rights. [Para 15] Referred Cases with Citations:

Referred Cases:

Tajvir Singh Sodhi v. State of Jammu and Kashmir

Representing Advocates:

Petitioner: Sri Ranganath S.Jois, Advocate (assisted by Sri N.Krishne Gowda, Advocate)

Respondents 1 to 4: Sri Spoorthy Hegde N., HCGP

Respondent 5: Sri G.B. Sharath Gowda, Advocate

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.11.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question Notification dated 21-10-2022 issued by the 3rd respondent in selecting and appointing the 5th respondent as the Chair Person of the Karnataka State Commission for Protection of Child Rights ('the Commission' for short).

2. The facts, in brief, adumbrated are as follows:

The petitioner and the 5th respondent became applicants pursuant to a notification issued by Government of Karnataka on 31-01-2022 calling for applications from eligible candidates for appointment to the post of Chairperson of the Commission. The applications lead to scrutiny of documents so submitted by both the petitioner and the 5th respondent. The 5th respondent comes to be appointed as the Chairperson of the Commission. The petitioner claims to have come to know of it only when it was published in the newspaper and then applies for all the requisite documents of selection

or proceedings of selection under the Right to Information Act, 2005, and having secured them, has knocked at the doors of this Court calling in question entire proceedings that took place leading to the appointment of the 5th respondent as Chairperson of the Commission and has also sought consequential prayer seeking annulment of appointment of the 5th respondent and conduct of fresh selection process in accordance with law. This Court on 15-12-2022 entertaining the writ petition had made the selection and appointment of the 5th respondent to be subject to the result of the petition.

3. Heard Sri Ranganath S.Jois, learned counsel appearing for the petitioner, Sri Spoorthy Hegde, learned High Court Government Pleader appearing for respondents 1 to 4 and Sri G.B. Sharath Gowda, learned counsel appearing for respondent No.5.

4. The learned counsel Sri Ranganath S.Jois, appearing for the petitioner would vehemently contend that the 5th respondent is least qualified to hold the post of Chairperson of the Commission. It is his submission that the 5th respondent is a political representative of the Bharatiya Janata Party and does not have or has not worked in the field of child rights in comparison to the credentials of the petitioner who is practicing as an Advocate and has been completely involved in the cases concerning juvenile justice appearing before the Juvenile Justice Board from 2009 to 2017 as one of the panel counsel of the District Legal Services Authority, Bengaluru. It is his submission that comparative credentials of the two would clearly lead to the annulment of appointment of the 5th respondent and appointment of the petitioner. He would seek quashment of entire proceedings and the resultant appointment of the petitioner.

5. On the other hand, the 5th respondent/appointee has filed his statement of objections. The learned counsel Sri G.B. Sharath Gowda appearing for the 5th respondent would contend that the 5th respondent long before the selection process itself had demitted membership of a political party and he is also in the field of advocating child rights for a long time and would submit that all the documents that are necessary for appointment of the 5th respondent are considered by the selection committee and appointment is made. He would submit that none of the grounds that are

urged in the petition are tenable for the appointment of the 5th respondent to be set aside.

6. The State has also filed its statement of objections. The learned counsel appearing for respondents 1 to 4 has contended that the wisdom of the selection committee in appointing the 5th respondent cannot be interfered with under Article 226 of the Constitution of India unless the appointment is contrary to the statute or arbitrariness is writ large in the appointment. He would submit that neither of the two is present in the case at hand. Therefore, the petition should be dismissed.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof what falls for my consideration is “***whether the appointment of the 5th respondent as Chairperson of the Commission is vitiated on account of statutory aberration?***”

8. The Government of India notifies the Commissions for Protection of Child Rights Act, 2005 (hereinafter referred to as ‘the Act’ for short). Section 17 deals with constitution of State Commission for Protection of Child Rights. Section 17 reads as follows:

“17. Constitution of State Commission for Protection of Child Rights.—(1) A State Government may constitute a body to be known as the(name of the State) Commission for Protection of Child Rights to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

(2) The State Commission shall consist of the following Members, namely:—

(a) a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and

(b) *six Members, out of which at least two shall be women, from the following fields, to be appointed by the State Government from amongst persons of eminence, ability, integrity, standing and experience in,—*

(i) education;

(ii) child health, care, welfare or child development;

(iii) juvenile justice or care of neglected or marginalized children or children with disabilities;

(iv) elimination of child labour or children in distress; (v) child psychology or sociology; and (vi) laws relating to children.

(3) The headquarter of the State Commission shall be at such place as the State Government may, by notification, specify.”

(Emphasis supplied)

Section 18 deals with appointment of Chairperson and other Members. Section 18 reads as follows:

“18. Appointment of Chairperson and other Members.—*The State Government shall, by notification, appoint the Chairperson and other Members:*

Provided that the Chairperson shall be appointed on the recommendation of a three Member Selection Committee constituted by the State Government under the Chairmanship of the Minister-in-charge of the Department dealing with children.”

Section 19 deals with term of office and conditions of service of Chairperson and other Members. Section 36 of the Act deals with the power of the State Government to make Rules. It reads as follows:

“36. Power of State Government to make rules.—

(1) The State Government may, by notification, make rules to carry out the provisions of this Act.

(2) *In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—*

- (a) terms and conditions of service of the Chairperson and Members of the State Commission and their salaries and allowances under Section 20;*
- (b) the procedure to be followed by the State Commission in the transaction of its business at a meeting under subsection (4) of Section 10 read with Section 24;*
- (c) the powers and duties which may be exercised and performed by the Secretary of the State Commission under sub-section (2) of Section 21;*
- (d) the salary and allowances and other terms and conditions of service of officers and other employees of the State Commission under sub-section (3) of Section 21; and*
- (e) form of the statement of accounts and other records to be prepared by the State Commission under sub-section (1) of Section 30.*

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.”

(Emphasis supplied)

In terms of the power conferred under Section 36 of the Act, the State Government notifies the Rules viz., the Karnataka State Commission for Protection of Child Rights Rules, 2010 (hereinafter referred to as ‘the Rules’ for short). Certain provisions of the Rules become germane to consider the issue in the *lis*. Rule 3 of the Rules reads as follows:-

“3. Eligibility for appointment as Chairperson and other Members. – (1) No person having any past record of violation of human rights especially child rights or criminal conviction shall be eligible for appointment as Chairperson or other Members of the Commission. The Chairperson or

the Members of the Commission, the person shall fulfill the following criteria:-

- (a) the person shall have at least five years of work experience in the field of child rights, child protection and advocacy for upholding the rights of children;***

- (b) the person shall not be an office-bearer or member of any political party.***

(2) The persons selected for the post of Chairperson/ Members shall not hold any other post or be affiliated to any Governmental, quasi-governmental, public sector, non-governmental, private organization or hold any other position whether for profit or not.”

(Emphasis supplied)

Rule 3 deals with eligibility for appointment as Chairperson and other Members. Rule 6 deals with the term of office of Chairperson and other Members. It reads as follows:

“6. Term of office of Chairperson and other Members. – (1) The Chairperson shall, unless removed from office under Section 7 read with Section 24 of the Act, hold office for a period of three years, or till the age of sixty five years, whichever is earlier.

(2) Every Member shall, unless removed from office under Section 7 read with Section 24 of the Act, hold office for a period of three years, or till the age of sixty years, whichever is earlier.

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), -

- (a) a person who has held the office of chairperson shall be eligible for renomination; and***

(b) *a person who has held the office of a Member shall be eligible for renomination as a member or nomination as a Chairperson:*

Provided that a person who has held an office of Chairperson or Member for two terms, in any capacity, shall not be eligible for renomination as Chairperson or, as Member.

(4) *If the Chairperson is unable to discharge his functions owing to illness or other incapacity, the State Government shall nominate any other member to act as Chairperson and the Member so nominated shall hold office of Chairperson until the Chairperson resumes office or for the remainder of his term.*

(5) *The Chairperson or a Member may, by writing under his hand addressed to the State Government, resign his office at any time.*

(6) *Any vacancy caused by death, resignation or any other reason shall be filled up in accordance with the provisions of sub-section (2) of Section 8 of the Act.”*

Section 17 of the Act *supra* and Rule 3 of the Rules form the fulcrum of the issue in the *lis*. Rule 3 directs that no person having any past record of violation of human rights especially child rights or criminal conviction shall be eligible for appointment as Chairperson or other Members. **This is the first rung of disability.** The Chairperson shall fulfill certain conditions as depicted in the Rule that a person shall have at least five years of work experience in the field of child rights, child protection and advocacy for upholding the rights of children. **This is the rung of eligibility.** A person who is sought to be appointed as a Chairperson or a Member should not be an office bearer or Member of any political party. **This is the second rung of disability.** The person selected for the post of Chairperson or Members should not hold any other post of governmental, quasi governmental, public sector, non-governmental or private organization whether for profit or not, **is another rung of disability, inter alia.** In terms of the bedrock of eligibility and ineligibility as depicted under the Rules, the case at hand requires consideration.

9. Government of Karnataka issues a notification for appointment of person in terms of sub-Section (1) of Section 17 of the Act. The term of the Chairperson was depicted to be 3 years and the maximum age limit of any applicant was at 62 years. As obtaining under Rule 3, the notification also contained that one should have work experience in the field of child rights, child protection and advocacy for upholding the rights of children. The petitioner and the 5th respondent became applicants. The petitioner is not selected but the 5th respondent is. Contending that the petitioner comes to know of the appointment of the 5th respondent only through the media, knocks at the doors of this Court, calling in question the appointment of the 5th respondent as Chairperson, projecting a **two pronged attack** – one projecting the ineligibility on the score that the 5th respondent is an office bearer or a Member of a political party and therefore, his appointment has to be annulled. The next is that the petitioner has better experience for more than 5 years in the field of child rights, child protection and advocacy for upholding the rights of children and in juxtaposition, the 5th respondent does not have such qualification.
10. I deem it appropriate, to deal with the first pronged attack i.e., whether the 5th respondent has, on the date of selection and appointment was an office bearer, or a member of any political party. The 5th respondent has filed his statement of objections. He would, no doubt accept that he was earlier a member of the Bharatiya Janata Party, but resigned from the primary membership of that party on 01-09-2020. He has produced documents to demonstrate his resignation from the primary membership of the party appended to the statement of objections which depicts that he has on 01-09-2020 resigned from the post and the party. The Notification for selection, as observed hereinabove, is issued on 31-01-2022, close to 15 months after the resignation of the 5th respondent from the political party. Therefore, the first pronged attack that the 5th respondent is an office bearer or member of a political party tumbles down, as, on the date of issuance of the notification the 5th respondent was neither an office bearer, nor a member of any political party.
11. The second pronged attack is with regard to comparative experience of 5 years in the field of child rights or child protection or advocacy for upholding

rights of children. The petitioner claims that he has been in the panel of the District Legal Services Authority from 2009 to 2017 and has fought various cases which concern juvenile justice and has worked extensively on behalf of juveniles. In juxtaposition, the 5th respondent has produced plethora of documents seeking to demonstrate that he is also in the field of child rights from 2001. Certificates of several participations in symposiums, awards and other encomiums by way of certificates given to the 5th respondent form part of the statement of objections. Apart from the same, the 5th respondent has also placed on record several documents that would drive home that the 5th respondent is fighting for child rights or has been advocating the cause of children and their rights for the last 20 years.

12. The Selection Committee has looked into the credentials produced by both the petitioner and the 5th respondent and has found it fit to choose the 5th respondent as a Chairperson in terms of the analysis of the Selection Committee. The Selection Committee is constituted under the statute. It is a three member committee. The analysis and consideration of documents of both the petitioner and the 5th respondent is by the Selection Committee. The Selection Committee has chosen the 5th respondent to be a better experienced candidate than the petitioner to hold the post of Chairperson of the Commission. This Court exercising its jurisdiction under Article 226 of the Constitution would not weigh the credentials *qua* experience of both the petitioner and the 5th respondent, and come to conclude that the experience of the petitioner far outweighs the experience of the 5th respondent. This is not the discretion exercisable by this Court under Article 226 of the Constitution of India.
13. This Court would not sit in the ***arm chair*** of experts and decide who is better qualified, *qua* their experience and obliterate an appointment made by the Selection Committee, virtually sitting in appeal over the findings and wisdom of the Selection Committee. The discretion available to this Court is exercisable only in certain circumstances, *qua* challenge to an appointment made by the Selection Committee, which would be arbitrariness and such arbitrariness should be palpable or demonstrable. The other would be that the selection and appointment should suffer from certain statutory

aberrations. I do not find any of the two circumstances existing in the challenge to the appointment of the 5th respondent.

14. Reference being made to the judgment of the Apex Court in the case of **TAJVIR SINGH SODHI v. STATE OF JAMMU AND KASHMIR**¹ in the circumstances, becomes apposite. The Apex Court has held as follows:

“Selection Process for Public Employment : Interference by Courts:

“65. Before proceeding further, it is necessary to preface our judgment with the view that Courts in India generally avoid interfering in the selection process of public employment, recognising the importance of maintaining the autonomy and integrity of the selection process. The Courts recognise that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice for us if we were to venture into reviewing the decision of experts who form a part of a selection board. The law on the scope and extent of judicial review of a selection process and results thereof, may be understood on consideration of the following case law:

- i) *In Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan, (1990) 1 SCC 305 : AIR 1990 SC 434, this Court clarified the scope of judicial review of a selection process, in the following words:*

“9...It is needless to emphasise that it is not the function of the court to hear appeals over the decisions of the selection committees and to scrutinise the relative merits of the candidates. Whether the candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection, or proved malafides affecting the selection etc.....”

¹ 2023 SCC OnLine SC 344

- ii) *In a similar vein, in Secy. (Health) Deptt. Of Health & F.W. v. Dr. Anita Puri, (1996) 6 SCC 282, this Court observed as under as regards the sanctity of a selection process and the grounds on which the results thereof may be interfered with:*

“9. ... It is too well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation.....”

- iii) *This position was reiterated by this Court in M.V. Thimmaiah v. Union Public Service Commis-sion, (2008) 2 SCC 119, in the following words:*

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion...

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30. We fail to understand how the Tribunal can sit as an Appellate Authority to call for the personal records and constitute Selection Committee to undertake this exercise. This power is not given to the Tribunal and it should be clearly understood that the assessment of the Selection Committee is not subject to appeal either before the Tribunal or by the courts. One has to give credit to the Selection Committee for

making their assessment and it is not subject to appeal. Taking the overall view of ACRs of the candidates, one may be held to be very good and another may be held to be good. If this type of interference is permitted then it would virtually amount that the Tribunals and the High Courts have started sitting as Selection Committee or act as an Appellate Authority over the selection. It is not their domain, it should be clearly understood, as has been clearly held by this Court in a number of decisions.....”

- iv) *Om Prakash Poplai and Rajesh Kumar Maheshwari v. Delhi Stock Exchange Association Ltd., (1994) 2 SCC 117, was a case where an appeal was filed before this Court challenging the selection of members to the Delhi Stock Exchange on the ground that the Selection Committee formed for the aforesaid purpose, arbitrarily favoured some candidates and was thus, against Article 14. This Court rejected the allegation of favouritism and bias by holding as under:*

“5. ...the selection of members by the Expert Committee had to be done on the basis of an objective criteria taking into consideration experience, professional qualifications and similar related factors. In the present cases, we find that certain percentage of marks were allocated for each of these factors, namely, educational qualifications, experience, financial background and knowledge of the relevant laws and procedures pertaining to public issues etc. Of the total marks allocated only 20 per cent were reserved for interviews. Therefore, the process of selection by the Expert Committee was not left entirely to the sweet-will of the members of the Committee. The area of play was limited to 20 per cent and having regard to the fact that the members of the Expert Committee comprised of two members nominated by the Central Government it is difficult to accept the contention that they acted in an unreasonable or arbitrary fashion.....”

66. Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.

67. Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee. In light of the position that a Court cannot sit in appeal against the decision taken pursuant to a reasonably sound selection process,.....”

(Emphasis supplied)

The Apex Court in its exposition notices that the Court, while exercising the power of judicial review, cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee was not corresponding to their performance in the test. The issue before the Apex Court was awarding of marks by the Selection Committee was erroneous. The Apex Court holds that the constitutional Courts cannot interfere in awarding of marks. I deem it appropriate to paraphrase the words ‘**awarding of marks**’ to that of consideration of ‘**relative experience**’ in the case at hand. Even then, the inexorable conclusion is that, this Court cannot step into the shoes of the Selection Committee or assume an appellate role, over the selection made. Thus, fails the challenge to the appointment of the 5th respondent, and the failure would lead to dismissal of the petition.

15. Finding no merit in the petition, the petition stands dismissed.

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