

Union of India

v.

Namit Sharma

(Supreme Court Of India)

HON'BLE MR. JUSTICE A.K. PATNAIK HON'BLE MR. JUSTICE A.K. SIKRI

Review Petition (Civil) No. 2309 Of 2012 & 2675 Of 2012 In W.P.(C). No. 210 Of 2012 & Slp (C) No. 27347 Of 2012 | 16-04-2013

I.A.No.6 in RP (C) No. 2309 of 2012

1. This is an application for stay of the operation of the judgment dated 13-9-2012 passed in Writ Petition (C) No. 210 of 2012 titled Namit Sharma v. Union of India (2013) 1 SCC 745 : (2013) 1 SCC (Civ) 786 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (L&S) 244) during the pendency of Review Petition (C) No.2309 of 2012 titled Union of India v. Namit Sharma.

2. We have heard the learned counsel for the parties and we are not inclined to stay the operation of the entire judgment in Namit Sharma v. Union of India (supra) but we direct that the following directions in sub-paras 108.8 and 108.9 quoted herein below shall remain stayed during the pendency of Review Petition (C). No. 2309 of 2012 : (SCC p. 804)

“108.8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a “judicial member”, while the other an ‘expert member’. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. The Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

108.9. The appointment of the judicial members to any of these posts shall be made ‘in consultation’ with the Chief Justice of India and Chief Justices of the High Court of the respective States, as the case may be.”

3. We further direct that wherever the Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming before the Information Commissioners, he will ensure that the matter is heard by a Bench of which at least one member has knowledge and experience in the field of law.

4. We make it clear that subject to the orders that may be finally passed after hearing the review petitions, the competent authority will continue to fill up the vacant posts of Information Commissioners in accordance with the Act and in accordance with the judgment in *Namit Sharma v. Union of India* (supra) except sub-paras 108.8 and 108.9 which we have stayed. This is to ensure that functioning of the Information Commissioner in accordance with the Act and the judgment is not affected during the pendency of the review petitions.

5. We further make it clear that the Chief Commissioners already functioning will continue to function until the disposal of the review petitions.

6. IA No. 6 is ordered accordingly.

RP (C) Nos. 2309, 2675 and SLP (C) No. 27347 of 2012

6. Heard in part. List together tomorrow as part-heard.