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IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.2013 OF 2024 (F)**

Shri Vincent M. D'Silva
(Retd.) District Judge,
Age 61, UG3, The Mist, Opp.
Sunaina Hotel, Fatorda, Goa. ... PETITIONER

Versus

1. State of Goa,
Represented by the Chief
Secretary, Secretariat,
Porvorim, Goa.

2. Director, Department of
Urban Development, First
Floor, Dempo Tower,
Patto, Panaji, Goa.

3. Shri Cholu Gauns (retd.)
District Judge, Rudra Complex
Bldg. "B" Ground Floor,
behind Flower Cross,
Bambolim, Tiswadi Goa,
403202.

... RESPONDENTS

Mr C.A. Coutinho, Senior Advocate with Mr Ivan Santimano,
Advocate for the Petitioner.

Mr Devidas Pangam, Advocate General with Mr Deep
Shirodkar, Additional Government Advocate for Respondent
Nos.1 and 2.

Mr J.E. Coelho Pereira, Senior Advocate with Mr B. Fernandes
and Mr V. Korgaonkar, Advocates for Respondent No.3.

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.**

DATE : 20th SEPTEMBER 2024

JUDGMENT : (*Per M.S. Karnik, J.*)

- 1.** Rule. The rule is made returnable forthwith. Learned counsel for the respondents waive service.
- 2.** The petitioner mounts a challenge under Article 226 of the Constitution of India to the appointment of respondent no.3 as a 'Member' of the Goa Real Estate Regulatory Authority under the Goa Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act', for short).
- 3.** In a nutshell, the petitioner's case is that the duly constituted Selection Committee under the RERA Act recommended the petitioner for appointment as a 'Member'; however, for reasons which do not stand the scrutiny of the provisions of Rule 4 of the Goa Real Estate (Regulation and Development) (Appellate Tribunal Members, Officers and Employees Appointment and Service Conditions) Rules, 2017 (hereinafter referred to as the 'Rules' for short), the

Government appointed respondent no.3, which was not according to the order of preference in terms of the Selection Committee's recommendations.

4. The facts in the present case are thus:-

5. The petitioner is a retired District Judge having worked in the judiciary in the State of Goa for a period of 27 years. The petitioner was a District and Sessions Judge for 12 years of which 6 years he worked as a Presiding Officer of the Industrial Tribunal and Labour Court, Panaji. The petitioner retired as a District Judge-I in 2022 from Margao. Prior to joining the judiciary, the petitioner practiced as an Advocate for 6 years. He has an unblemished record during his tenure in the judiciary.

6. After retirement, the petitioner was appointed as an Adjudicating Officer, Goa RERA vide order dated 09.11.2023 in consultation with the Government and has been functioning as an Adjudicating Officer since November 2023 till date. The Adjudicating Officer is not a full-time post but is entitled for remunerations for per case decided and is paid conveyance allowance for attending work. The petitioner has

functioned as an Adjudicating Officer in an unblemished manner.

7. The respondent no.3 retired as District Judge-II in December 2023. Respondent no.3 was a District Judge for a period of 5 years in the State Judiciary since the year 2000.

8. A post of 'Member' of the Goa RERA under 'the Act' fell vacant consequent to the retirement of the then incumbent. The Registrar (Admin) of the High Court of Bombay at Goa sought willingness of the petitioner and three others including respondent no.3 for the post of Member (Judicial) RERA. The petitioner gave his willingness on 08.04.2024 with a brief biodata. Respondent no.3 also gave his willingness.

9. The Selection Committee headed by the Senior Judge of the High Court of Bombay at Goa nominated by the Hon'ble Chief Justice, Secretary (Housing), Secretary (Law) and Secretary (Urban Development) in the Government of Goa held its meeting on 27.05.2024 and shortlisted two candidates while forwarding its recommendations to the Government in terms of Rule 3 of Chapter II of the said Rules of 2017. The Selection Committee, for the reasons recorded in the minutes

of the meeting held on 27.05.2024, recommended the petitioner and respondent no.3 in that order of preference.

10. The Government appointed respondent no.3 by a Notification dated 11.07.2024 as a 'Member' RERA. This appointment was not according to the order of preference of the Selection Committee.

11. After obtaining all the documents under the Right to Information Act, by a letter dated 25.07.2024, addressed to respondent nos.1 and 2, the petitioner called upon the respondents to appoint him as 'Member'.

12. Mounting a challenge to the appointment of respondent no.3 by the State Government, Mr Coutinho, learned Senior Advocate made the following submissions.

(A) The appointment is in breach of the provisions of Section 22 of the Act and Rule 4 of the Rules. The reasons for preferring respondent no.3 over the petitioner are arbitrary and do not stand the scrutiny of rule 4 of the Rules. The Selection Committee on a detailed evaluation and comparative analysis preferred the petitioner over respondent no.3 and, moreover, indicated that it is only if the petitioner is not willing to accept

the appointment that respondent no.3 be considered, in which case, the impugned order appointing the respondent no.3 calls for interference. The State Government cannot sit in appeal over the recommendations of the Selection Committee which was made after considering the entire materials on record and by a Committee headed by a Senior Judge of this Court.

(B) This is a fit case which calls for not only quashing and setting aside the appointment of respondent no.3 but the facts necessitate issuance of a mandamus directing the State Government to appoint the petitioner. In support of his submissions, Mr Coutinho relied upon the following judicial pronouncements:-

- (i) R.S. Mittal V/s. Union of India*¹,
- (ii) Km. Neelima Misra V/s. Dr. Harinder Kaur Paintal and Ors.*²,
- (iii) S. Chandramohan Nair V/s. George Joseph and Ors.*³,
- (iv) State of Punjab V/s. Salil Sabhlok and Ors.*⁴,
- (v) Vivek Krishna V/s. Union of India and Ors.*⁵
- (vi) K.K. Saxena V/s. International Commission on Irrigation and Drainage*⁶.

¹ 1995 (Supp.2) SCC 230

² AIR 1990 SC 1402

³ (2010) 12 SCC 687

⁴ (2013) 5 SCC 1

⁵ 2022 DGLS (SC) 1321

⁶ 2015 4 SCC 670

13. Learned Advocate General defending the appointment of respondent no.3 submitted thus:-

(A) The file notings of the State Government preferring respondent no.3 over the petitioner clearly reveal that the reasons recorded therein stand the scrutiny of the provisions of the Act and rule 4 of the Rules. The State Government has valid reasons recorded in writing that preferred respondent no.3 over the petitioner. The recommendations of the Selection Committee do not confer a vested right in the petitioner to be appointed. It is ultimately the State Government which is empowered to make the appointment and if such exercise is vested upon valid reasons as recorded, this petition must necessarily fail. In any event, assuming, without admitting, that the order of the State Government does not stand the scrutiny of the Act and the Rules, this Court at the highest can quash the decision and send the matter back to the State Government for reconsideration but under no circumstances this Court can issue a mandamus directing that the petitioner be appointed as a 'Member' RERA.

(B) In support of his submissions, the following judicial pronouncements are relied upon:

- (i) U.P. State Road Transport Corporation & Anr. V/s. Mohd. Ismail & Ors.*⁷,
- (ii) The Govind Sugar Nills Ltd. and Anr. V/s. Hind Mazdoor Sabha and Ors.*⁸.

14. Mr Coelho Pereira, learned Senior Advocate for respondent no.3 vehemently opposed the petition on the strength of the following submissions:-

(A) Respondent no.3 had a distinguished career as a Senior Judicial Officer of the State Judiciary. Respondent no.3 has attained vast experience in the legal field and has been actively involved in social service. This experience gained by respondent no.3 complies with the requirement set out in Section 22 of the Act and it is for this reason that respondent no.3 was preferred over the petitioner. The reasons recorded by the State Government are in writing which satisfy the test of Rule 4. The petitioner cannot claim a vested right to be appointed. The petitioner's case was considered by the State Government but for the reasons recorded, if respondent no.3

⁷ (1991) 3 SCC 239

⁸ (1976) 1 SCC 60

is preferred in accordance with the provisions of law, such a decision cannot be termed as arbitrary or illegal. The impugned decision is compliant with the provisions of the Act and the Rules. In any case, a mandamus cannot be issued directing the appointment of the petitioner. There is a delay in challenging the appointment of respondent no.3 and only on this ground of delay and laches the petition be dismissed. The petitioner was well aware of the decision since he was discharging duties as an Adjudicating Officer with RERA and, therefore, the delay in challenging the order of appointment defeats his claim. Respondent no.3 has already taken over charge and is efficiently discharging duties as a Member RERA. The appointment of respondent no.3 should not be disturbed as it is in consonance with the provisions of the Act and the Rules.

(B) Mr Pereira, learned Senior Advocate relies on the following judicial pronouncements in support of his submissions:-

(i) Smt. Malini M. Xete V/s. The Director of Education, Government of Goa & Ors.⁹

⁹ 1999 SCC OnLine Bom 151

*(ii) Oriental Bank of Commerce V/s. Sunder Lal Jain and Anr.*¹⁰

*(iii) K. Vijaya Lakshmi V/s. State of Andhra Pradesh and Anr.*¹¹

15. Heard. We have perused the memo of petition, the relevant annexures, the affidavit in reply filed by respondent no.3 and also the records produced by the State Government.

16. Chapter V of the said Act are provisions relating to the Goa Real Estate Regulatory Authority. The establishment and incorporation of RERA are provided for by Section 20. Section 21 ordains that the Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

17. The relevant provision in the context of the present case is Section 22 which provides for qualifications of Chairperson and Members of Authority. In terms of Section 22, the Selection Committee consisting of the nominee of the Chief Justice of the High Court, i.e. Senior Judge of the High Court of Bombay at Goa, the Secretary of the Department dealing with Housing and

¹⁰ (2008) 2 SCC 280

¹¹ (2013) 5 SCC 489

the Law Secretary was constituted for making recommendations for appointment as Member RERA.

18. The recommendations of the Selection Committee were placed before the State Government. The State Government appointed respondent no.3. As the appointment was not according to the Order of the Preference of the Selection Committee, the State Government recorded the following reasons in writing:

“Mr Cholu M. Gauns may be appointed as member of RERA considering his wide experience in social administration and legal fields.”

19. It is significant to note that the said Act was enacted to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. The importance of

enacting the said Act cannot be lost sight of. Section 2(zd) defines “Member” means the member of the Real Estate Regulatory Authority appointed under Section 21 and includes the Chairperson. Chapter V deals with the Real Estate Regulatory Authority. Section 20 thereunder provides for the establishment and incorporation of the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under the RERA Act. Section 21 ordains that the Authority shall consist of a Chairperson and not less than two whole-time Members to be appointed by the appropriate Government.

20. Section 22 provides for qualifications of Chairperson and Members of Authority. Section 22 is extracted for convenience as under:

“22. Qualifications of Chairperson and Members of Authority.- The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case

of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:

Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:

Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.”

21. Thus, in terms of Section 22, the Member was to be appointed on the recommendations of Selection Committee consisting of the nominee of the Chief Justice of the High Court, i.e., the Senior Judge of the Bombay High Court at Goa, the Secretary of the Department dealing with Housing and the Law Secretary. The petitioner and respondent no.3 along with two others were considered. The Selection Committee had to make recommendations from amongst

persons having adequate knowledge and professional experience of at least 15 years as this was a case of appointment of a Member. The petitioner as well as respondent no.3 had the requisite experience in the field of law. The Committee recommended a panel of the petitioner and respondent no.3 in that order of preference.

22. It is pertinent to extract the relevant portion of the minutes of the Selection Committee meeting held on 27.05.2024 which is thus:

“1. The Second meeting of the Selection Committee constituted to select the Member of the Goa Real Estate Regulatory Authority was held under the Chairmanship of the Hon'ble Shri. on 27th May 2024 at 5.00 p.m. in the Conference Room of the Hon'ble High Court of Bombay at Goa at Porvorim.

The following were present:

- 1. Hon'ble Shri. JusticeChairperson*
- 2., IAS, Secretary (Housing) ..Member*
- 3., IAS, Secretary (Law) ..Member*
- 4. IAS, Secretary, (Urban Development)
..Convenor*

2. At the outset, the Secretary (Urban Development) briefed all the members about the Selection Committee,

which was constituted vide Order No.1/RERA/Chairman & Members/2023/Part file/3898 dated 14th March 2024 under Section 22 of the Real Estate (Regulation and Development) Act 2016. He stated that Smt. Vijaya D. Pol (Retired District Judge), who was a member of the Authority, retired on attaining the age of 65 years on 11.03.2024, one vacancy had resulted in the Member position. This was in view of the provision contained under section 23 of the Real Estate (Regulation and Development) Act, 2016, wherein it is provided that the Chairperson and members shall hold office for a term not exceeding five years from the date from which they enter upon their office, or until they attain the age of 65 years, whichever is earlier and shall not be eligible for re-appointment.

3. As decided in the meeting dated 03.04.2024, the names of the retired District Judges who would be eligible as per the age and other criteria were sought along with their profile, willingness, and performance appraisal reports with the assistance of the Registrar(Admn), High Court of Bombay at Goa. Accordingly, details of the following four Judicial officers were received from the Registrar(Admn), High Court of Bombay at Goa, along with Bio Data, posting profiles, and willingness in respect the Retired District Judges who retired from service during the period from 1 January, 2023 till date.

1. Shri Vincent M. D'Silva, Retd. District Judge
2. Shri Narayan Surendra Amonkar, Retd. District Judge

3. Shri Anil Scaria, Retd. District Judge

4. Shri Cholu M. Gauns, Retd. District Judge

Procedure of filling of the vacancy of the Member of Authority:

The Committee members then discussed and deliberated on the suitability of the candidates, having regard to the relevant criteria. The Committee evaluated the curriculum vitae (bio-data) of all four Judicial officers and also considered the work/job profile of the Judicial Officers to recommend a panel for filling the vacancy of a Member of the Goa Real Estate Regulatory Authority. On a comparative evaluation, and upon due consideration and deliberations, the Committee felt the Job profile, experience, and seniority rendered Shri Vincent Silva the most-suited candidate out of the choices available. Apart from having discharged duties as a District Judge for a considerable period, Mr Silva was also the presiding officer of the Industrial Tribunal at Goa. Besides, Mr Silva is presently functioning as an Adjudicating Officer in RERA and so has acquired familiarity with the subject. He is the senior most among the judicial officers considered. The committee also felt that the appointment of some of the candidates might involve logistical difficulties. In any case, upon a cumulative consideration and a comparative evaluation, the Committee felt that Mr Silva was most suited. Therefore, after due deliberations, it was decided to recommend the name of Shri Vincent M. D' Silva for the appointment as a

Goa Real Estate Regulatory Authority member. In addition, the Committee, consistent with the provisions of Rule 3(3) of the 2017 Rules, decided to prepare a panel comprising Mr Silva and Mr Cholu Gauns in the order of preference. So, if for any reason Mr Silva does not accept the offer of appointment, Mr Gauns could be considered.

Recommendation of the Selection Committee

As per Rule 3(3) of the Goa Real Estate (Regulation and Development) (Regulatory Authority Chairperson, Members, Officers and other Employees Appointment and Service Conditions) Rules, 2017, the Selection Committee is required to make recommendations to the Government for consideration of a panel of not more than three persons, in order of preference, to fill the vacancy.

Accordingly, the Committee recommends the names of the following two Officers in the order of their preference:

- 1. Shri Vincent M. D'Silva, Retd. District Judge*
- 2. Shri Cholu M. Gauns, Retd. District Judge"*

23. We have perused the original file. The only materials before the State Government was the one which was before the Selection Committee. We do not find any materials in support of the observation of the Government that the respondent no.3 has a wide experience in social administration. Mr Pereira,

learned Senior Advocate did try to impress upon us that respondent no.3 was a member of the Village Panchayat and, therefore, he can be said to have adequate knowledge of social service. Section 22 of the Act provides that the recommendation has to be amongst the persons having adequate knowledge of social service or administration. It is argued by Mr Coutinho, learned Senior Advocate for the petitioner that there is no such concept of social administration nor is it in the contemplation of Section 22. We find that there is absolutely no material to support the observation that respondent no.3 had wide experience in any other field apart from law. The State Government while appointing respondent no.3 not in the order of preference of the Selection Committee considered his wide experience in social administration and legal fields. In our opinion, the consideration for appointing the petitioner on the basis that respondent no.3 has wide experience in social administration is clearly erroneous and unjustified.

24. In so far as experience in the legal field is concerned, there is no doubt that the petitioner as well as respondent no.3 have wide experience in the field of law. It is here that the

recommendations of the Selection Committee need to be closely looked at as to why the Selection Committee preferred the petitioner over respondent no.3.

25. Firstly, it needs to be borne in mind that the Selection committee to be constituted under Section 22 comprised of the nominee of the Chief Justice of this Court who was a Senior Judge of the High Court of Bombay at Goa and consists of high-level senior most bureaucrats of the State Government. The willingness in respect of the retired District Judge who retired from service during the period from 1st January 2023 till the relevant date was called. The procedure adopted by the Selection Committee for filling up the vacancy of the Member of Authority is laid down in the Selection Committee's recommendations. The Committee proceeded in the following manner:

(a) the Selection committee discussed and deliberated on the suitability of the candidates having regard to the relevant criteria;

(b) The Committee evaluated the curriculum vitae (bio-data) of all four Judicial officers and also considered the work/job profile of the Judicial Officers to recommend a panel for filling

the vacancy of a Member of the Goa Real Estate Regulatory Authority.

(c) On a comparative evaluation, and upon due consideration and deliberations, the Committee felt the Job profile, experience, and seniority rendered, the petitioner was the most-suited candidate out of the choices available. The Committee observed that apart from having discharged duties as a District Judge for a considerable period, the petitioner was also the Presiding Officer of the Industrial Tribunal at Goa. Besides, the petitioner is presently functioning as an Adjudicating Officer in RERA and so has acquired familiarity with the subject. The petitioner is the senior most among the judicial officers considered.

(d) The Committee also felt that the appointment of some of the candidates might involve logistical difficulties. In any case, upon a cumulative consideration and a comparative evaluation, the Committee felt that the petitioner was most suited.

(e) Thus, the Committee upon cumulative consideration felt that the petitioner was most suited. Therefore, after due

deliberations, it was decided to recommend the name of the petitioner for the appointment as a Member.

(f) The Committee, consistent with the provisions of Rule 3(3) of the said Rules, decided to prepare a panel comprising of the petitioner and respondent no.3 in that order of preference. The Committee specifically observed that if for any reason the petitioner does not accept the offer of appointment, respondent no.3 could be considered.

26. Accordingly, the Committee recommended the name of the petitioner and respondent no.3 in this order of preference.

27. Having regard to the recommendations of the Committee, it is obvious that the petitioner and respondent no.3 though have adequate knowledge and requisite experience in the field of law, the Committee for the reasons as seen in the recommendations, felt that the petitioner was the most suited.

28. In terms of Rule 4 of the said Rules, the requirement is that the Government shall consider the recommendations of the Selection Committee for the appointment of the Chairperson and the Members in the order of preference as

recommended by the Selection Committee. While considering the recommendations, it is obvious that much significance is to be given to the recommendations of the Selection Committee. This is obviously because the Selection Committee comprises of a nominee of the Chief Justice and high ranking officials of the State Government. A reading of Section 22 and Rule 4 indicates that the Government shall consider the recommendation of the Selection Committee for appointment as a Member in the order of preference. A deviation from the first part of Rule 4 as to the order of preference can be made, only after recording the reasons in writing.

29. The Selection Committee for reasons extracted herein before found the petitioner most suited and hence recommended the panel of the petitioner and respondent no.3 in that order of preference. The State Government while appointing respondent no.3 recorded the reasons for his appointment 'considering his wide experience in social administration and legal fields'. It is seen that there is no reference to the petitioner being considered which in our opinion is in breach of the first part of Rule 4 which provides

that the Government shall consider the recommendations of the Selection Committee for the appointment of Member in the order of preference as recommended by the Selection Committee. We find the reason that respondent no.3 had wide experience in social administration is without any materials and unjustified. Moreover, the petitioner as well as respondent no.3 have a wide experience in the legal field as the recommendations of the Selection Committee would go to show. The Selection Committee on the basis of the materials and upon due deliberations and having regard to the relevant criteria found the petitioner most suited and accordingly recommended the panel in the order of preference. Undoubtedly, the State Government has the power to appoint a person not according to the order of preference, but for that, the State Government has to record the reasons in writing. In the present case, we find that the reasons are not based on any supporting materials and are unjustifiable. It is not possible for us to uphold the reasoning as it does not pass muster of Rule 4 for getting over the recommendations of the Selection Committee. The power to appoint a 'Member' is of the State Government. The exercise of such power has to be in terms of section 22 of the Act and Rule 4 of the Rules. The Selection

Committee after finding that the petitioner most suited also observed that if for any reason the petitioner does not accept the order of appointment, respondent no.3 be appointed. There is nothing on record to indicate that the petitioner was given an offer of appointment which he did not accept in which case respondent no.3 could be considered. It is pertinent to note that there is no challenge to the recommendations of the Selection Committee. The petitioner has not alleged any malafide as against the Government.

30. The decision to appoint respondent no.3 as a Member of RERA calls for interference. The decision of the Government appointing respondent no.3 and the consequent order and Notification appointing respondent no.3 as a Member of Goa RERA is quashed and set aside.

31. The question now is whether we send the matter back to the State Government for reconsideration or issue a mandamus directing the State Government to appoint the petitioner as urged by the learned Senior Advocate for the petitioner.

32. Learned Advocate General relied upon the decision in the *Govind Sugar Mills Ltd & Anr.* (supra) in support of his submission that after quashing the order it is for the

Government to reconsider the matter but the Court cannot give peremptory directions to appoint the petitioner. Reliance is placed on paragraphs 4 and 5 where Their Lordships observed thus:

*“4. In the judgment of this Court delivered a few days ago, namely **M/s Mahabir Jute Mills Ltd. Gorakhpore v. Shri Shibban Lal Saxena & Ors.**¹² it has been held on a consideration of the provisions of law contained in Section 4K of the Act that after quashing the order of the Government refusing to make a reference the High Court could ask the Government to reconsider the matter but it could not give peremptory directions to make a reference. We may, however, take note of a sentence occurring in the judgment of this Court in the case of **Bombay Union of Journalists & Ors. V/s. State of Bombay**¹³ which reads thus:*

"If the appropriate Government refuse to make a reference for irrelevant considerations, or on extraneous grounds, or acts mala fide, that, of course, would be another matter; in such a case a party would be entitled to move the High Court for a writ of mandamus."

We think what was meant to be conveyed by the sentence aforesaid was that the party would be entitled to move the High Court for interfering

¹² (1975) 2 SCC 818

¹³ (1964) 6 SCR 22

with the order of the Government and not necessarily for the issuance of a writ of mandamus to direct the Government to make a reference. The mandamus would be to reconsider the matter. It does not seem to be quite reasonable to take the view that after the refusal of the Government to make a reference is quashed a writ of mandamus to make a reference must necessarily follow. The matter has still to be left for the exercise of the power by the Government on relevant considerations in the light of the judgment quashing the order of refusal.

5. For the reasons stated above we allow this appeal only to the extent that the order of the High Court made in the Special Appeal directing the Government of U.P. and the Labour Commissioner to make a reference under Section 4K of the Act is not sustainable and is set aside. We were informed at the Bar that two references have already been made in pursuance of the said direction. It is plain that the said order made cannot hold good when we have set aside the order of the High Court giving the direction in pursuance of which the references have been made. It will, however, be open to the State Government to reconsider the matter in the light of the judgment of the High Court and within the ambit of well- settled principles of law for exercise of their power of reference and to take such decision in the matter as they may think fit and proper to take in accordance with law. We shall make no order as to costs.”

33. Learned Advocate General then placed reliance on *U.P. State Road Transport Corporation and Anr.* (supra) to contend that the Court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law. The observations of the Hon'ble Supreme Court in para 12 are relevant, which read thus:

“12. The High Court was equally in error in directing the Corporation to offer alternative job to drivers who are found to be medically unfit before dispensing with their services. The Court cannot dictate the decision of the statutory authority that ought to be made in the exercise of discretion in a given case. The Court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law. The Court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law. Whether alternative job is to be offered or not is a matter left to the discretion of the competent authority of the Corporation and the Corporation has to exercise the discretion in individual cases. The Court cannot command the Corporation to exercise discretion in a particular manner and in favour of a particular person. That would be beyond the jurisdiction of the Court.”

34. Mr Coelho Pereira, learned Senior Advocate relied upon the decision in *Oriental Bank of Commerce* (supra), to impress upon us the pre requisites for issuance of mandamus. It is submitted that in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the Authorities. It is submitted that in the present case, this Court cannot issue a mandamus directing the Government to appoint the petitioner. Reference to paragraphs 11 and 12 is profitable and hence extracted hereunder :

“11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr. :

Note 187 - Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some

specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192 - Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and Tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196 - Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court, subject always to the well-settled principles which have been established by the Courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and Judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the Court may, and should, look to the larger public interest which may be concerned - an interest which private litigants are

apt to overlook when striving for private ends. The Court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.- ...The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

12. These very principles have been adopted in our country. In *Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh and others*¹⁴, after referring to the earlier decisions in *Lekhraj Sathramdas Lalvani v. N.M. Shah*¹⁵, *Rai Shivendra Bahadur (Dr.) v. Nalanda College*¹⁶ and *Umakant Saran (Dr.) v. State of Bihar*¹⁷, Court observed as follows in paragraph 15 of the reports :

"15..... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. The

¹⁴ (1977) 4 SCC 145

¹⁵ AIR 1966 SC 334

¹⁶ AIR 1962 SC 1210

¹⁷ (1973) 1 SCC 485

chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. ... In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant Bank to declare their

account as NPA from 31st March, 2000 and apply R.B.I. guidelines to their case.”

35. Mr Pereira, learned Senior Advocate also placed reliance on *K. Vijay Lakshmi* (supra). Para 30 of the said judgment reads as under:

*“30. In view of this constitutional and legal framework, we are clearly of the view that the High Court has erred firstly on the administrative side in discharging its responsibility under Article 234 of the Constitution, and then on the Judicial side in dismissing the writ petition filed by the appellant, by drawing an erroneous conclusion from the judgment in the case of **Union of India V/s. Kali Dass Batish**¹⁸. Having stated so, the Court cannot grant the mandamus sought by the appellant to issue an appointment order in her favour. As held by this Court in para 17 of **Harpal Singh Chauhan Vs. State of U.P.**¹⁹, the Court can examine whether there was any infirmity in the decision making process. The final decision with respect to the selection is however to be left with the appropriate authority. In the present matter the Division Bench ought to have directed the State Government to place all the police papers before the High Court on the administrative side, to*

¹⁸ (2006) 1 SCC 779

¹⁹ (1993) 3 SCC 552

enable it to take appropriate decision, after due consideration thereof.”

36. Mr Coelho Pereira, learned Senior Advocate submitted that this petition suffers from delay and laches. The Notification of order of appointment of the respondent no.3 is dated 11.07.2024. The petitioner thereafter made application for obtaining relevant documents under the Right to Information Act. The petition is filed on 14.08.2024. We, therefore, do not find any merit in the submission that the petition suffers from delay or laches.

37. It is significant to note that pursuant to the issuance of the Notification appointing respondent no.3, the petitioner made a detailed representation dated 25.07.2024 addressed to the Chief Secretary, Government of Goa and the Department of Urban Development which is at annexure G at page 38 of the paper book demanding justice including the relief to appoint him to the post as a Member in place of respondent no.3.

38. Having regard to the well settled legal principles, we would have otherwise refrained from issuing a writ of mandamus directing the Government to appoint the

petitioner consequent upon finding that there was an infirmity in the decision making process which has resulted in the quashing of appointment of respondent tno.3. The question before us is whether we adopt the course of calling upon the Government to reconsider the matter for appointment of a Member in terms of the recommendations of the Selection Committee. In the facts of the present case, we are inclined to direct the Government to appoint the petitioner, for the reasons spelt out hereafter.

39. Considering the composition of the Selection Committee, the purport of Section 22 and Rule 4, the recommendations of the Selection Committee assume significance. Due regard will have to be given to the recommendations of the Selection Committee and more so when the order of preference is forwarded after due deliberations and upon considering all the materials on record. A high degree of sanctity has to be attached to the recommendations of the Selection Committee which cannot be brushed aside lightly. It is therefore that Rule 4 recognises the order of preference and attaches weightage to the Order of preference. If the appointment is not to be in accordance with

the order of preference, the same has to be for reasons in writing.

40. It is not that the recommendation of the Selection Committee giving preference to the petitioner over respondent no.3 is discarded by the State Government for justifiable reasons. There is no whisper as to why the detailed consideration of the Committee recommending the petitioner over the respondent no.3 is brushed aside. Not only that, but there are no compelling reasons much less justifiable reasons brought on record as to why the appointment made is not according to the order of preference by the Selection Committee.

41. In our view, the reasons in writing purportedly in terms of rule 4 do not justify a departure for the appointment of a Member in the order of preference as recommended by the Selection Committee. No doubt the appointment is to be made by the Government but the same has to be in conformity with the provisions of Section 22 and Rule 4 of the Rules. The Selection committee has for valid reasons recommended that the petitioner be preferred over the respondent no.3. As we find that there is absolutely no justification or material placed

on record to deviate from the recommendations of the Selection Committee, we are of the opinion that in the facts of this case, the Government can be directed to appoint the petitioner consequent to the quashing of the appointment of respondent no.3.

42. The petition is therefore allowed in terms of prayer clause (a), which reads thus:

“(a) By a writ in the nature of certiorari the decision of the Government taken on 30.06.2024 to appoint Shri Cholu Gauns be quashed and set aside and by an order of mandamus the respondent nos.1 and 2 be directed to appoint the petitioner as member of Goa RERA.”

43. Rule is made absolute. No order as to costs.

44. At this stage, Mr Coelho Pereira, learned Senior Advocate for respondent no.3 requested for staying the operation of this judgment for four weeks. We are not inclined to accede to this request. Hence, the request is rejected.

VALMIKI MENEZES, J.

M. S. KARNIK, J.