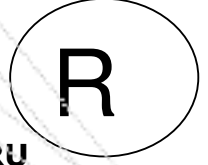




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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 02<sup>ND</sup> DAY OF SEPTEMBER, 2022**

**PRESENT**

**THE HON'BLE MR. JUSTICE B.VEERAPPA**

**AND**

**THE HON'BLE MRS. JUSTICE K.S.HEMALEKHA**

**WRIT APPEAL No.481 OF 2022 (S-RES)**

**BETWEEN:**

1. MOHAN CHANDRA P.,  
AGED ABOUT 49 YEARS,  
S/O LATE JANARDHANA NAYAK P.,  
R/AT PANJIGAR HOUSE,  
KALANJA POST,  
SULLIA TALUK - 574 212.

...APPELLANT

(BY SRI MOHAN CHANDRA P., PARTY-IN-PERSON)

**AND:**

1. THE STATE OF KARNATAKA,  
DEPARTMENT OF PERSONNEL AND  
ADMINISTRATIVE REFORMS,  
(JANASPANDANA CELL),  
3<sup>RD</sup> FLOOR, PODIUM BLOCK,  
V. V. TOWER, BENGALURU - 560 001,  
REP. BY ITS CHIEF SECRETARY.
2. SRI N. C. SRINIVAS,  
AGED ABOUT 63 YEARS  
CHIEF INFORMATION COMMISSIONER
3. SRI S. M. SOMASHEKARA,  
AGED ABOUT 64 YEARS,  
STATE INFORMATION COMMISSIONER.





4. SRI K. P. MANJUNATHA,  
AGED ABOUT 58 YEARS  
STATE INFORMATION COMMISSIONER,

NO.2 TO 4 ARE WORKING AT  
KARNATAKA INFORMATION COMMISSION  
ROOM NO.331 TO 347 GATE NO.2,  
3<sup>RD</sup> STAGE, 3<sup>RD</sup> FLOOR,  
DR. AMBEDKAR VEEDI,  
BANGALORE - 560 001.

...RESPONDENTS

(BY SRI LAXMINARAYAN, ADDITIONAL GOVERNMENT  
ADVOCATE FOR R1;  
SRI G.B. SHARATH GOWDA, ADVOCATE FOR R2;  
SRI RAJASHEKHAR K., ADVOCATE FOR R3 AND R4)

\*\*\*\*

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE  
IMPUGNED ORDER DATED 21/04/2022 IN WP No.21902/2019  
(S-RES) PASSED BY THE LEARNED SINGLE JUDGE AND TO  
ALLOW THE WRIT PETITION AS PRAYED FOR.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY  
HEARING, THIS DAY, **B.VEERAPPA J.**, DELIVERED THE  
FOLLOWING:

### **J U D G M E N T**

The present intra Court Appeal is filed by the Appellant/  
writ petitioner/party-in-person, who is the aspirant for the post  
of Chief Information Commissioner and Information  
Commissioner pursuance to the notification dated 07.08.2018  
issued by the State Government, challenging the Order dated



21.04.2022 passed by the learned single Judge dismissing W.P.No.21902/2019 filed by him.

**I. FACTS OF THE CASE**

2. It is the case of the appellant/party-in-person that, in order to fill up the vacant posts in the Karnataka Information Commission, the respondent had issued the notification dated 07.08.2018 bearing No.DPAR 185 RTI 2018 calling applications for the post of Chief Information Commissioner and two posts of State Information Commissioners from the eligible candidates. The last date fixed for receipt of the application was 22.09.2018 at 5.30 pm. The appellant being one of the aspirant to the said posts submitted single application to the respondent No.1. After receipt of the application, the respondent No.1 had published the particulars of the candidates in its official web site i.e., [www.janaspandana.kar.nic.in](http://www.janaspandana.kar.nic.in).

3. It is the specific case of the appellant that the respondent No.1 has not followed the general directions issued by the Hon'ble Supreme Court in Writ Petition (Civil) No.436/2018 dated 15.02.2019 in the case of *Anjali Bhardwaj and others vs.*



*Union of India and others* and selected the candidates/ respondent Nos.2 to 4, arbitrarily without verifying the genuineness of the applications submitted by the candidates. The said approach of the respondent No.1 is totally illegal, arbitrary and it violates Articles 14 and 141 of the Constitution of India and thereby defeats the main object of Right to Information Act, 2005.

4. It is further case of the appellant that, at the time of submitting the select list to the Appointing Authority, the Election Code of Conduct was in force. The Selection Committee clandestinely, in a hurried manner, obtained the permission of the Chief Election Commissioner for the best reason known to it and recommended the names of respondent Nos.2 to 4 to the Appointing Authority, viz., His Excellency the Governor of Karnataka as per the provisions of the Right to Information Act, 2005, for passing necessary order of appointment. His Excellency the Governor of Karnataka being the Appointing Authority, by the notification dated 22.03.2019 appointed respondent No.2 as the Chief Information Commissioner and respondent Nos.3 and 4 as State



Information Commissioners, in pursuance of the recommendation made by the Selection Committee. Being aggrieved by the same, the appellant submitted his application under the Right to Information Act, 2005 before the respondent No.1 seeking information regarding the procedure followed for appointment of Chief Information Commissioner and two State Information Commissioners. The respondent No.1 partly furnished the information and partly refused to furnish the information to the appellant. Being highly aggrieved by the notification dated 22.03 2019 appointing respondent Nos.2 to 4 to the post of Chief Information Commissioner and State Information Commissioners, the appellant filed W.P.No. 21902/2019, praying to quash the notification dated 22.03.2019 produced as per Annexure-C to the writ petition, as being violative of the direction issued by the Hon'ble Apex Court in *Anjali Bhardwaj's* case (supra) and further to direct the respondent No.1 to appoint the candidates for the post of Chief Information Commissioner and State Information Commissioner as per the directions/guidelines issued in *Anjali Bhardwaj's* case.



**II. STATEMENT OF OBJECTIONS TO THE WRIT PETITION FILED BY RESPONDENT No.1.**

5. In pursuance to the notice issued by the learned single Judge, the respondent No.1/State Government filed statement of objections contending that the very writ petition filed by the petitioner challenging the appointment of respondent Nos.2 to 4 is not maintainable and is liable to be dismissed. It is further contended that the notification dated 07.08.2018 was issued inviting applications for one post of Chief Information Commissioner and two posts of State Information Commissioners. The said notification was widely published in the newspapers and also posted on the official website. In pursuance to the same, 419 applications were received by the State and the Committee constituted under the provisions of Section 15(3) of the Right to Information Act, 2005, comprising of Hon'ble Chief Minister, Hon'ble Leader of the Opposition Party of the Legislative Assembly and Hon'ble Deputy Chief Minister met on 06.02.2019 and after considering the names of all 419 applicants, recommended the name of Sri N.C.Srinivasa, who was the Law Secretary, for being appointed as Chief Information Commissioner; Sri S.M.Somashekar, who was retired from Indian Forest Service (IFS) who held



innumerable positions and responsibilities in the Government and Administration, and Sri K.P.Manjunatha, an advocate by profession with wide experience in Civil and Criminal Cases, for being appointed as State Information Commissioners.

6. It is further contended that as the general election to the Lok Sabha was intervening, after obtaining permission of the Election Commission of India, notification was issued appointing respondent No.2 as Chief Information Commissioner and respondent Nos.3 and 4 as State Information Commissioners, respectively. There is absolutely no illegality in the selection process. Though the Judgment in the case of *Anjali Bhardwaj* was passed on 15.02.2019, the Selection Committee had made recommendations on 06.02.2019 itself and even then, there is no violation of the directions issued by the Hon'ble Supreme Court in *Anjali Bhardwaj's* case.

7. It is further contended that the selection process, in any way, does not violate the directions issued in *Anjali Bhardwaj's* case. The said judgment specifies that the notification inviting applications be given wide publicity by putting it on website and that the terms and conditions of appointment be spelt out in





the notification and the list of applicants who are short listed be specified and selection be made taking into consideration the all over eligibility criteria set out under Section 15(5) of the Right to Information Act, 2005. These directions are all directory and not mandatory. Even other wise all those directions are followed in the selection process in question. The notification inviting applications for appointment of Chief Information Commissioner and State Information Commissioners dated 07.08.2018 was not only published in various newspapers, but was also uploaded on the official website [www.janaspandana.kar.nic.in](http://www.janaspandana.kar.nic.in). The selection process has been just, fair and transparent. The qualification and eligibility criteria for being appointed as the Chief Information Commissioner and State Information Commissioners has been very meticulously considered.

8. It is further contended that, Sri N.C.Srinivas, who has been appointed as the Chief Information Commissioner, holds B.A., LL.B. degree. He has practiced as an Advocate, discharged the duties as Public Prosecutor. Thereafter, he was appointed as Munsiff and JMFC in the year 1991 and discharged



duties as Chief Judicial Magistrate, Member Secretary and Chairman of District Legal Services Authority, Mangaluru and Hassan. Respondent No.2 secured first rank in District Judges' competitive examination held by the High Court, he has been honoured by the Kannada Development Authority for having written good Kannada judgments, worked as super time scale District Judge, Additional Registrar General of Dharwad Bench of this Court, Principal District and Sessions Judge at Ramanagara. He has worked as Principal Secretary to Government, Law Department, Government of Karnataka from 2016 till 2019 i.e., till he was appointed as Chief Information Commissioner. He has also served as ex-officio Syndicate Member of Karnataka State Law University and Member of Executive Council and General Council of National Law School of India University, Bengaluru. Over the last 36 years he has put in meritorious service which makes him person of eminence in public life with wide knowledge in the field of law and administration. He eminently fits the eligibility criteria specified in Section 15(5) of the RTI Act, 2005.



9. It is further contended that, respondent No.3-Sri S.M. Somashekar, who has been appointed as the State Information Commissioner is an All India Service Officer of 1983 batch of Indian Forest Service selected through the competitive examination conducted by the Union Public Service Commission and superannuated in June 2018 after putting in 35 years of government service in various capacities. He worked as Deputy Conservator of Forests in various Forest Divisions, Conservator of Forest of Forest Circles, Chief Regional Executive, Tea Board, South Zone Office, Coonoor, Ministry of Commerce, Government of India. He also worked as Chief Executive Officer, Zilla Panchayath and Additional PCCF, Regional Office, MOEF & CC, Bengaluru, worked as Principal Chief Conservator of Forest (PCCF) cum Chief Wild Life Warden, Haryana, and superannuated as Principal Chief Conservator of Forest (Head of the Forest Force) and Head of the Department, Forest Department, Haryana. During his career, he received Appreciation and Commendation Certificate from Government of Haryana for his outstanding work in the field of forestry. He represented Tea Board of India, Ministry of Commerce and Government of India in the annual conferences of UPASI,



COONOOR. He was nominated as member of India Delegation to the XIV World Forestry Congress on Forest and People: Investing in a sustainable future, held at Durban, South Africa. Respondent No.3 participated in the conference held in Syracuse University-USA on Sustainable Management Practices of Natural Resources, presented a paper on Eco-Restoration of Aravalli Hills in Haryana Landscape approach. Over the last 35 years, the respondent No.3 has put in meritorious service which makes him person of eminence in public life with wide knowledge and experience in law science and technology, social service, management and administration.

10. It is further contended that, Sri K.P.Manjunath, who has been appointed as State Information Commissioner is an advocate by profession, got himself enrolled in the year 1989 on the roll of Karnataka State Bar Council, Bengaluru, and he had conducted several Sessions Trials at Shivamogga and he had conducted several civil cases in the District and Sessions Court at Shivamogga. He has got wide experience in civil and criminal cases and he has put in more than 30 years experience as an Advocate. While he was practicing as an Advocate at



Shivamogga and Shikaripura, he rendered social service and had actively participated in Lok Adalath conducted by District Legal Services Authority and conducted many cases for poor litigants on behalf of the free legal aid committee. The third respondent over the last 30 years has put in meritorious service which makes him a person of eminence in public life with wide knowledge in the filed of law, administration and science, etc.,

11. It is further contended that the appointments of respondent Nos.2 to 4 in question have been done in the most transparent manner and fully in accordance with law. There is no illegality or irregularity in the said appointments and therefore, the writ petition is liable to be dismissed. The allegation that the respondent No.1 has not followed the general directions issued by the Hon'ble Supreme Court in *Anjali Bhardwaj's case* is denied and contended that the recommendation for the appointments for the posts were made on 06.02.2019, whereas, the dictum in *Anjali Bhardwaj's case* was delivered on 15.02.2019. However, the observations made in the said Judgment have been followed even though the



judgment came later. The yardstick adopted by the respondent No.1 for selection of the candidates for the post of Chief Information Commissioner and State Information Commissioners is fair and proper and therefore, sought to dismiss the writ petition.

**III. STATEMENT OF OBJECTIONS TO THE WRIT PETITION FILED BY RESPONDENT No.2.**

12. The respondent No.2 filed statement of objections dated 05.08.2019, denied the averments made in the writ petition and specifically contended that, in the writ petition the petitioner has suppressed the material facts about his qualification and antecedents and also while filing application before the 1<sup>st</sup> respondent seeking appointment to the aforesaid posts. It was specifically contended that the petitioner was working as Civil Judge (Junior Division), Karnataka Judiciary. There were serious allegations against the petitioner with regard to dereliction of his duties and misconduct. The High Court held enquiry into the said charges and found them to be true and therefore, petitioner was discharged from service by the Order dated 06.03.2018 and the said Order has reached finality. The petitioner having been discharged from service on



account of dereliction of duties, could not be considered to a sensitive post of Chief Information Commissioner/ State Information Commissioners, which would have cascading effects on the very institution itself. More so, in view of the fact that the Chief Information Commissioner/ State Information Commissioners carry out functions to ensure right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in working of every public authority. It is submitted that the petitioner has not disclosed his antecedents while making application to the first respondent to consider his name to the post of Chief Information Commissioner/ State Information Commissioners. Therefore, on this ground alone, the writ petition deserves to be dismissed by imposing exemplary costs.

13. It is further contended that the main ground urged by the petitioner is that the respondent No.1 has not followed the general directions issued by the Hon'ble Supreme Court in *Anjali Bhardwaj's* case. However, the Selection Committee for recommending the names of individual for appointment to the



posts of Chief Information Commissioner and State Information Commissioners was constituted on 03.08.2018, pursuant to which, the applications were invited vide notification dated 07.08.2018. The Selection Committee met on 06.02.2019 and upon considering all the applications on merit, resolved to recommend the name of respondent No.2 as Chief Information Commissioner and the respondent Nos.3 and 4 as State Information Commissioners. Therefore, the entire selection process was completed even prior to the judgment rendered in *Anjali Bhardwaj's* case on 15.02.2019. The said judgment being prospective in nature, would not affect the appointment of the respondent No.2 and in fact the directions issued in *Anjali Bhardwaj's* case have been followed by the respondent No.1 while recommending the names of respondent Nos.2 to 4.

14. It is further contended that the 2<sup>nd</sup> respondent has been appointed taking into consideration his qualification and experience in the field of law and administration. Only after taking permission from the Election Commission of India, the selection process was made strictly in accordance with law. Therefore, no fault can be found in the appointment of 2<sup>nd</sup>





respondent. It is further contended by respondent No.2 that the Karnataka State Information Commission was established in the year 2005 in pursuance of the provisions of Right to Information Act, 2005. The Karnataka State Information Commission consists of a Chief Information Commissioner and 10 posts of State Information Commissioners. The post of Chief Information Commissioner fell vacant on 06.09.2018 on completion of the term of the then incumbent Chief Information Commissioner and also 3 posts of State Information Commissioners were vacant. Thereby, after following the procedure contemplated under the Right to Information Act, 2005, the selection was made and the same is in accordance with law.

15. It is further contended that some other person had filed W.P.No.41484/2018 challenging the very notification dated 07.08.2018. The learned single Judge by the Order dated 26.03.2019 refused to grant any interim order in the said writ petition, which when challenged in W.A.No.973/2019, the Division Bench though initially granted an interim order, subsequently, by the Order dated 25.04.2019 vacated the



interim order holding that the appointment of respondent Nos.2 to 4 is subject to the out come of the Writ Appeal and subsequently, the appeal came to be dismissed for non prosecution. Viewed from any angle, the writ petition is devoid of merits and has been filed with an ulterior motive of harassing the respondent No.2 causing hurdles in the smooth administration of the Karnataka State Information Commission and therefore, sought to dismiss the writ petition.

16. To the new ground urged by the appellant/petitioner in the rejoinder, that the respondent No.2 was a member of Karnataka Judicial Service and that he was deputed to Law Department as Principal Secretary to Government by the High Court of Karnataka on 09.11.2016 and at the time of submitting application to the respondent No.1, the High Court of Karnataka /parent department was having lien over respondent No.2 and therefore, respondent No.2 ought to have submitted his application to the post of Chief Information Commissioner only through parent department/High Court of Karnataka, upon obtaining No Objection Certificate and that the respondent No.2 submitted his application through Chief



Secretary, Government of Karnataka, and the same is not in accordance with law, respondent No.2 in his additional statement of objections contended that the petitioner cannot be permitted to urge the said ground for the reason that it has not been urged in the main petition. The rejoinder is only meant for denying or clarifying the facts stated in the statement of objections/written statement. Fresh cause of action, fresh case or fresh grounds cannot be brought in by way of a rejoinder. The rejoinders have to be clarificatory in nature. Therefore, the ground urged by the petitioner that the respondent No.2 has not filed his application through proper channel warrants no consideration. It is further contended that the petitioner had filed an application seeking amendment of the petition for urging additional grounds. Even in the said application, he chose not to urge the above ground. Such being the case, the petitioner cannot be permitted to urge the said ground. It is further contended that the notification dated 07.08.2018 would state that the persons who are serving the State/Central Government or any other organization may send their particulars through 'proper channel'. It is pertinent to note that the word used in the notification is 'proper channel' and not



'prescribed authority' or 'appropriate authority'. The term 'proper channel' has not been defined under any Act/Rules. Such being the case, the only interpretation that can be given is that a person has to file his application through his reporting authority or immediate superior officer in rank. At the relevant point of time, the respondent No.2 was working as Principal Secretary, Law Department, Government of Karnataka, on deputation. The Chief Secretary of the Government of Karnataka was the reporting authority for respondent No.2 at that time. Therefore, the proper channel for the respondent No.2 to file application to the post of Chief Information Commissioner was only through Chief Secretary, Government of Karnataka. Therefore, there is no illegality committed by the respondent No.2, as contended by the petitioner.

17. It is further contended that the name of the respondent No.2 was recommended for the post of Chief Information Commissioner on 06.02.2019. The respondent No.2 tendered his resignation to the High Court of Karnataka/parent body citing the reason that his name has been recommended to the post of Chief Information Commissioner. The Full Court of the



High Court of Karnataka considered the resignation tendered by the respondent No.2 and accepted the same as it had no objection for the respondent No.2 being appointed to the post of Chief Information Commissioner. Further, the procedure prescribed under the notification dated 07.08.2018 that the application should be filed through proper channel is only directory and not mandatory and therefore, sought to dismiss the writ petition with costs.

**IV. STATEMENT OF OBJECTIONS TO THE WRIT PETITION FILED BY RESPONDENT Nos.3 and 4.**

18. The respondent Nos.3 and 4 filed common statement of objections, adopting the contentions urged in the statement of objections filed by respondent No.2, contending that the contentions urged by the petitioner are untenable, writ petition is neither maintainable in law nor on facts, petitioner has suppressed the material facts and as such, the writ petition deserves to be dismissed with exemplary costs. It is further contended that the respondent No.1, after following the procedure contemplated under the provisions of Section 15(3) of the Right to Information Act, 2005, out of 419 applications received which included the petitioner's application, selected



and appointed respondent Nos.3 and 4 to the posts of State Information Commissioners. The selection made by the respondent No.1 is in consonance with the judgment of the Hon'ble Supreme Court in the case of *Anjali Bhardwaj* and therefore, sought to dismiss the writ petition with costs.

**V. REJOINDER FILED BY THE WRIT PETITIONER**

19. The appellant/petitioner/party-in-person invited attention of the Court to paragraph-4 of the rejoinder filed by him wherein, it is stated that, it is true that the petitioner was working as Civil Judge (Junior Division), Karnataka Judiciary. The allegation that there were serious allegations against petitioner with regard to dereliction of his duties and misconduct is specifically denied by the petitioner. The further allegations that this Court held enquiry into the said charges and found them to be true and therefore, he was discharged from service vide Order dated 06.03.2018 was denied by the petitioner. He also denied that the said Order has attained finality. The petitioner further denied that since he was discharged from service, his application cannot be considered for selection to a sensitive post does not hold any water. He also denied that allegation that he has not disclosed his



antecedents. The petitioner has stated that he was appointed as Civil Judge in Karnataka Judiciary on 30.09.2008 and reported for duty on 01.07.2009 and the probationary period was fixed for two years from the date of reporting duty and the same was expired on 30.06.2011. Neither the appointing authority nor the High Court of Karnataka extended the probationary period of the petitioner or any other Civil Judges appointed on 30.09.2008, at the end of the initial probationary period as mandated under Rule 4 of the Karnataka Civil Service (Probation) Rules, 1977, and kept the suitability in abeyance for years together. Thereafter, only on 02.04.2014, the High Court of Karnataka declared the probationary period of Civil Judges appointed on 30.09.2008 except 11 Civil Judges. Thereafter, on 26.04.2014, the High Court declared the probationary period of 7 Civil Judges and extended the probationary period of remaining 4 Civil Judges including the petitioner without assigning reasons for one year and the same got expired on 24.04.2015. In the meantime, the High Court of Karnataka reduced the probationary period of 2 Civil Judges from one year to two months and declared the probationary period on 01.07.2014. Thereafter, on 15.07.2015, the



Government of Karnataka issued notification discharging one Hanumanthappa from judicial service in pursuance of the recommendation made by the High Court of Karnataka. Neither the appointing authority nor the High Court of Karnataka considered the suitability of the petitioner at the end of the extended period of probation on 24.04.2015 as mandated under Rule 5 of the Karnataka Civil Service (Probation) Rules, 1977 and kept the suitability in abeyance years together.

20. It is further stated by the petitioner in the rejoinder that the legality of the notification including the recommendation letter dated 03.11.2017 to discharge the petitioner from judicial service is challenged by him in W.P.No.2400/2019 and the same is pending consideration. If at all the petitioner was discharged from service by the appointing authority for dereliction of duty and for misconduct, the respondent No.2 ought to have brought to the notice of the appointing authority regarding the said fact to take action against the petitioner. Unfortunately, the said fact was not brought to the notice of the appointing authority by the respondent No.2 prior to passing an





order of discharge and obtained discharge order on untenable ground. It is further contended that, at the time of submitting application to respondent No.1, respondent No.2 is having lien over High Court of Karnataka/parent Department, because he is the permanent member of Karnataka State Judiciary. Such being the case, respondent No.2 ought to have submitted application to respondent No.1 through the parent Department/ High Court of Karnataka by obtaining No Objection Certificate. Since the same is not done, sought to direct the respondent No.2 to produce the documents.

**VI. OBSERVATIONS OF THE LEARNED SINGLE JUDGE IN THE WRIT PETITION**

21. The learned single Judge, after hearing the writ petitioner/party-in-person and the learned counsel for the respondents at length, by the Order dated 21.04.2022 dismissed W.P.No.21902/2019 holding that the contention of the petitioner that the respondent No.2, not having forwarded his application through proper channel, it cannot be ignored that the second respondent was functioning as the Law Secretary to the Government of Karnataka at the relevant point of time. He has forwarded the application through the Chief



Secretary, Government of Karnataka. No doubt, if strict adherence is called for in terms of the note put up in the recruitment notification, the second respondent should have forwarded the application through High Court. Nevertheless, this requirement does not strike at the root of the matter, as strict adherence in this regard may not be sacrosanct. Moreover, the High Court has given its consent, *post facto* and therefore, appointment of second respondent as the State Chief Information Commissioner cannot be set at naught, at this juncture. Accordingly, dismissed the writ petition. Hence, the present Intra Court Appeal is filed.

22. We have heard the appellant/writ petitioner/party-in-person and the learned Additional Government Advocate for respondent No.1 and learned counsel for the respondent Nos.2 to 4.

#### **VII. CONTENTIONS RAISED BY THE APPELLANT**

23. Sri.MohanChandra.P-appellant/party-in-person contended with vehemence that the Order passed by the learned single Judge dismissing the writ petition cannot be sustained and is liable to be set-aside.



24. The appellant further contended that respondent No.1 has not constituted the Search Committee and thereby violated the interim order dated 13.12.2018 passed in *Anjali Bhardwaj's* case and therefore, selection of respondent Nos.2 to 4 is bad in law. The said aspect is not considered by the learned single Judge. He further contended that the 2<sup>nd</sup> respondent has not submitted the application through proper channel. Therefore, the Selection Committee ought not to have considered his application for the post of Chief Information Commissioner. Under Rule 29 of the Karnataka Civil Services (Conduct) Rules, 2021, misconduct is on the part of the respondent No.2 in not submitting the application through proper channel. Thereby, the learned single Judge has not considered the directions issued by the Hon'ble Supreme Court in *Anjali Bhardwaj's* case and therefore, sought to allow the Writ Appeal and set-aside the impugned Order passed by the learned single Judge. In support of his contentions, the appellant/party-in-person, relied on the judgment in the case of *Anjali Bhardwaj's supra*.



**VIII. ARGUMENTS ADVANCED BY THE LEARNED ADDITIONAL GOVERNMENT ADVOCATE FOR RESPONDENT NO.1**

25. Sri Laxminarayan, learned Additional Government Advocate for respondent No.1/State Government, reiterating the averments made in the statement of objections filed in the writ petition, contended that, considering the entire material on record, the learned single Judge has rightly dismissed the Writ Petition. He contended that, the writ petition filed by the petitioner is not maintainable, as he has not made the Selection Committee as party to the writ petition. The Selection Committee, considering the eligibility criteria, selected respondent Nos.2 to 4, among 419 applications received for the said posts. The same is in accordance with law. He contended that, it is not for this Court to sit in judgment over the manner in which the recommendation was made by the Selection Committee and decide the selection process. Therefore, the learned single Judge has rightly dismissed the Writ Petition. The Appellant/writ petitioner has not made out any ground to interfere with the impugned Order, in exercise of powers under Section 4 of the Karnataka High Court Act 1961 and therefore, sought to dismiss the Writ Appeal.



**IX. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL  
FOR RESPONDENT No.2**

26. Sri G.B.Sharath Gowda, learned counsel for respondent No.2, reiterating the averments made in the statement of objections to the writ petition, contended that the notification was issued on 07.08.2018 and at that time, the respondent No.2 was working as Principal Secretary, Law Department, Government of Karnataka. After considering the over all work experience and knowledge of the 2<sup>nd</sup> respondent, the Selection Committee thought fit to select him to the post of Chief Information Commissioner as he fulfilled the criteria mentioned in the notification dated 07.08.2018. The said notification specifically prescribes that the persons who are serving under the State/Central Government or any other organization, may send their particulars through proper channel. It is directory in nature and not mandatory. As stated supra, as on the date of issuance of the notification i.e., 07.08.2018, the 2<sup>nd</sup> respondent was working as Principal Secretary, Law Department, Government of Karnataka. Thereby, the 2<sup>nd</sup> respondent has submitted the application through proper channel i.e., through the Chief Secretary, Government of Karnataka, and therefore, the 2<sup>nd</sup> respondent has not violated the condition stipulated in



the notification dated 07.08.2018. Therefore, there is no ground to set-aside the Order passed by the learned single Judge. Learned counsel further contended that the petitioner having participated in the selection process, is estopped from filing the writ petition and therefore, the present Writ Appeal is liable to be dismissed with heavy costs. The learned counsel further invited attention of this Court to paragraph-62 of the Judgment in *Anjali Bhardwaj's* case, wherein, the Hon'ble Supreme Court has directed the State Government to undertake the selection process and to fill up the posts within two months from the date of the said Judgment. He contended that the State Government has complied with the said direction by completing the selection process within the stipulated time. Learned counsel further contended that, it is not the case of the appellant that he is better qualified than respondent Nos.2 to 4. Very curiously, in the writ petition, the appellant/petitioner has sought to direct the respondent to appoint the candidates for the post of Chief Information Commissioner and State Information Commissioners as per the direction/ guidelines issued by the Hon'ble Apex Court of India in *Anjali Bhardwaj's* case, in a transparent manner. The very prayer is not



maintainable. Thereby, the learned single Judge, considering the entire material on record, has rightly dismissed the writ petition and the appellant has not made out any ground to interfere with the impugned Order and therefore, sought to dismiss the Writ Appeal with heavy costs.

27. In support of his contentions, learned counsel relied upon paragraph 18 of the Judgment of the Delhi High Court in the case of ***CPL N.K.Jakhar vs. Union of Indian and others*** reported in ***2009 SCC OnLine Del 3317***, to contend that, 'the petitioner did not apply through 'proper channel' relates to a procedure of the law and not the substance of the law. Unless otherwise mandate by the language of a procedural law which leaves no scope to interpret a rule governing a procedure as mandatory, every attempt has to be made to read a rule relating to procedure as being directory and not mandatory'. He further contended that in the present case, the notification dated 07.08.2018 prescribes that, the persons who are serving under the State/Central Government or any other organization, 'may' send their particulars through 'proper channel'. The word used in the notification is 'may' and not 'shall'. Therefore, the



allegation of the Appellant that the respondent No.2 did not submit the application through 'proper channel' is devoid of any merit.

28. Learned counsel further relied on the Judgment in the case of *S.Umapathi vs. The State of Karnataka and others* in *W.P.No.40784/2012* dated *10.03.2014*, wherein, the Division Bench of this Court, at paragraph 10, held that, "It is not for this Court to sit in judgment over the manner in which the recommendation was made by the Committee constituted under sub-section (3) of Section 15 of the Act, in the absence of there being any glaring arbitrariness or illegality being pointed out. The Committee, in its wisdom, has considered the names of various persons and has recommended the names of only respondent Nos.3 to 7 for being appointed as the State Chief Information Commissioner and the State Information Commissioners. In a petition under Articles 226 and 227 of the Constitution, this Court cannot sit as an Expert Committee over the Committee constituted under sub section (3) of Section 15 of the Act and substitute its judgment in place of the recommendations made by the Committee constituted under





the Act.” Learned counsel further contended that the appellant has not made out any glaring arbitrariness or illegality in appointing respondent Nos.2 to 4. The arguments put forth by the appellant is vague and only on technicality with an intention to harass respondent Nos.2 to 4. There is no proper prayer made in the writ petition to the effect that the appellant was to be appointed instead of respondent Nos.2 to 4, and therefore, sought to dismiss the Writ Appeal with costs.

**X. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR RESPONDENT Nos.3 and 4**

29. Sri Rajashekhar K, learned counsel for respondent Nos.3 and 4, while adopting the arguments advanced by the learned counsel for respondent No.2, contended that the appellant has not come to the Court with clean hands and has suppressed the material facts. He contended that, in the rejoinder, the appellant has only denied the averments made in the statement of objections. The fact that the appellant was in judicial service and was discharged from service by the High Court is not at all whispered in the Memorandum of Writ Petition. In the absence of any material produced by the



appellant to substantiate that he is more qualified than respondent Nos.2 to 4, he cannot claim to be appointed as Chief Information Commissioner or State Information Commissioner and the prayer made in the writ petition is not maintainable. The appellant who was unsuccessful in being selected to the aforesaid posts, filed the writ petition with an ulterior motive only with an intention to harass the respondents and therefore, sought to dismiss the Writ Appeal with heavy costs.

**XI. POINT FOR CONSIDERATION**

30. In view of the aforesaid rival contentions urged by the Appellant/party-in-person, learned Additional Government Advocate and the learned counsel for respondent Nos.2 to 4, the only point that arises for our consideration is:

“Whether the Appellant/party-in-person has made out a case to interfere with the impugned Order passed by the learned single Judge dismissing the writ petition, in the facts and circumstances of the present case?”



## **XII. CONSIDERATION**

31. It is not in dispute that, as contemplated under the provisions of Section 15(3) of the Right to Information Act, 2005, the respondent No.1 by the Government Order dated 03.08.2018, constituted a Selection Committee consisting of Hon'ble Chief Minister, Hon'ble Opposition Party Leader of the Legislative Assembly and Hon'ble Deputy Chief Minister. In pursuance of constitution of the Selection Committee, the respondent No.1 issued notification dated 07.08.2018 inviting applications from the eligible candidates to the one post of Chief Information Commissioner and 2 posts of State Information Commissioners. So also, in pursuance of the same, 419 applications were received which included the appellant's application also.

32. At this stage, the appellant/party-in-person, rightly and fairly submits that he filed only single application for two posts i.e., for the posts of Chief Information Commissioner and State Information Commissioner.

33. It is the case of the appellant that the respondent No.1 has not complied with the interim order dated 13.12.2018



granted by the Hon'ble Supreme Court in *Anjali Bhardwaj's* case (supra) wherein, a direction was given to put on web site the names of the Search Committee and the names of the candidates who have been short listed as well as the criteria which is followed for selection.

34. At this juncture, we immediately perused the judgment in *Anjali Bhardwaj's case*, wherein, at paragraph-30 the Order dated 13.12.2018 has been reiterated, wherein it is observed that, "the respondents shall put on the website the names of the Search Committee, the names of the candidates who have been shortlisted as well as the criteria which is followed for selection. We may again record the statement of learned Additional Solicitor General that the selection criteria is prescribed in the Right to Information Act itself which is being followed. Still, that can be put on the website". However, under the Right to Information Act, there is no specific provision to constitute the Search Committee as contended by the appellant. It is to be noted that the Hon'ble Supreme Court has only observed that, the respondents shall put on the website the names of the Search Committee, but has not



directed to constitute the Search Committee. On the statement made by the learned Additional Solicitor General that the selection criteria is prescribed in the Right to Information Act itself which is being followed, directed that, still, that can be put on the website. Thereby, the Hon'ble Supreme Court, among other States, permitted Karnataka State to proceed with the selection of candidates in terms of the provisions of the Right to Information Act itself and to put it on the web site.

35. It is also not in dispute that after issuance of the notification dated 07.08.2018, it was published in various news papers, so also in the web site [www.janaspandana.kar.nic.in](http://www.janaspandana.kar.nic.in). It is also not in dispute that prior to issuance of the notification dated 07.08.2018, in terms of Section 15(3) of the Right to Information Act, 2005, Selection Committee was constituted by notification dated 03.08.2018, which consisted of Hon'ble Chief Minister, Hon'ble Opposition Party Leader of the Legislative Assembly and Hon'ble Deputy Chief Minister. Admittedly, the said Selection Committee was constituted by the State Government much prior to the judgment in *Anjali Bhardwaj's* case which was rendered on 15.02.2019 and admittedly, the



constitution of Selection Committee has not been challenged by the appellant.

36. It is also not in dispute that the Committee constituted under the provisions of Section 15(3) of the Right to Information Act, 2005, considering in detail all the applications on merits, unanimously resolved to recommend the name of Sri N.C.Srinivasa- respondent No.2 to the post of Chief Information Commissioner and the names of Sri S.M.Somashekara and Sri K.P.Manjunatha-respondent Nos.3 and 4 respectively, to the posts of State Information Commissioners. The said recommendation is also not challenged by the appellant. The Government Order dated 03.08.2018 constituting the Selection Committee consisting of Hon'ble Chief Minister, Hon'ble Opposition Party Leader of the Legislative Assembly and Hon'ble Deputy Chief Minister, for recommending to His Excellency the Governor of Karnataka for appointment to the post of Chief Information Commissioner and State Information Commissioners, has also not been challenged by the appellant. The Selection Committee has not been made as party to the writ petition. Only the State Government and the persons who



have been appointed to the post of Chief Information Commissioner and State Information Commissioners have been made as parties to the writ petition. In pursuance to the recommendation, the Notification dated 22.03.2019 came to be issued 'By the Order and in the name of His Excellency the Governor of Karnataka' appointing respondent No.2 as the Chief Information Commissioner and respondent Nos.3 and 4 as State Information Commissioners.

37. Except denying the allegations made against him in the statement of objections, the appellant/petitioner/party-in-person has not denied either the qualification or work experience of respondent Nos.2 to 4 or their eminence in various fields prescribed under the Act. It is not in dispute that the respondent Nos.2 to 4 have been appointed as Chief Information Commissioner and State Information Commissioners strictly in accordance with Section 15(5) of the Right to Information Act, 2005, which reads as under:

**"15. Constitution of State Information**

**Commission.—**

xxx xxx xxx

xxx xxx xxx



xxx xxx xxx  
xxx xxx xxx  
xxx xxx xxx

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance."

38. A careful reading of Section 15(5) of the Right to Information Act, 2005, makes it clear that the State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

39. Admittedly, the respondent No.1/State Government, in its statement objections has categorically stated that the respondent Nos.2 to 4 are the persons of eminence in public life with wide knowledge and experience in law, etc., and the same is not denied by the appellant. It is not the case of the appellant that he is a person more qualified and is having





eminence in public life with wide knowledge in various fields than that of respondent Nos.2 to 4. A careful perusal of the memorandum of writ petition, rejoinder and the grounds urged in the writ appeal does not depict as to how the appellant is more qualified, possesses more eligibility criteria than that of respondent Nos.2 to 4 for being selected and appointed as Chief Information Commissioner or State Information Commissioner. So also, in the absence of any lacuna pointed out by the appellant in the qualification and eligibility criteria possessed by respondent Nos.2 to 4, the writ petition, is not maintainable.

40. The notification dated 07.08.2018 clearly stipulates that persons fulfilling the criteria for appointment as the Chief Information Commissioner/ State Information Commissioners and interested in appointment to the post may send their bio-data in the prescribed proforma by post or hand delivery to Under Secretary to Government, Department of Personnel and Administrative Reforms (Janaspandana Cell), 3rd floor, Podium Block, V.V.Tower, Dr.Ambedkar Veedhi, Bengaluru-560 001, by 5.30 pm on 22.09.2018. As admitted by the appellant/party-



in-person, he has made "only single application for two posts".  
In the entire writ petition, the appellant/writ petitioner has not  
stated as to how a single application can be made for two  
posts. When the Court posed a specific question in this regard,  
the appellant/party-in-person, very cleverly answered that  
there is no mandate in the notification that two separate  
applications have to be made for two posts and therefore, he  
has made only one application for two posts. The very  
language used in the notification dated 07.08.2018 supra  
clearly depicts that the applications are invited for three posts  
i.e., one post of Chief Information Commissioner and two posts  
of State Information Commissioners and therefore, the  
appellant ought to have made two applications if he wanted to  
apply for both the posts. The same has not been done.

41. Further, the appellant has not disclosed his avocation  
either in the memorandum of writ petition or writ appeal. Even  
the cause title is silent about his avocation. The cause title  
only depicts that the name of the appellant/writ petitioner is  
Mohan Chandra P, Aged about 49 years, S/o late Janardhana  
Nayak P, residing at Panjigar House, Kalanja Post, Sullia Taluk-



574 212. In the absence of any pleadings with regard to his avocation and as to what is his qualification and what is his eminence in public life and knowledge and experience in law and other aspects prescribed under Section 15(5) of the Right to Information Act, the very writ petition filed against the State Government and respondent Nos.2 to 4 is not maintainable as the same appears to have been filed for some extraneous reasons without making out any grounds as to how the appointment of respondent Nos.2 to 4 is bad, illegal and violative of the directions issued by the Hon'ble Supreme Court in the case of *Anjali Bhardwaj*.

42. At this stage, it is relevant to reiterate the interim Order granted by the Hon'ble Supreme Court in *Anjali Bhardwaj's* case, wherein, it was directed that the respondents shall put on the website the names of the Search Committee, the names of the candidates who have been short listed as well as the criteria which is followed for selection. Further, while recording the statement of learned Additional Solicitor General that the selection criteria is prescribed in the Right to Information Act, 2005, itself which is being followed, still it was directed to put



the same on the website. The aforesaid direction has been strictly followed by the 1st respondent/State Government. Further, while disposing of *Anjali Bhardwaj's* case, the Hon'ble Supreme Court, at paragraphs 61 to 63, observed as under:

*"61. Karnataka SIC is functioning with 05 Commissioners, namely, 01 CSIC and 4 Information Commissioners. As on 31st October, 2017, 33,000 appeals and complaints were pending.*

*62. In the counter affidavit, it is mentioned that Notification for filling up of the posts of CSIC and 2 Information Commissioners was issued on 7th August, 2018 against which 419 applications have been received. It is further stated that the meeting of the Selection Committee constituted under Section 15 of the RTI Act is awaited. This affidavit was filed on 8th December, 2018. Last date for receiving the application was 22nd September, 2018. It appears that after receipt of the applications, for three months nothing happened. In these circumstances, we impress upon the Selection Committee to undertake the selection process so that the posts are filled within two months from today.*

*63. Further more, having regard to the alarming pendencies of the complaints and appeals before*



*the Karnataka Information Commission, it would be appropriate to consider increasing the strength of Information Commissioner. In our view, Commission needs to function with full strength, namely, 1 CSIC and 10 Information Commissioners and we recommend accordingly. This recommendation be considered and decision thereon be taken within one month. Thereafter, process should be initiated and completed within six months from the date of this judgment.*

43. Except contending with vehemence that the appointment of respondent Nos.2 to 4 is in violation of *Anjali Bhardwaj's* case, the appellant has not shown as to what is the violation.

44. In fact, the Hon'ble Supreme Court, in *Anjali Bhardwaj's* case, at paragraph-62 supra, has observed that, "In the counter affidavit, it is mentioned that notification for filling up of the posts of CSIC and 2 Information Commissioners was issued on 7th August, 2018 against which 419 applications have been received. It is further stated that the meeting of the Selection Committee constituted under Section 15 of the RTI Act is awaited. This affidavit was filed on 8th December, 2018. Last date for receiving the application was 22nd September,



2018. It appears that after receipt of the applications, for three months nothing happened. In these circumstances, we impress upon the Selection Committee to undertake the selection process so that the posts are filled within two from today, i.e., 15.02.2019." Accordingly, the respondent No.1 issued the Notification dated 22.03.2019 appointing respondent Nos.2 to 4 as Chief Information Commissioner and State Information Commissioners, strictly in accordance with the provisions of the Right to Information Act, 2005 and the directions issued by the Hon'ble Supreme Court.

45. It is pertinent to note that, the appellant has not shown what is his eminence in public life as contemplated under Section 15(5) of the Right to Information Act, 2005, and filed the writ petition for the following relief:

*"(a) Issue a writ in the nature of certiorari or any other appropriate writ or order or direction quashing the notification dated 22.03.2019 bearing No.DPAR 185 RTI 2018 issued by the respondent as per Annexure-C, as violative of the direction issued by the Hon'ble Apex Court of Indian in Writ Petition (Civil) No.436/2018 dated 15.02.2019 including the*



*interim Order dated 13.12.2018 passed in Writ Petition (Civil) No.436/2018.*

*(b) Issue a writ in the nature of mandamus or any other appropriate writ or order or direction, directing the respondent to appoint the candidates for the post of Chief Information Commissioner and State Information Commissioner as per the direction/ guidelines issued by the Hon'ble Apex Court of Indian in Writ Petition (Civil) No.436/2018 dated 15.02.2019 in a transparent manner."*

46. It is also not in dispute that, in response to the notice issued in the writ petition, the respondent No.1/State Government filed statement of objections specifically stating as to what is the eminence in public life possessed by respondent Nos.2 to 4. Paragraphs paragraphs-4, 5 and 6 of the said statement of objections reads as under:

"4. It is submitted that the Sri N.C. Srinivasa who been appointed as the Chief Information has Commissioner holds B.A. LL. B., degree. He has practiced as an Advocate, discharged duties as Public Prosecutor. Thereafter, he was appointed as Munsiff J.M.F.C. in the year 1991 and discharged duties as Chief Judicial Magistrate, Member - Secretary and Chairman of District Legal Services



Authority, Mangalore and Hassan. This respondent secured first rank in District Judges' competitive examination held by this Hon'ble Court; he has been honoured by the Kannada Development Authority for having written good Kannada judgments, worked as super time scale District Judge, Addl. Registrar General of Dharwad Bench of this Hon'ble Court, Principal District and Sessions Judge at Ramanagar. He has worked as Principal Secretary to Government, Law Department, Government of Karnataka from 2016-2019 i.e., till he was appointed as Chief Information Commissioner. This respondent has also served as Ex-Officio Syndicate Member of Karnataka State Law University and Member of Executive Council and General Council of National Law School of India University, Bangalore. This respondent over the last 36 years has put in meritorious service which makes him person of eminence in public life with wide knowledge in the field of law and administration. He eminently fits the eligibility criteria specified in Section 15(5) of the RTI Act, 2005.

5. It is submitted that the Sri. S.M.Somashekar who has been appointed as the Information Commissioner is an All India Service Officer of 1983 batch of Indian Forest Service selected through the





competitive examination conducted by the Union Public Service Commission and superannuated in June 2018 after putting 35 years of government service in various capacities, he worked as Deputy Conservator of Forests in various forest divisions, Conservator of Forest, of Forest Circles, Chief Regional Executive, Tea Board, South Zone Office, Coonoor, Ministry of Commerce, Government of India. And also worked as Chief Executive Officer, Zilla Panchayath, and Additional PCCF, Regional Office, MOEF & CC, Bengaluru. Worked as Principle Chief Conservator of Forest (PCCF) cum Chief Wild Life Warden, Haryana and superannuated as Principal Chief Conservator of Forest (Head of the Forest Force) & Head of the Department, Forest Department, Haryana. During his career he received Appreciation and Commendation certificate from Government of Haryana for his outstanding work in the field of Forestry. Represented Tea Board of India, Ministry of Commerce, and Government of India in the annual conferences of UPASI, COONOOR. Nominated as member of Indian Delegation to the xiv World Forestry Congress on forest and people: investing in a sustainable future, HELD AT Durban, South Africa. Participated in the Conference held in Syracuse University-USA on Sustainable Management Practices of Natural Resources, presented a paper on Eco-Restoration of



Aravalli Hills in Haryana-Landscape approach. This respondent No.3 over the last 35 years has put in meritorious service which makes him person of eminence in public life with wide knowledge and experience in law science and technology, social service, management and administration.

6. It is submitted that the Sri. K.P. Manjunath who has been appointed as the Information Commissioner is an Advocate by profession got himself enrolled in the year 1989 on the roll of Karnataka State Bar Council, Bengaluru and he had conducted several Sessions Trail at Shimoga and he had conducted several civil cases in the District and Sessions Court at Shimoga. He has got wide experience in civil and criminal cases and he has put in more than 30 years experience as an Advocate. While he was practicing as an Advocate at Shimoga and Shikaripura he rendered social service and had actively participated in Lok-Adalat conducted by District Legal Services Authority and conducted many cases for poor litigants on behalf of the free legal aid committee. This respondent over the last 30 years has put in meritorious service which makes him a person of eminence in public life with wide knowledge in the field of law, administration and science.



47. The aforesaid fact is not disputed by the appellant in the rejoinder filed by him. He has only stated that he was working as a Judicial Officer and was discharged by the High Court and challenging the same, he has filed W.P.No.2400/2019 and the same is pending for consideration.

48. This clearly indicates that the appellant was in judicial service and since he was found to be not suitable to hold the post, was discharged from service. The said fact is suppressed by the appellant and has nowhere stated in the memorandum of writ petition or writ appeal. Therefore, the appellant has not approached the Court with clean hands and the writ petition is liable to be dismissed on the ground of suppression of material facts.

49. At this stage, it is relevant to note that the learned single Judge, after considering the contentions urged by the appellant/petitioner/party-in-person and the learned counsel for the respondents, by the impugned Order, at paragraphs-5, 6 and 7, observed as under:

*5. It is noticeable that the co-ordinate Bench had in fact noticed the interim order dated 13.12.2018*



*issued by the Hon'ble Supreme Court in Anjali Bharadwaj. However, the co-ordinate Bench has also taken note of the submission made on behalf of the respondent-State Government that the Notification containing the terms and conditions was issued on 07.08.2018, much before the interim orders dated 13.12.2018 were passed by the Hon'ble Supreme Court. The co-ordinate Bench also noticed the fact that on 06.02.2019, the recommendations of the names for appointment to the posts of Chief Information Commissioner and the State Information Commissioners were also made. Further, in the final order dated 15.02.2019 of the Hon'ble Supreme Court in the case of Anjali Bharadwaj, at paragraph No.62, in respect of State of Karnataka, it is noticed as follows;*

*"62. In the counter affidavit, it is mentioned that Notification for filling up of the posts of CSIS and 2 Information Commissioners were issued on 07th August, 2018 against which 419 applications have been received. It is further stated that the meeting of the Selection Committee constituted under Section 15 of the RTI Act is awaited. This affidavit is filed on 08<sup>th</sup> December, 2018. Last date for receiving*



*application was 22nd September, 2018.*

*It appears that after the receipt of the applications, for three months nothing happened. In these circumstances, we impress upon the Selection Committee to undertake the selection process so that the posts are filled within two months from today”.*

*6. The learned Senior Counsel Sri.Udaya Holla is right in his submissions that the Hon'ble Supreme Court was appraised of the constitution of Selection Committee under Section 15 of the RTI Act, and an affidavit filed on 08<sup>th</sup> December, 2018 was also brought to the notice of the Hon'ble Supreme Court. There is a specific direction given by the Hon'ble Supreme Court in its final order dated 15.02.2019 directing the Selection Committee to undertake the selection process and fill up the posts within two months from the date of the order of the Hon'ble Supreme Court. That being the position, the contention of the petitioner that the Search Committee was not constituted in terms of the interim order dated 13.12.2018 and therefore, the appointment of respondents No.2 to 4 is in violation of the interim directions of the Hon'ble Supreme Court, does not hold any water.*



*7. As regards, the contention of the petitioner that respondent No.2, not having forwarded his application through proper channel, it cannot be ignored that the second respondent was functioning as the Law Secretary to the Government of Karnataka at the relevant point of time. He has forwarded the application through the Chief Secretary, Government of Karnataka. No doubt, if strict adherence is called for in terms of the note put up in the recruitment notification, the second respondent should have forwarded the application through the High Court. Nevertheless, this requirement does not strike at the root of the matter, as strict adherence in this regard may not be sacrosanct. Moreover, the High Court has given its consent, post facto and therefore, the appointment of the second respondent as the State Chief Information Commissioner cannot be set at naught, at this juncture, on this ground.*

50. Further, a careful perusal of the grounds urged in the memorandum of writ petition and the writ appeal depicts that the appellant has not stated as to how the selection of respondent Nos.2 to 4 is in violation of the provisions of the Right to Information Act, 2005 and as to how he is better qualified than respondent Nos.2 to 4. In fact, the proceedings



of the meeting of the Committee constituted under Section 15(3) of the Right to Information Act, 2005, to recommend the names for the appointment of Chief Information Commissioner and State Information Commissioners, depicts that the Committee took due note of the recent interim order passed in W.P.No.41484/2018 in the case of Mohammed Wazir Ahmed vs. State of Karnataka and after going through the details of the applicants, unanimously decided to recommend the names of respondent Nos.2 to 4.

51. The appellant/party-in-person has not made out any illegality committed by the Selection Committee and admittedly, the Selection Committee is not arrayed as party to the writ petition and therefore, the writ petition is liable to be dismissed for non joinder of necessary party. The Selection Committee, after considering the Judgment passed by the Hon'ble Supreme Court in *Anjali Bhardwaj's* case and the provisions of the Right to Information Act, 2005, has rightly selected and appointed respondent Nos.2 to 4 and this Court, cannot sit in judgment over the manner in which the recommendation was made by the Committee constituted



under Section 15(3) of the Right to Information Act, 2005, in the absence of there being any glaring arbitrariness or illegality being pointed out. The Committee, in its wisdom, has considered the names of various persons and among 419 applicants, has recommended the names of respondent Nos.2 to 4 for being appointed as the Chief Information Commissioner and State Information Commissioners. In a petition under Articles 226 and 227 of the Constitution, this Court cannot sit as an Expert Committee over the Committee constituted under Section 15(3) of the Act and substitute its judgment in place of the recommendations made by the Committee constituted under the Act. Therefore, learned single Judge has rightly dismissed the writ petition.

52. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of ***Dalpat Abasaheb Solunke and others vs. Dr.B.S.Mahajan and others*** reported in **(1990)1 SCC 305**, wherein, at paragraph-12, it is held as under:

*"12. It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the court has*





*also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. 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 scrutinize the relative merits of the candidates. Whether a 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. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the court, the High Court went wrong and exceeded its jurisdiction."*



53. Though Sri Mohan Chandra P, appellant/party-in-person contended that respondent No.2 has not applied to the post through 'proper channel', it relates to a procedure of the law and not the substance of the law. A careful perusal of the notification dated 07.08.2018 clearly indicates that, the persons who are serving under the State/Central Government or any other organization, 'may' send their particulars through proper channel. The word used in the notification is 'may' and not 'shall'. Unless otherwise mandate by the language of a procedural law which leaves no scope to interpret a rule governing a procedure as mandatory, every attempt has to be made to read a rule relating to procedure as being directory and not mandatory. Therefore, the contention of the appellant that the respondent No.2 has not applied through 'proper channel', cannot be accepted.

54. At this juncture, it is pertinent to note that it is the specific case of the respondent No.2 that, as on the date of the notification, he was working on deputation as Principal Secretary, Law Department, Government of Karnataka. As such, during the relevant time, the Chief Secretary,



Government of Karnataka was the reporting authority. Therefore, 'proper channel' for respondent No.2 was only through the Chief Secretary, Government of Karnataka and accordingly, respondent No.2 has applied through proper channel and there is no illegality. More over, the High Court has given consent post facto. The said aspect has been rightly considered by the learned single Judge.

55. As already stated supra, the appellant/petitioner who is aspirant to the post of Chief Information Commissioner and State Information Commissioner, has not laid down foundation to contend that he is eligible for the said posts, as contemplated under Section 15(5) of the Right to Information Act, 2005. When the appellant has not laid down any foundation, he has no locus to challenge the appointment of respondent Nos.2 to 4. More over, this is not a Public Interest Litigation, whereas, it is Personal Interest Litigation. On that ground also, the appellant is not entitled to any relief.

56. It is relevant to note that, at paragraph 4 of the memorandum of Writ Petition, the appellant/petitioner has stated that, 'he is one of the aspirant to the post of Chief



Information Commissioner and State Information Commissioner and as such he submitted application to the respondent well in advance'. However, after the appointment of respondent Nos.2 to 4 to the aforesaid posts, the appellant has filed the present writ petition. Once the appellant/petitioner participated in the proceedings, he is estopped from challenging the selection process. On that ground also, the Writ Petition is liable to be dismissed. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of ***Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation*** reported in ***(2011)5 SCC 435***, wherein the Hon'ble Supreme Court at paragraph 12, has held as under:

*12. The doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not*



*blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.*

57. Admittedly, the present Writ Appeal is filed by the Appellant under Section 4 of the Karnataka High Court Act, 1961. The scope of the Appeal is very limited. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. Our view is fortified by the decision of the Hon'ble Supreme Court in the case of **H.B.Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons & others**, reported in **1992 Supp (2) SCC 312**, wherein, at paragraph-8, it is held as under:

*8. But here what was assailed was the correctness of findings as if before an appellate forum. Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a*



*conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.*

58. It is a fundamental principle of law that person invoking the extraordinary jurisdiction under Article 226 of the Constitution of India must approach the Court with clean hands and should not conceal material facts. It has further been held that there is necessity to save judicial process from becoming abuse to subvert justice. The need to approach the Court with clean hands is all the more necessary as Law is not a game of chess. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of ***Ramjas Foundation vs. Union of India*** reported in ***1993 Supp(2) SCC 20***.

59. Though the arguments advanced by the appellant/party-in-person in the present Writ Appeal is very attractive, there is no substance in it. He has not made out any case to interfere with the selection of respondent Nos.2 to 4. After considering the entire material on record, we are not persuaded to accept



the contentions urged by the appellant, in the light of the fact that the scope of the Appeal is very limited in exercise of powers under Section 4 of the Karnataka High Court Act, 1961. The judgment relied upon by the appellant in the case of *Anjali Bhardwaj* supra, in fact, is in favour of the respondents. The appellant has not shown any violation of the judgment in *Anjali Bhardwaj's* case. What is challenged in the writ petition is, appointment of respondent Nos.2 to 4 by the Selection Committee. However, he has not shown as to how the selection and appointment is bad. Except making allegation against respondent No.1/ State Government, the appellant has not placed any material before the Court to substantiate the allegations.

60. When query was made by the Court during the course of dictation as to what is his avocation, the appellant/party-in-person submits for the first time in the present Writ Appeal that he is a practicing advocate. Even in the cause title, appellant has not shown his avocation. In the verifying affidavit filed along with the Memorandum of Writ Appeal, the appellant has not stated his avocation. Being a practicing advocate and



arguing the present Writ Appeal as a party-in-person, he is misusing the process of the Court and is harassing the respondents repeatedly, wasting public and judicial time of the Court, by filing writ petition and writ appeal. This Court has taken pains to consider the grievance of the appellant. The present Writ Appeal is being heard since 11.30 am. The dictation of the judgment continued till 1.45 pm and also in the post lunch session from 3.00 pm to 4.00 pm. Thereby, the appellant has wasted the precious public time by filing this frivolous intra Court appeal.

61. Like any other organ of the State, Judiciary is also manned by human beings. But the function of the judiciary is distinctly different from other organs of the State- in the sense, its function is divine. Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors fail people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. It is high time the judiciary must take utmost care to see that the temple of





justice does not crack from inside, which will lead to a catastrophe in the justice delivery system resulting in the failure of public confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside.

62. Admittedly, in the present case, the appellant is a practicing advocate, as disclosed by him during the course of dictating this Judgment. He should have responsibility towards the Society and know his limits.

63. It is true that the judges should not be hyper sensitive in discharging judicial functions, but that does not mean and imply that they ought to maintain angelic silence also. Immaterial it is as to the person but it is the seat of justice which needs protection; it is the image of judicial system which needs protection. Nobody can be permitted to tarnish the image of the temple of justice. The majesty of the Court shall have to be maintained and there ought not to be any compromise or leniency in that regard. It is well settled that legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable



members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The casualness with which some members practice the profession is certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving.

64. The experience of this Court depicts that in recent years there has emerged a trend of filing speculative litigations before various Courts of law, not just in the Court of first instance, but also in the High Court as well as before the Hon'ble Supreme Court. It is the duty of the Courts to ensure that such litigations shall be weeded out at the first instance rather than allowing to be festered and thereby coming in the way of genuine litigants seeking justice treating the Court as "Temple of Justice" and to protect precious public & judicial time of the court.

"This augurs ill for the health of our judicial system".



65. In the present intra Court Appeal filed by the appellant/ party-in-person who is a practicing advocate should know his limits and he cannot waste the public time. The whole day is wasted because of the attitude of the appellant. We have spent considerable time for the present intra Court Appeal. Absolutely there is no material in the present case. The respondent Nos.2 to 4 have been selected by the Selection Committee taking into consideration their eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance, as contemplated under Section 15(5) of the Right to Information Act, 2005. In the absence of any better qualification possessed by the appellant, he cannot contend that the selection of respondent Nos.2 to 4 is bad. The appellant is unnecessarily harassing the respondents who have been appointed legally, in terms of the provisions of the Right to Information Act, 2005.

66. From the facts narrated in the preceding paragraphs which all not being referred to, to avoid repetition, it is axiomatic that appellant/ petitioner has not approached this



Court with clean hands and is guilty of suppression of material facts. On that ground alone, the appellant is not entitled to any discretionary relief in exercise of jurisdiction under Article 226 of the Constitution of India.

### **XIII. CONCLUSION**

67. For the reasons stated above, the point raised for consideration in the present intra Court Appeal is answered in the negative holding that the appellant has not made out any ground to interfere with the impugned Order passed by the learned single Judge and therefore, the Writ Appeal is liable to be dismissed with costs.

68. Though the scope of the appeal is very limited, after taking pains in reconsidering the entire material on record, we hold that the appellant/party-in-person has not made out any ground to interfere with the impugned Order passed by the learned single Judge, in exercise of powers under Section 4 of the Karnataka High Court Act 1961.

### **XIV. RESULT**

69. In view of the above, we pass the following:



**ORDER**

(i) The Intra Court Appeal is ***dismissed*** with costs of ₹5,00,000/- (Rupees Five Lakhs only).

(ii) The Order dated 21.04.2022 passed by the learned single Judge in W.P.No.21902/2019 is hereby confirmed.

(iii) The appellant/party-in-person shall deposit the costs of ₹5,00,000/- (Rupees five lakhs) with the Advocates' Association, Bengaluru, within a period of two months from the date of receipt of certified copy of this Order, failing which the Registry is directed to post the matter before the Court for implementation of the Order with regard to payment of costs.

(iv) Registry is directed to communicate a copy of this Order to the Secretary, Advocates' Association, Bengaluru, for information.

(iv) At this stage, the appellant/party-in-person orally submits that he intends to file Appeal before



the Hon'ble Supreme Court and therefore, seeks fitness certificate. Since the matter is considered elaborately on merits, we are of the considered opinion that this is not a fit case to issue fitness certificate. Accordingly, the request is rejected.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Kcm