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*Before H.S. Bedi AND Viney Mittal, JJ.*

HARYANA PUBLIC SERVICE COMMISSION,—*Petitioner*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

*C.W.P. No. 12593 of 2005*

12th August, 2005

*Constitution of India, 1950—Arts. 14 and 226—Prevention of Corruption Act, 1988—S. 2(c), Cl. (x)—Government ordering holding of vigilance inquiries in some of the past selections made by the Haryana Public Service Commission—Vigilance Department summoning the record of the Commission—Challenge thereto—Whether the Vigilance Department of the State has jurisdiction or authority to hold a vigilance enquiry against the functioning of the Commission—Provisions of 1988 Act including the Chairman and the members of the Commission in the definition of public servant—State Government has power to withdraw any requisition sent to the Commission for selection by amending rules and take out the selections/appointments to the various posts out of the purview of the Commission—Enquiries by the Vigilance Department cannot be taken to mean any erosion of the authority of the Commission or its independence—If the selections are alleged to be tainted and based upon consideration other than merit, the Commission cannot, in such circumstances, claim any immunity—No body has a vested right to perpetuate illegally or hide a scandal—Petition liable to be dismissed.*

*Held*, that the enquiries now being conducted by the Vigilance Bureau pertain to certain past selections. From the communication received by the petitioner—Commission, it appears that the actions of the past Secretary, the past Chairman and certain other officers/officials of the Commission are being probed with regard to serious charges. Under any circumstances, the aforesaid enquiries cannot be taken to mean any erosion of the authority of the Commission or its independence. Even an expert and constitutional body like the Commission is supposed to perform its duties, fearlessly and carry out selections on the basis of the best merit available. However, if the aforesaid selections are alleged to be tainted and based upon

consideration other than merit, the Commission cannot, in such circumstances, claim any immunity. No body has a vested right to perpetuate illegality or hide a scandal. All selections made by public servants are supposed to be based upon competence, merit any integrity. The allegations to the contrary would not only erode the public confidence in the Commission but would also result in merit being a casualty. This is definitely contrary to the constitutional scheme enshrined in Articles 14 and 16 of the Constitution of India. Commission rather than making a complaint with regard to enquiries, should be rather over anxious to clear its fair name.

(Para 15)

*Further held*, that an effort has been made by the Commission to protect its Chairman and the members, who for undisclosed reasons have chosen not to directly approach this Court. The Commission which is a constitutional body has unnecessarily filed the present petition to watch the interest of the Chairman and members, who have chosen to remain behind the curtain. The Commission cannot equate itself, nor under the Constitution of India can it be so equated, with its Chairman and its members. The Commission has a distinct and a constitutional identity, independent of its Chairman and members. It is, thus, apparent that the present petition has been filed at the instance of the Chairman and members, although in the name of the Commission. We cannot put any seal of approval to this act of the Commission.

(Para 23)

M.L. Sarin, Senior Advocate with H.N. Mehtani and G.C. Shahpuri, Advocates, *for the petitioners*

### JUDGMENT

**VINEY MITTAL, J :**

(1) Through the present petition, an unfortunate attempt has been made by the Haryana Public Service Commission (hereinafter called the "Commission") to thwart the efforts made by the State Government to find out as to whether in some of the past selections made by the Commission, its Officers and Officials, its Secretary its members and the past Chairman etc. had acted on some extraneous and illegal consideration. The Commission complains that holding of the aforesaid Vigilance inquiries and summoning of the record of the

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aforesaid previous selections by the Vigilance Department was, in fact, an encroachment upon the independence and the constitutional status of the Commission.

(2) It has been averred by the Commission that general elections to the State assembly were held in the State of Haryana in February/March, 2005. As a result of the same "Congress Government" was formed in the State. Although, it has hastened to add that the present Chairman and the members are non-political persons. It has been averred that the present Chairman and the present members of the Commission are the appointees of the previous "Indian National Lok Dal" Government. It has been pleaded in the present petition that after the formation of the new Government, various communications had been received by the Commission requiring it to supply certain records pertaining to some past selections. The Commission on its part replied to all the aforesaid communications by refusing to supply the record and reiterated its constitutional status and authority. Additionally, a reliance was also placed on the advise of Legal Remembrancer, Haryana contained in the memorandum dated March 12, 1987, from the Chief Secretary to Director State Vigilance Bureau, whereby it was communicated that "the Chairman/Members of the Haryana Public Service Commission are not Government servants covered by the instructions obtaining in letter No. 4/22/78-Vig. (1) dated 19th February, 1980. Vigilance Department have, therefore, no jurisdiction to check and scrutinize the records of the Public Service Commission as the same is a constitutional authority". The Communication dated July 4, 2005 from the Chief Secretary to Government Haryana addressed to the Director State Vigilance Bureau, a copy whereof was also endorsed to the Haryana Public Service Commission,—*vide* endorsement of the aforesaid date has been appended as Annexure P/21 with the present petition. At this stage, it would be relevant to extract the aforesaid communication for appreciating the stand taken by the State Government :

"I am directed to invite your kind attention to your Memo No. 1241/SVB-9 dated 7th May, 2005 on the above subject and to state that the issue whether Vigilance Department/ State Vigilance Bureau has the jurisdiction to investigate and enquire into the complaints and information

containing allegations of corruption against Chairman, members and other employees of the Haryana Public Service Commission came to be re-examined in view of certain complaints/information received in Vigilance Department/Vigilance Bureau against Chairman/Members of the Commission. In this regard, attention is drawn to an earlier letter of the State Government issued,—*vide* Memo No. 66/6/87-7GSI, dated 10th March, 1987 which based on the advice of L.R., had stated that the Vigilance Department has no jurisdiction to check and scrutinize the record of Public Service Commission. But with the enactment of Prevention of Corruption Act in the year, 1988 the position has undergone total change. This matter was recently referred to L.R. for advice. L.R. has advised as given below :

“The previous advice was given on the premise that being a constitutional authority, the Chairman/Members of the Haryana Public Service Commission could not be covered under the definition of Government servant/ Public Servant so as to be amendable to the jurisdiction of the Vigilance Department. However, after the enactment of Prevention of Corruption Act, 1988, which covers Chairman/Members or employee of a Service Commission or Board under the definition of Public Servant,—*vide* section 2(c)(x), the previous advice has lost its relevance.

There being an explicit statutory provision, referred to above bringing the Chairman/Members and other employees of a Service Commission/Board within the purview of public servant, the position stated in letter No. 66/6/87-7GSI, dated March, 1987 is no more valid. The Vigilance Department, thus has the jurisdiction to investigate and enquire into the complaints and information setting forth allegations of corruption against Chairman/Members and other employees of Haryana Public Service Commission and for that purpose, it has the power to check and scrutinize the records of the Commission.”

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(2) In view of the advice, the letter dated 10th March, 1987 referred to above is hereby superseded and it is made clear that the Vigilance Department/State Vigilance Bureau can take action as per advice of L.R.”

(3) The Commission, however, persisted with its stand and reiterated the same in reply to the various requests made for supplying the record by the Vigilance Bureau.

(4) The Commission has approached this Court through the present petition claiming that the aforesaid communications dated May 25, 2005 (Annexure P/2), July 14, 2004 (Annexure P/4), May 3, 2005 (Annexure P/6), May 5, 2005 (Annexure P/9), May 7, 2005 (Annexure P/11), May 13, 2005 (Annexure P/12) and July 5, 2005 (Annexure P/14) are without jurisdiction, ultravires of the Constitution of India, violative of Article 14 of the Constitution of India, based on malice and amounts to an abuse of authority and powers by the respondents “with a sole purpose to put the Chairman and members of Haryana Public Service Commission to humiliation, harassment and indignity”. A further direction has been sought for the issuance of a writ of mandamus for directing the respondents not to interfere in the functioning of the Commission, nor to adjudge the legality, propriety and merits of the selection made by the Commission, with a further direction not to probe the functioning of the Commission in making selections for the period 2000 to 2004 or for any period prior or subsequent thereto.

(5) While filing the present petition, certain more facts have been pleaded in the petition. It has been pleaded that,—*vide* an order dated March 23, 2005, the Chairman and a Member of the Haryana Public Service Commission were required to vacate the official residence allotted to them. They had to approach this Court whereby an interim relief had been granted. Various other instances have been pleaded in the petition whereby the requisitions for making recommendations to various posts have been withdrawn. Rules have also been amended by the State Government taking some posts out of the purview of the Commission. On the basis of the aforesaid facts, it has been claimed the present Government was acting against the Chairman and the Members of the Commission by holding the vigilance inquiries to involve them in some criminal cases. It has also been claimed that the State Vigilance Bureau has neither any competence nor any authority to probe into the selections made by the Commission in the past.

(6) We have heard Shri M.L. Sarin, learned senior counsel for the Commission at some length and with his assistance have also gone through the record of the case.

(7) Learned senior counsel has argued with a great vehemence that neither the Chairman nor the members of the Commission were Government servants and, therefore, any inquiry by the Vigilance Department against their functioning was totally without jurisdiction and authority. To elaborate the aforesaid argument, learned senior counsel has placed strong reliance upon the communication dated March 12, 1987, from the Chief Secretary to the Director, State Vigilance Bureau containing the opinion of the Legal Remembrancer to the effect that the Chairman/Members of the Haryana Public Service Commission being not Government servants, Vigilance Department had, therefore, no jurisdiction to check and scrutinize the record of the Public Service Commission, as the same is a constitutional authority. On the basis of the aforesaid memorandum, it has been strenuously argued by the counsel that the action of the respondents in summoning the record actually amounted to an interference in the functioning of the Commission, which was not only illegal but also unconstitutional.

(8) Shri Sarin has also placed strong reliance upon some observations made by a Division Bench of this Court in the case of **Girish Arora and others versus State of Haryana and another (1)**. Accordingly, it has been argued that the Vigilance Department of the State had no jurisdiction or authority to hold a vigilance enquiry against the functioning of the Commission without registration of any formal FIR against any person, member of the Commission or its Chairman. Our pointed attention has been drawn to the observations made by the Hon'ble Supreme Court of India in the case of **State of U.P. versus Rafiquddin and others (2)** wherein the constitutional status and independent authority of the Public Service Commission has been recognized. To stress his point further, Shri Sarin has also relied upon the various judgments of the Apex Court as well as a Full Bench of this Court in **Harjit Singh Sidhu versus State of Punjab and others (3)**. On the basis of the aforesaid authorities, it has been

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(1) 1998 (1) R.S.J. 613

(2) AIR 1988 S.C. 162

(3) 1989 (4) S.L.R. 403

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vehemently argued that when even this Court would be slow in exercising the powers of judicial review, when selections have been made by an expert body like Public Service Commission, therefore, it would be wholly anomalous to permit the Vigilance authorities to conduct an inquiry into the affairs of the Commission. It has been elaborated that when even the Courts are slow in interfering in the selection process, then obviously the police/State authorities cannot be permitted to have a free hand in probing the selection process.

(9) Lastly, it has been argued by the learned senior counsel that the very fact a large number of requisitions sent to the Commission for selection had been withdrawn and the various rules amended, taking the selections/appointments to the various posts out of the purview of the Commission, itself shows the *mala fides* of the Government. Reiterating that the Commission enjoyed a constitutional status and was a body of expert persons, a great reliance has been placed upon certain observations made by a Full Bench of this court in **Jaskaran Singh Brar versus State of Punjab and others (4)**. On the basis of the aforesaid arguments, learned counsel has prayed that the actions of the respondents including the State Government were liable to be set aside and quashed.

(10) We have thoughtfully given due consideration to the various arguments raised by the learned senior counsel. However, we express our inability to accept the aforesaid contentions.

(11) At the outset we may notice that the petitioner/Commission has tried to drag political considerations by insinuations at least. It has been pleaded that the present Chairman and the Members of the Commission are appointees of the previous "Indian National Lok Dal" Government and that after the elections, a new "Congress Government" has assumed office. Although it has been asserted that all the persons i.e. the Chairman and the Members of the Commission are non-political persons but the insinuations and the attempt to politicise the whole controversy is loud and clear. The aforesaid attempt cuts at the very root of the various arguments raised by the Commission. As a constitutional body, it is not expected of the Commission to bring in politics or rely upon the fact that the ruling party in the State had changed. We can only express our disapproval for the aforesaid attempt made by the Commission.

(12) The primary reliance placed by the Commission is upon an advise rendered by the Legal Remembrancer, Haryana to the State Government contained in the communication dated March 12, 1987. At that point of time, it was opined by the Legal Remembrancer that the Chairman/Members of the Haryana Public Service Commission are not Government servants, covered by the instructions dated February 19, 1980 and, therefore, the Vigilance Department had no jurisdiction to check and scrutinize the record of the Public Service Commission, as the same is a constitutional authority. It is not in dispute that after the issuance of the aforesaid communication and the advise rendered by the Legal Remembrancer, Haryana, the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act") was enacted. The same became operative and effective with effect from September 9, 1988. Section 2(b) of the Act defines "Public duty" to mean a duty in the discharge of which the State, the public or the community at large has any interest. Section 2(c) defines a Public Servant. Clause (x) thereof provides as follows :

"Any person who is a Chairman, Member or employee of any Service Commission or Board, by whatever name called or a member of any selection committee appointed by such Commission or Board, for the conduct of any examination or making any selection on behalf of such Commission or Board."

(13) Explanation (1) to section 2 further explains that persons falling under any of the sub clauses are Public Servants whether appointed by the Government or not. Chapter III of the aforesaid Act contains sections 7 to 16. Various offences and penalties have been provided with regard to situations when public servants perform their public duties by taking illegal gratification etc. It is, thus clear that on the enactment of aforesaid 1988 Act, the Chairman and the members of the Public Service Commission have been included in the definition of public servants. Accordingly, they have a public duty to perform. Therefore, the advise rendered by the Legal Remembrancer in the year 1987, i.e. prior to the commencement of the aforesaid 1988 Act, has naturally lost its relevance. The matter was, therefore, re-examined by the Legal Remembrancer and the earlier opinion was consequently revised. On the receipt of the aforesaid revised opinion, the Chief Secretary to the State of Haryana addressed a communication dated



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July 4, 2005 to the Director, State Vigilance Bureau (Annexure P/21), superseding the earlier advise contained in letter dated March 10, 1987. A copy of the aforesaid communication dated July 4, 2005 was even forwarded to the Secretary of the Haryana Public Service Commission. We have already extracted the aforesaid communications in the earlier portion of the judgment. It is, therefore, apparent that the reliance placed upon by the petitioner-Commission on the earlier advise of the year 1987. Through communication Annexure P/8, has not only been specifically superseded but had lost its relevance also. The argument of the learned senior counsel based upon the aforesaid communication Annexure P/8, therefore, cannot be accepted.

(14) The reliance placed by the petitioner's counsel on the Division Bench judgment in Girish Arora's case (*supra*) is also wholly misplaced. In Girish Arora's case, primary question engaging the attention of the Court was as to whether after having accepted the recommendations made by the Commission, the State Government had any jurisdiction to withhold the appointments of the writ petitioners on the basis of concocted and baseless complaints. The Division Bench examined in detail the background of the aforesaid case. It also went through the entire record of selections made available to the Court by the Commission. It was in the light of the aforesaid background that the following observations were made by the Division Bench, which have been relied upon strongly by the present petitioner :

“68. Having regard to the constitutional protection bestowed upon the Chairman and the members of the Public Service Commission, it is absolutely imperative that men possessing high degree of caliber, competence and integrity are appointed to occupy these important offices. The integrity and efficiency of the administrative apparatus of the State substantially depends on the quality of appointments made by the Public Service Commission and similar other bodies. Therefore, establishment of the Public Service Commission must be constituted of persons of high ability, varied experience and of undisputed integrity and complete freedom should be available to the commission to evolve its procedure for making selection for the purpose of recruitment to public services. Erosion of the independence of the Commission due to interference by the executive authorities will not only dilute the autonomy of the

Commission but will greatly damage the public services. It is, therefore, the constitutional duty of the State to ensure that the functioning of the Public Service Commission is not tampered by bureaucratic and political interference and the Commission is left free to select the best talent for public services.

69. There is no doubt the role of the Public Service Commission is recommendatory and in its capacity as the appointing authority, the Government can decline to approve the recommendations made by the Commission if there exist good reasons for doing so and the Government is also entitled to take into consideration the development which may take place after the receipt of the recommendations from the Commission. The Government can exercise its veto on the recommendations of the Commission in cases recommendations are found to be tainted with *mala fides* or corruptions but it can neither interfere in the day to day functioning of the Commission nor can supervise the functioning of the Commission. The power of the Government not to approve the recommendations made by the Commission cannot be extended to order a vigilance probe into the working of the Commission. If there exists any allegation of corruption and there exists sufficient material to register a case against the Chairman or the member of the Commission, the Government can take appropriate action in accordance with law but in the grab of exercising this power the Government cannot interfere with each and every recommendation made by the Commission and frustrate the rights of selected candidates by initiating vigilance inquiry on frivolous allegations. What is necessary to be emphasized is that the Government should not dilute the authority and independence of the Commission in any manner. Likewise the position of primacy enjoyed by the Commission must not be allowed to be tampered either by the Government or by the members. In **Bihar Public Service Commission versus Dr. Shiv Jatan Thakur AIR 1994 S.C. 2466**, the Apex Court has highlighted the necessity of the members of the Commission conducting themselves in a manner which would enhance the image of the institution.

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70. We have made aforementioned observations with the hope that the bureaucratic authorities and the Government will refrain from taking action which may subvert the independence of the Commission.”

(15) From the perusal of the entire judgment of the Division Bench in Girish Arora’s case, it is apparent that the only question which was before the Court was as to whether the appointments could be denied to the selected candidates on the basis of the pendency of certain vigilance enquiries which had been found to be baseless. By any stretch of imagination, it was not held by this Court that on any count, even in the face of the allegations of corruption and other irregularities, disclosed later with regard to certain appointments made earlier, no inquiry could be held. That is the precise argument being raised by the learned senior counsel for the petitioner in the present case on the strength of the aforesaid judgment. We do not accept that any such inference is available from the said authority. It is not in dispute that the enquiries now being conducted by the Vigilance Bureau pertain to certain past selections. From the communication received by the petitioner-Commission, it appears that the actions of the past Secretary, the past Chairman and certain other Officers/Officials of the Commission, are being probed with regard to serious charges. Under any circumstances, the aforesaid enquiries cannot be taken to mean any erosion of the authority of the Commission or its independence. Even an expert and constitutional body like the Commission is supposed to perform its duties, fearlessly and carry out selections on the basis of the best merit available. However, if the aforesaid selections are alleged to be tainted and based upon consideration other than merit, the Commission cannot, in such circumstances, claim any immunity. No body has vested right to perpetuate illegality or hide a scandal. All selections made by public servants are supposed to be based upon competence, merit and integrity. The allegations to the contrary would not only erode the public confidence in the Commission but would also result in merit being a casualty. This is definitely contrary to the constitutional scheme enshrined in Articles 14 and 16 of the Constitution of India. Commission, rather than making a complaint with regard to enquiries, should be rather over anxious to clear its fair name.

(16) Before coming to the next point raised by the learned counsel, it would be appropriate to deal with a submission made by him to the effect that power to hold a vigilance inquiry prior to registration of a formal FIR was wholly unwarranted and without jurisdiction. We may notice that the aforesaid argument of the learned counsel is double edged. Obviously, if the aforesaid argument were to be accepted, it would have to be held that no vigilance enquiry can proceed without registration of an FIR. But at the same time we cannot hold that there is any impediment in the way of the State Government/its functionaries or any other person being aggrieved, in registering a formal FIR. Therefore, if a formal FIR is registered, then even as per the learned counsel, the holding of the vigilance inquiries could be justified. In our considered view, it would embarrass the Commission, its Chairman and its Members more rather than protect. Holding of the Vigilance inquiry without registration of any formal FIR, in our view is in the nature of a fact finding exercise. If after the aforesaid exercise is undertaken, the Commission of any criminal offence is made out, the law will take its own course. We, therefore, do not accept the aforesaid argument raised by the counsel for the Commission.

(17) For the reasoning adopted by us while dealing with Grisih Arora's case (*supra*) we also find that the petitioner cannot take any benefit out of the observations made by the Apex Court in paragraph 14 of the judgment rendered in Rafiquddin's case (*supra*).

(18) This bring us to the next argument raised by the learned senior counsel. Shri Sarin has tried to draw an analogy from the power of judicial review in case of a challenge to the selections made by the Commission, to contend that since it had been universally accepted that even this court in proceedings under Articles 226/227 of the Constitution of India would be slow to interfere with the process of selection and to examine the competitive merit of the selected candidates *vis-a-vis* the unsuccessful candidates, therefore, on the same analogy the Vigilance Authorities could not be permitted to hold a probe into the selections made by the Commission.

(19) We find that the aforesaid contention of the learned counsel is also without any merit. There is no dispute with the proposition of law that while exercising the power of judicial review this court

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would be slow in making competitive comparison of the selected candidates *vis-a-vis* the unsuccessful candidates. To this extent reliance placed by the petitioner on the judgment of Jasjit Singh Sindhu's case (*supra*) is wholly justified. However, we express our inability to extend the aforesaid analogy any further to hold that even in the case of corruption charges, tainted selections, or any illegality, no investigation in the matter of selection, could be made. Accepting the aforesaid argument would be perpetuating the tainted selections. Neither any judgment of any court taking any such view has been cited nor is it possible for us to lay down the aforesaid broad proposition. The considerations, while exercising the power of judicial review are wholly different. The said considerations are not relevant while making an inquiry into corruption charges or scams. Therefore, the aforesaid argument raised by the learned senior counsel for the petitioner is also without any merit.

(20) Lastly, the argument of the learned counsel with regard to withdrawal of requisitions, sent earlier to the Commission for making selections and amending the rules for taking out certain selections/appointments to various posts, by amending the rules, may also be noticed. It has been argued that all this had been done to dilute the authority of the Commission. Strong reliance has been placed upon the following observations made by the Full Bench in Jaskaran Singh Brar's case (*supra*).

"79. Chapter II of the Constitution deals with pre-appointment stage. Article 315 creates Public Service Commission for the Union and one such Commission for each State. Article 316 provides the manner in which the Chairman and the other Members of the Public Service Commission shall be appointed whereas Article 317 injects independence amongst members of a Public Service Commission by ensuring that they can be removed and/or suspended only in certain exceptional circumstances. The prohibition imposed on the holding of office by members of the Commission when they cease to be such members, is another salutary provision to keep the members of the Commission away from their post tenure allurements, the laudable object being that the Commission functions independently without local or extraneous considerations.

Article 320 casts a duty upon the Public Service Commission “to conduct exercise for appointment to the services” and “also to assist the States in framing and operating schemes for any service as well as a duty is cast upon the State” to consult a Public Service Commission on all matters relating to methods of recruitment to civil services and civil posts, on the principles to be followed in making appointments to civil services and posts including promotions etc. It is true that the word “shall” contained in Article 320 (3) has been read as “may” for want of consequences in the event of its defiance. This restricted scope, however, pertains to the matters of competing claims. The political and executive authorities of a State while acting as the trustees of the Public Offices are obligated not only to discharge their duties in a fair and transparent manner but are also accountable to the people of the State for each one of their actions. If there exists a jumbo sized Public Service Commission and its Chairman/Members are being provided all the perks and facilities at the cost of the State exchequer and when they themselves have not shirked away from discharging their constitutional obligations, there shall lie a very heavy onus upon the functionaries of the State Government to explain and disclose those extraordinary circumstances which completed them not to entrust a recruitment to the Public Service Commission and to take the same from its purview and thereafter get the same carried out through its own executive functionaries. On our repeated queries, the learned Senior Counsel for the State could give no satisfactory explanation as to why requisition to fill up these seven posts was not sent to the Commission at first place? The half hearted explanation which came forth was that the recruitments were decided to be made in a time bound manner so as to “promote the cause of the sports persons” and it was felt expedient to get the same done through a Departmental Selection Committee as the Commission might have consumed a reasonably long period. We are afraid that this explanation hardly inspires any confidence. There is nothing on the record of the State Government to show that even a simple

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query was ever sent to the Commission as to how much period it will take in making the recruitment. There is also nothing on record to suggest that a "special drive" to promote the cause of sports persons would have been defeated had the recruitments been made through the Commission. Needless to say that under the 1959 Rules, recruitment to the Punjab Police Service i.e. in the rank of D.S.P. is otherwise required to be made through the Public Service Commission in terms of Rule 6(3) thereof. While there appears to be nothing more than conjectures and surmises which do not lay foundation for a firm finding, however, allegations were made that the Commission having disapproved the criterion of "outstanding sports persons",—*vide* its communication dated 15th October, 2003, could not have selected those candidates for whom this entire exercise was undertaken. Unfortunately, the authorities in the State of Punjab made no concerted efforts to dispel this impression. The fact that the Principal Secretary to the Chief Minister was made Chairman of the Selection Committee a son of another Officer from the staff associated with the Chief Minister was selected in a manner which has been already explained explicitly and is suggestive of a total pick and choose policy, castigates upon the independence and fairness of the Selection Committee, if not its *bona fides*."

(21) We have duly considered the aforesaid contention of the learned counsel as well. We do not find any merit in the same also. The issue before the Full Bench in Jaskaran Singh Brar's case was as to whether the selections/appointments to the posts of Deputy Superintendent of Police by the State of Punjab by taking out the same out of the purview of the Public Service Commission was, in any manner, justified or not. The State of Punjab had made certain appointments of Deputy Superintendents of Police from the category of outstanding sports persons. *Vide* a notification, the aforesaid posts were notified as ex-cadre posts. Accordingly, it was decided by the State Government to fill up the aforesaid posts through the selection committee and not through the Public Service Commission. While adjudicating upon the controversy, it was noticed by the Full bench that the aforesaid nomenclature of the said posts being "ex-cadre" was

only given with a view to fill up the aforesaid vacancies and to take them out of the purview of the Public Service Commission, whereas for all intents and purposes, after selection of the said appointees, the rules of the regular cadre posts were to be applicable to the appointees. It was also observed that for future promotion and induction into the Indian Police Service, the aforesaid appointees were to be treated as the cadre appointees. It was in the light of the aforesaid facts that the Full Bench made the aforesaid observations, noticed above. By any stretch of imagination, the observations made by the Full Bench cannot be taken to mean that the powers of the State Government to take out certain posts from the purview of the Commission by amending the relevant Rules was commented upon in any manner. The grievance in this regard made by the learned counsel is misplaced. This argument raised by the learned senior counsel is also without any merit. The same is, accordingly, rejected.

(22) To be fair to the learned counsel, another vain attempt made by him to challenge the impugned action of the respondents may also be noticed. On the basis of the constitutional provisions and on the basis of some judgments of the Apex Court, it was argued by Shri Sarin that the status and position of the Chairman/Members of the Public Service Commission is equivalent to, if not higher than, the Judges of the High Court and Supreme Court because of the protection available to them against their removal. On that basis it has been contended that the action of the State Government in ordering the Vigilance enquiries was with a *mala fide* attention to ultimately order their removal. We find that the aforesaid argument of the learned counsel is wholly irrelevant to the controversy involved in the present case. The Commission in the present case is only aggrieved against the holding of the vigilance enquiry and probe in some past selections made by the Ex-Chairman/Members and the functioning of the Ex-Secretary. The question of removal of any member/Chairman is neither an issue in the present controversy nor any analogy on the basis of the protection against removal can be raised by the Commission, at this stage.

(23) Before parting with this order, we must comment upon a fact. The prayer made by the petitioner-Commission in the present case is not only for quashing the requisitions made by the Vigilance authorities seeking certain record from the Commission but a specific



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prayer has been made that the aforesaid enquiries are “arbitrary, without jurisdiction, ultravires of the Constitution of India, violative of Article 14 of the Constitution of India, suffers from vices of discrimination based on malice, contrary to the provisions of law and Constitution of India, amounts to the abuse of authority and misuse of powers on the part of the respondents with a sole purpose to put the Chairman, members and employees of Haryana Public Service Commission to humiliation, harassment, indignity.” It is, thus, apparent that an effort has been made by the Commission to protect its Chairman and the members, who for undisclosed reasons have chosen not to directly approach this Court. The Commission which is a constitutional body has unnecessarily file the present petition to watch the interest of the Chairman and members, who have chosen to remain behind the curtain. The Commission cannot equate itself, nor under the Constitution of India can it be so equated, with its Chairman and its members. The Commission has a distinct and a constitutional identity, independent of its Chairman and members. It is, thus apparent that the present petition has been filed at the instance of the Chairman and members, although in the name of the Commission. We cannot put any seal of approval to this act of the Commission.

(24) No other point has been urged before us.

(25) In view of the aforesaid discussion, we do not find any merit in the present petition. The same is, accordingly, dismissed.

(26) A copy of the order be given dasti on usual charges.

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**R.N.R.**