

In the Hon’ble High Court of Judicature at Allahabad, Lucknow Bench,
Lucknow

Writ petition No- 5647 (M/B) of 2020 (Civil)

Dr Nutan Thakur Petitioner

Versus

State of Uttar Pradesh Respondent

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Lucknow
Dated- 24/02/2020

(Dr Nutan Thakur)
Petitioner in Person

In the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench,
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Respondent

LIST OF DATES AND EVENTS

S No	Date	Event
1.	17/02/2015	Date of appointment of Chief Information Commissioner
2.	16/02/2020	Vacancy arises for post of Chief Information Commissioner

This Writ Petition is being presented with the most humble prayer to kindly direct the State of Uttar Pradesh to immediately fill the vacancy of Chief Information Commissioner without any delay, having arisen in the Uttar Pradesh Information Commission after the completion of term of previous Chief Information Commissioner Sri Javed Usmani on 16/02/2020 in accordance with the directions of the Hon'ble Supreme Court in Anjali Bhardwaj v. Union of India, 2019 SCC OnLine SC 205. Hence this Writ petition.

Lucknow

Dated- 24/02/2020

(Dr Nutan Thakur)

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Writ petition No- 5647 (M/B) of 2020 (Civil)

Dr Nutan Thakur,

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Versus

State of Uttar Pradesh through Principal Secretary, Administrative

Reforms Department, Civil Secretariat, Lucknow----- Respondent

Writ Petition under Article 226 of the Constitution of India

To,

The Hon'ble Chief Justice and His other Hon'ble companion Judges of the
aforesaid Court:

The humble petition of the above named petitioners most respectfully begs to submit as under

1. That by means of this petition being filed under Article 226 of the Constitution of India, the petitioner prays before this Hon'ble Court to kindly direct the respondent, State of Uttar Pradesh through Principal Secretary, Administrative Reforms to immediately fill the vacancy of Chief Information Commissioner (CIC, for short) having arisen in the UP Information Commission (the Commission, for short) without any delay, because of the completion of term of Sri Javed Usmani as CIC. The petitioner also most humbly prays to kindly direct the respondent to completely follow the directions of the Hon'ble Supreme Court in Anjali Bhardwaj v. Union of India, 2019 SCC OnLine SC 205 (Writ Petition Civil No. 436 OF 2018) while making this appointment of CIC and of other Information Commissioners (ICs, for short) in future. A copy of the Commission's website showing vacancy to the post of CIC is being attached as Annexure No 1.
2. That the petitioner declares that she has not filed any other Writ petition before the Hon'ble Court either at Allahabad or its Lucknow bench pertaining to the subject matter and/ or for the relief prayed for in the instant writ petition and it is further declared that in respect of the same subject, no caveat notice has been received by her.
3. That the matter is that the under section 2(k) of the Right to Information Act 2005 (RTI Act, for short), "State Information

Commission" means the State Information Commission constituted under sub-section (1) of section 15.

4. That section 15 of the RTI Act says-“(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act. (2) The State Information Commission shall consist of- (a) the State Chief Information Commissioner, and (b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. (3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of- (i) the Chief Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Legislative Assembly; and (iii) a Cabinet Minister to be nominated by the Chief Minister. Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition. (4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and

do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act. XXX”

5. That section 16 of the RTI Act previously said-“16. (1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years. (2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner: Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15: Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner. XXXX”.
6. That section 16 has now been amended through the Right to Information (Amendment) Act, 2019 in the following manner-“In section 16 of the principal Act- (a) in sub-section (1), for the words "for a term of five years from the date on which he enters upon his

office", the words "for such term as may be prescribed by the Central Government" shall be substituted; (b) in sub-section (2), for the words "for a term of five years from the date on which he enters upon his office", the words "for such term as may be prescribed by the Central Government" shall be substituted; XXXX."

7. That through the Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, State Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules, 2019, the Central Government has fixed the terms of CIC and ICs in following manner—"12. Term of office.—The State Chief Information Commissioner, or State Information Commissioners, as the case may be, shall hold office for a period of three years from the date on which he enters upon his office."
8. That sections 18, 19 and 20 of the RTI Act deal with the Powers and functions of the CIC and the Information Commissions (ICs, for short) as regards appeal and complaints presented before them.
9. That a reading of the RTI Act makes it clear that the Commission is the most pivotal body in every State as regards the proper functioning and performance of the RTI Act. Here again, the CIC and ICs are the most pivotal authorities in the Commission, because they are the one responsible for hearing the appeals and complaints. The importance of CIC is even much more because in

addition to hearing the appeals and complaints, the general superintendence, direction and management of the affairs of the Commission also vests in the CIC, so that the CIC has dual role of quasi-judicial and administrative functioning of the Commission.

10. That as per the Commission website, the previous CIC Sri Javed Usmani was appointed on 17/02/2015. As per the conditions stated in sub-section (2) of section 16 of the RTI Act before the 2019 amendment applicable at that given point of time, Sri Usmani's term got over on 16/02/2020. The result is that from 17/02/2020, there is no CIC left in the Commission and his hearing Chamber S-1 is empty. The petitioner and her husband Sri Amitabh Thakur are getting directly affected by this vacancy. For instance, on 19/02/2020, 05 Second Appeals of the petitioner's husband could not be heard because of this vacancy, while on 27/02/2020, there are 07 Second Appeals (01 belonging to the petitioner and 06 to her husband) listed for hearing in Chamber No S-1 which shall not be heard merely because of this vacancy. There are many other cases presented by the petitioner and her husband which are pending before the CIC, which will remain unheard, due to the above mentioned vacancy.

11. That the fact that terms of Sri Usmani as CIC was to complete on 16/02/2020 was known to the State Government since the day he joined his post on 17/02/2015. Hence, it was expected on the part of the State Government to undertake all necessary steps to select the next CIC well in advance, so that he could be appointed

immediately with the creation of this vacancy. It was definitely required from the State Government to give top priority to this work so as to avoid such situation which has arisen now because of the inaction on its part, where the post of CIC has got vacated. Hence this situation has arisen only because of the inaction and lack of proper and timely action of the State Government on this extremely important issue. Thus the State Government has failed in its legal and statutory duty of making appointment of CIC in the Commission within the stipulated time so that vacancy of CIC has got created. As stated above, the role and importance of the CIC in the proper functioning of the Commission is beyond any doubt. Thus the above creation of vacancy in the Commission, merely because of the inaction on part of the State Government, is having an adverse effect on the petitioner, who is getting personally affected by this vacancy as her cases in S-1 are not being heard.

12. That in *Anjali Bhardwaj (supra)*, the Hon'ble Supreme Court passed the following GENERAL DIRECTIONS FOR CIC & SCICs-
“(67) (i) Insofar as transparency in appointment of Information Commissioners is concerned, pursuant to the directions given by this Court, the Central Government is now placing all necessary information including issuance of the advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. on the website. All States shall also follow this system. (ii) Insofar as terms and conditions of appointment are concerned, no doubt, Section 13(5) of RTI Act states that the CIC

and Information Commissioners shall be appointed on the same terms and conditions as applicable to the Chief Election Commissioner/Election Commissioner. At the same time, it would also be appropriate if the said terms and conditions on which such appointments are to be made are specifically stipulated in the advertisement and put on website as well. (iii) Likewise, it would also be appropriate for the Search Committee to make the criteria for shortlisting the candidates, public, so that it is ensured that shortlisting is done on the basis of objective and rational criteria. (iv) We also expect that Information Commissioners are appointed from other streams, as mentioned in the Act and the selection is not limited only to the Government employee/ex-government employee. In this behalf, the respondents shall also take into consideration and follow the below directions given by this Court in *Union of India vs. Namit Sharma*⁶ "32. ... (iii) We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Ss. 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner. (iv) We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Ss. 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Ss. 12(3) and 15(3) of the Act for appointment as Chief Information

Commissioner or Information Commissioners. (v) We further direct that the Committees under Ss. 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made.” (v) We would also like to impress upon the respondents to fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time lag between the occurrence of vacancy and filling up of the said vacancy. 68) We would like to place on record that aforesaid directions are given keeping in view the salient purpose which RTI Act is supposed to serve. This Act is enacted not only to sub-serve and ensure freedom of speech. On proper implementation, it has the potential to bring about good governance which is an integral part of any vibrant democracy. Attaining good governance is also one of the visions of the Constitution. It also has vital connection with the development. All these aspects are highlighted above.”

13. That it is being prayed that none of the above directions of the Hon'ble Supreme Court are being adhered by the State Government in this case, as can be seen from the following facts-

- (a) The respondent has not placed all necessary information including issuance of the advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. on the website.
- (b) No information as regards the above facts is available on the website <http://www.adminreform.upsdc.gov.in/en-us/> of the Administrative Reforms Department, UP.

14. That similarly, other directions in Anjal Bhardwaj (supra) also need to be kindly followed by the State Government-

- (a) The Search Committee has to make the criteria for shortlisting the candidates, public, so that it is ensured that shortlisting is done on the basis of objective and rational criteria.
- (b) The CIC and ICs are appointed from other streams as well and the selection is not limited only to the Government employee/ex-government employee, as stated in Union of India vs. Namit Sharma (2013) 10 SCC 359.
- (c) The Search Committee while making recommendations to the Hon'ble Governor must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens after the appointment is made.

- (c) The State Government must fill up vacancies, in future, without any delay and the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time lag between the occurrence of vacancy and filling up of the said vacancy.

15. That few of the directions of the Hon'ble Supreme Court need to be complied with while the selection process is still going on, which are not being followed by the State Government, including presenting the details of the candidates on the website etc. There are other directions that need to be followed by the Selection Committee at the time of decision making and by the respondent after the selection, including making the details and criteria of selected candidates public and initiating the process much ahead of vacancy, which need to be kindly followed in appointment of CIC and other future appointments of ICs and CICs.

16. That each of these directions are such that they help and assist in selection of much better candidates for CIC and ICs in a huge way, through a much more reliable, transparent and open manner, which also induces the faith of the common citizen and all the information seekers, including the petitioner, in the decision process for selection of ICs and CIC. It is also quite obvious that better selection of CIC and ICs is good and helpful for every citizen and every information seeker, including the petitioner, who certainly wants that better candidates are selected as ICs and CIC in more transparent and open manner, which is not happening

presently as the directions of Anjali Bhardwaj (supra) are not being followed.

17. That in the given circumstances, for all the facts narrated in the above Para, the petitioner, being personally aggrieved by the matter, is having no any efficacious and effective alternative remedy available to her than to bring it before this Hon'ble Court. The matter being important to her so as to necessitate her pursuing it further, this writ petition is being filed under Article 226 of the Constitution of India with the prayers being kindly begged here, on the following amongst other grounds. The petitioner's photograph and Identity proof are enclosed along with.

GROUNDS

- (1) Because there has been sudden vacancy of post of CIC in the Commission.
- (2) Because this vacancy has arisen merely because of the State Government's inaction, who have failed in their required statutory duty of appointing CIC within the stipulated time period.
- (3) Because the State Government did not appoint the next CIC within the stipulated time while it was imperative on its part to get person selected for the post of CIC much in advance so that he could get appointed on the day the vacancy got created.
- (4) Because the petitioner is getting personally affected by this sudden vacancy to the post of CIC.

- (5) Because in addition, the State Government is not following the directions issued by the Hon'ble Supreme Court in Anjali Bhardwaj (supra) meant for appointment of CIC and ICs.
- (6) Because the directions issued in Anjali Bhardwaj (supra) are of extreme importance for selection of better candidates as ICs and CIC, which will help the process of information seeking by the petitioner through RTI Act in a big way.
- (7) Because there is an immediate need to fill the vacancy of CIC in the Commission, without any further delay.
- (8) Because there is an immediate need to follow the various directions of the Hon'ble Supreme Court in Anjali Bhardwaj (supra) in the present CIC appointment and future appointments of ICs.

PRAYER

Wherefore, it is most respectfully prayed that this Hon'ble Court may be pleased to-

- a. Kindly issue a writ in the nature of Mandamus or any other appropriate writ, order or direction directing the State of Uttar Pradesh through the Principal Secretary, Administrative Reforms to fill the vacant post of Chief Information Commissioner in the Uttar Pradesh Information Commission, as per the provisions of law enumerated in the Right to Information Act 2005 and otherwise, and complete the selection process as per the required parameters and yardsticks, so as to ensure that the selected person takes oath of office of Chief Information Commissioner, at the

earliest without any further delay, within a maximum time-period of, say 15 days.

- b. Kindly issue a writ in the nature of Mandamus or any other appropriate writ, order or direction directing the Respondent to make all appointments to the post of Chief Information Commissioner and the Information Commissioners in the Uttar Pradesh Information Commission, including the present vacancy and the future appointments, as per the various direction of the Hon'ble Supreme Court issued in Anjali Bhardwaj v. Union of India, 2019 SCC OnLine SC 205 as stated in the above Para, as regards appointment of Information Commissioners in Center and various States.
- c. any other order as this Hon'ble Court deems fit in the interest of justice, for the benefit of the petitioner.

Lucknow
Dated- 24/02/2020

(Dr Nutan Thakur)
Petitioner in Person

In the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench,
Lucknow

Writ petition No- (M/B) of 2020

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Versus

State of Uttar Pradesh `

Respondent

AFFIDAVIT

I, Nutan Thakur,

the deponent, do hereby solemnly affirm

and state on oath as under -

1. That the deponent is the sole Petitioner in the above noted petition and as such she is fully conversant with the facts and circumstances of the case, deposed to hereunder.
2. That the contents of the paragraphs 1-2, 9-11, 13-17 of the Writ petition are true to my personal knowledge, 3-8, 12 based on documents and records and believed to be true or NIL are based on legal advice.

Oath Commissioner