SUPREME COURT OF INDIA

Manohar Nathusao Samarth

Vs.

Marotrao

C.A.Nos.2406 of 1977 and 356 of 1978

(V. R. Krishna Iyer, V. D. Tulzapurkar and R. S. Pathak, JJ.)

04.05.1979

JUDGEMENT

KRISHNA IYER, J.:-

1. A tricky issue of statutory construction, beset with semantic ambiguity and pervasive possibility, and a prickly provision which if interpreted literally leads to absurdity and if construed liberally, leads to rationality, confront the court in these dual appeals by special leave spinning around the eligibility for candidature of an employee under the Life Insurance Corporation and the declaration of his rival, 1st respondent, as duly returned in a City Corporation election. A tremendous trifle in one sense, since almost the whole term has run out. And yet, divergent decisions of Division Benches of Madras and Calcutta and a recent unanimous ruling of a Bench of five judges of Punjab and Haryana together with the Bombay High Court's decision under appeal have made the precedential erudition sufficiently conflicting for this Court to intervene and declare the law, guided by the legislative text but informed by the imperatives of our constitutional order. The sister appeal filed by the respondent relates to that part of the judgment of the High Court which reverses the declaration granted by the trial judge that he be deemed the returned candidate.

2. This little preface leads us on a brief narration of the admitted facts. The appellant (in C. A. 2406 of 1977) was a candidate for election to the Corporation of the City of Nagpur from Ward 34 and his nearest rival was the 1st respondent, although there were other candidates also. Judged by the plurality of votes, the appellant secured a large lead over his opponents and was declared elected. The end of the poll process is often the beginning of the forensic process at the instance of the defeated candidates with its protracted trial and appeals upon appeals, thus making elections doubly expensive and terribly traumatic. The habit of accepting defeat with grace, save in gross cases, is a sign of country's democratic maturity. Anyway, in the present case, when the appellant was declared the returned candidate the respondent challenged the verdict in court on a simple legal ground of ineligibility of the former who was, during the election, a development officer under the Life Insurance Corporation (for short, the LIC). The lethal legal infirmity, pressed with success, by the respondent was that under Regulation 25 of the Life Insurance Corporation of India (Staff) Regulations, 1960 (briefly, the Regulations) framed by the LIC, all its employees were under an embargo on taking part in municipal elections, save with the permission of the Chairman. Therefore, the appellant who was such an employee and had not sought or got the Chairman's permission laboured under a legal ineligibility as contemplated in Section 15 (g) of the City of Nagpur Corporation Act, 1948 (hereinafter referred to as the Act). Both the Courts below shot down the poll verdict with this statutory projectile and the aggrieved appellant urges before us the futility of this invalidatory argument.

2-A. Section 15 (g) is seemingly simple and reads:

15. No person shall be eligible for election as a Councillor if he-

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(g) is under the provisions of any law for the time being in force, ineligible to be a member of any local authority; So, the search is for any provision of law rendering the returned candidate ineligible to be a member. The fatal discovery of ineligibility made by the respondent consists in the incontestable fact that the appellant was at the relevant time an LIC employee bound by the Regulations, which have the force of Law, having been framed under Section 49 of the LIC Act, 1956. The concerned clause is Regulation 25 (4) which reads thus:

"25 (4) No employee shall canvass or otherwise interfere or use his influence in connection with or take part in an election to any legislature or local authority.

Provided that –

xx xx xx xx

(iii) the Chairman may permit an employee to offer himself as a candidate for election to a local authority and the employee so permitted shall not be deemed to have contravened the provisions of this regulation.

3. A complementary regulation arming the Management with power to take action for breach of this ban is found in Regulation 39 which states.

39. (1). Without prejudice to the provisions of other regulations, any one or more of the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed by the disciplinary authority specified in Schedule on an employee who commits a breach of regulations of the Corporation, or....."

4. The crucial issue is whether this taboo in Regulation 25 spell electoral ineligibility or merely sets rules of conduct and discipline for employees, violation of which will be visited with punishment but does not spill over into the area of election.

5. Two decisions one of Calcutta, Sarafatullah Sarkar v. Surja Kumar AIR 1955 Cal 382 and the other of Punjab and Haryana, Uttam Singh v. S. Kirpal Singh AIR 1976 Punj and Har 176 (FB) support the appellant's position that mere rules regulating service discipline and conduct, even though they have the force of law, cannot operationally be expanded into an interdict on candidature or amount to ineligibility for standing for election. Chakravarthi, C. J., speaking for a Bench of the Calcutta High Court, upheld the stand (at p. 384):

"It appears to me to be 'abundantly' clear that in so far as the Government Servants' Conduct Rules provide for discipline and document (conduct?) and, in doing so, forbid conduct of certain varieties their aim is merely regulation of the conduct of Government Servants, as such servants, and that aim is sought to be attained by prescribing certain rules of correct conduct and laying down penalties for their breach. If a Government servant disregards any of the Rules which bear upon discipline and conduct and conducts himself in a manner not approved by the Rules or forbidden by them, he may incur the penalties for which the Rules provide. It cannot, however, be that any of his other rights as a citizen will be affected. Taking the present case, if a Government servant violates the prohibition against offering himself as a candidate for election to one or another of the bodies mentioned in Rule 23, he may incur dismissal or such other penalty as the authorities may consider called for, but the breach of the conditions of service committed by him cannot disenfranchise him or take away from him any of the rights which he has in the capacity of the holder of franchise.

While, therefore, a Government servant offering himself for election to one of the bodies mentioned in Rule 23, may bring upon himself disciplinary action, which may go as far as dismissal, the consequence cannot also be that his election will be invalid or that the validity of his election will be affected by the breach. The disqualification imposed by Rule 23 is of the nature of a personal bar which can be overstepped only at the Government servant's peril as regards his membership of a service under the Government. It is not and cannot be an absolute disqualification in the nature of ineligibility.

What the Rules enjoins is that a Government servant shall not take part in any election and that he shall also not take part in the form of offering himself as a candidate.... The prohibition is directed at personal conduct and at not at rights owned by the Government servant concerned. Illustrations of an absolute prohibition of the nature of a real disqualification or ineligibility will be found in Sections 63-E (1) and 80-B. Government of India Act, 1915-19 and Articles 102 and 191 of the present Constitution which deal, in both cases, with qualification for election, to the Central or the State Legislature."

6. In his view, the core purpose of the Regulation is not to clamp down disqualifications regarding elections but to lay down disciplinary forbiddance on conduct of government servants qua Government servants contravention of which would invite punishment. If we may say so, this is a purpose-oriented interpretation.

7. A Five-Judge Bench of the Punjab and Haryana High Court adopted this reasoning in a situation akin to ours and repelled the further submission that the disqualification was founded on the policy that an employee of the Corporation if he became a member of the Legislature or City Corporation would not be able to carry out his function. The court also dissented from a Division Bench decision of the Madras High Court which took a contary view.

8. It is fair to notice the Madras ruling before we discuss the fundamentals and declare the law as we read it to be. In the Madras case, Narayanaswamy v. Krishnamurthy, ILR (1958) Mad 513 : (AIR 1958 Mad 343) (which related to an Assembly seat) the court felt that the point was not free from difficulty but reached the conclusion that the Regulation made by the L.I.C. was perhaps intended to ensure undivided attention upon their duties as such employees but it also operated as a disqualification. The contention before the court was somewhat different. The question posed was whether the concerned Regulation could be treated as law which fulfilled the requirements of Article 191 (1) (e) of the Constitution. The major consideration of the court was as to whether a regulation to ensure proper performance of duties by the employees of the Corporation could also be treated as a law imposing a disqualification. Even so, making a liberal approach to the line of reasoning of the court we may consider the observation as striking a contrary note.

9. We do not examine, not having been invited to do so, whether Parliament or its delegate could enact a law relating to elections to local bodies, a topic which falls within the State List. We confine ourselves to the sole question debated at the Bar as to the ambit and limit, the import and interpretation of Regulation 25 (4) of the L.I.C. Regulations, vis-a-vis S. 15 (g) of the Act.

10. The Regulations have been framed under S. 49 of the L.I.C. Act and a conspectus of the various Chapters convincingly brings home the purpose thereof. All the Regulations and the Schedules exclusively devote themselves to defining the terms and conditions of service of the staff. Regulation 25 comes within Chapter III dealing with conduct and discipline of the employees. Regulation 39 deals with penalties for misconduct and Regulation 40 deals with appeals. The inference is irresistible that the sole and whole object of Regulation 25, read with Regulation 39, is to lay down a rule of conduct for the L.I.C. employees. Among the many things forbidden are, for instance, prohibition of acceptance of gifts or speculation in stocks and shares. Obviously, we cannot read Regulation 32 as invalidating a gift to an L.I.C. employee under the law of gifts, or Regulation 33 as nullifying transfer of stocks and shares speculatively purchased by an L.I.C. employee. Likewise, Regulation 25 while it does mandate that the employee shall not participate in an election to a local authority cannot be read as nullifying the election or disqualifying the candidate. The contravention of the Regulation invites disciplinary action, which may range from censure to dismissal.

11. Section 15 (g) relates to the realm of election law and eligibility to be a member of a local authority. Ineligibility must flow from a specific provision of law designed to deny eligibility or to lay down disqualification. If a rule of conduct makes it undesirable, objectionable or punishable for an employee to participate in elections to a local authority, it is a distortion, even an exaggeration out of proportion, of that provision to extract out of it a prohibition of a citizen's franchise to be member in the shape of a disqualification from becoming a member of a local authority. The thrust of Regulation 25 is disciplinary not disqualificatory. Its intent imposes its limit, language used by a legislature being only a means of communicating its will in the given environment. This is obvious from the fact that the Chairman is given the power to permit such participation by an employee depending on the circumstances of each case. Even the range of punishments is variable. No ground rooted in public policy compels us to magnify the disciplinary prescription into a disenfranchising taboo. To revere the word to reverse the sense is to do injustice to the art of interpretation. Reed Dickerson quotes a passage from an American case to highlight the guideline:1

1 The Interpretation and Application of Statutes by Reed Dickerson, p. 199.

"(T)he meaning of some words in a statute may be enlarged or restricted in order to harmonize them with the legislative intent of the entire statute..... It is the spirit.... of the statute which should govern over the literal meaning."

12. There is a further difficulty in construing the Regulation as stipulating an ineligibility for candidature because there is a proviso therein for the Chairman to grant permission to the employee to participate in elections. Permission is a word of wide import and may even survive the death of the person who permits (Kelly v. Cornhill Insurance Co. Ltd., (1964) 1 All ER 321 (HL) per Lord Dilhorne L. C. at p. 323). Equally clearly, where a statute does not necessarily insist on previous permission it may be granted even later to have retrospective effect. Or permission once granted may be retracted. These legal possibilities will create puzzlesome anomalies if we treat the Regulation as a ban on participation in election. An employee may stand as a candidate after securing permission, but in the course of the election the Chairman may withdraw the permission. What happens then? An employee may be refused permission in the beginning and if he still contests and wins it is conceivable that the Chairman may grant him permission which may remove the disability. In such a case, one who was ineligible at one stage becomes eligible at a later stage. Other odd consequences may also be conceived of, although it is not necessary to figure them out. The rationale of the Regulation, rather, its thrust, is disciplinary not disqualificatory.

13. It is quite conceivable, if the legislature so expresses itself unequivocally, that even in a law dealing with disciplinary control, to enforce electoral disqualifications provided the legislature has competence. The present provision does not go so far.

14. Even assuming that literality in construction has tenability in given circumstances, the doctrinal development in the nature of judicial interpretation takes us to other methods like the teleological, the textual, the contextual and the functional. The strictly literal may not often be logical if the context indicates a contrary legislative intent. Courts are not victims of verbalism but are agents of the functional success of legislation, given flexibility of meaning, if the law will thereby hit the target intended by the law-maker. Here the emphasis lies on the function, utility, aim and purpose which the provision has to fulfil. A policy-oriented understanding of a legal provision which does not do violence to the text or the context gains preference as against a narrow reading of the words used. Indeed this approach is a version of the plain meaning rule,2 and has judicial sanction. In Hutton v. Phillips, (1949) 45 Del 156, 160 : 70 A 2d 15, 17 the Supreme Court of Delaware said:

2 The Interpretation and Application of Statutes by Reed Dickerson p. 231.

"(Interpretation) involves far more than picking out dictionary definitions of words or expressions used. Consideration of the context and the setting is indispensable properly to ascertain a meaning. In saying that a verbal expression is plain or unambiguous, we mean little more than that we are convinced that virtually anyone competent to understand it, and desiring fairly and impartially to ascertain its signification, would attribute to the expression in its context a meaning such as the one we derive, rather than any other; and would consider any different meaning, by comparison, strained, or far-fetched, or unusual, or unlikely."

15. This perceptive process leaves us in no doubt about the soundness of the interpretation which has appealed to the Full Bench of the Punjab and Haryana High Court and the Division Bench of the Calcutta High Court.

16. There is a broader constitutional principle which supports this semantic attribution. The success of our democracy to 'tourniquet' excess of authority depends on citizen participation. An inert citizenry indifferent to the political process is an enemy of the Republic's vitality. Indeed, absolutism thrives on inaction of the members of the polity. Therefore, activist involvement in various aspects of public affairs by as many citizens as can be persuaded to interest themselves is a sign of the health and strength of our democratic system. Local self-government and adult franchise give constitutional impetus to the citizens to take part in public administration. Of course, this does not mean that where a plain conflict of interests between holding an office and taking part in the political affairs of government exists, a disqualification cannot be imposed in public interest. The rule is participation, the exception exclusion. Viewed from that angle, if a government servant or an employee of the L.I.C. participates in local administration or other election it may well be that he may forfeit his position as government servant or employment, if dual devotion is destructive of efficiency as employee and be subject to disciplinary action - a matter which depends on a given milieu and potential public mischief. I am not resting our decision on this general consideration but mention this persuasive factor as broadly supportive of our conclusion.

17. I hold that the impact of Regulation 25 (4) is not to impose ineligibility on an L.I.C. employee to be a member of a municipal corporation. Its effect is not on the candidature but on the employment itself. In the present case, I am told that the appellant has since resigned his post. The ultimate result of the reasoning that appeals to us is that the judgment of the High Court must be reversed and the appellant restored to the poll verdict and be regarded as validly returned member of the Nagpur City Corporation.

18. In this view, the next appeal by the first respondent does not fall to be considered although counsel has pressed his contention that the High Court was wrong. I do not think it necessary to discuss elaborately the legal issue except to state that the view taken by the Bombay High Court in Pyare Saheb Gulsar Chhotumiya Sawasi v. Dashrath Wasudeo Daff, 1977 Mah LJ 246: (AIR 1977 Bom 91) is correct. I am constrained to state that the draftsmanship of the provision is dubious and the court in this decision has had to salvage sense out of alternative absurdity flowing from fidelity to pedantry. It is clear, in election law, that a defeated candidate cannot claim a seat through an election petition merely out of speculative possibilities of success. The reasoning of the Bombay High Court not merely accords with the well-known criteria incorporated in the Representation of the People Act, 1950 as well as in the rulings thereon by this Court but also is in consonance with the election sense. It is true that there is no common law rule applicable in this area and election statutes have to be strictly construed but that does not doctrinally drive the Court to surrender to bizarre verbalism when a different construction may inject reasonableness into the provision.

19. Section 428 of the Corporation Act aims at sense and when a plurality of contestants are in the run other than the one whose election is set aside, predictability of the next highest becomes a misty venture. The rule in S. 428 contains the corrective in such situations and the pregnant expression 'against whose election no cause or objection is found gives jurisdiction to the court to deny the declaration by the next highest and to direct a fresh election when the constituency will speak. We concur in the reasoning of Masodkar, J. in the said ruling 1977 Mah LJ 246: (AIR 1977 Bom 91).

20. The reliance on Sukhdev Singh v. Bhagatram, (1975) 1 SCC 421 : (AIR 1975 SC 1331) by the counsel is inept. I am satisfied that the view of the High Court on this branch of the case is correct. I would, therefore, allow Appeal No. 2406 of 1977 and dismiss Appeal No. 356 of 1978. Parties will bear their costs at this late stage when long litigation has kept in suspended animation the constituency's right to representation.

21. **TULZAPURKAR, J :-** I have had the benefit of reading the judgment of my esteemed brother Krishna Iyer in these appeals whereby he proposes to allow the returned candidate's appeal (C. A. No. 2406 of 1977) and dismiss the election petitioner's appeal (C. A. No. 356 of 1978) but I regret my inability to agree with him as in my view both the appeals deserve to be dismissed.

22. Judges and lawyers always clamour for legislative simplicity and when, as is the case here, legislative simplicity is writ large on the concerned provision and the text of the provision is unambiguous and not susceptible to dual interpretation, it would not be permissible for a Court, by indulging in nuances, semantics and interpretative acrobatics, to reach the opposite conclusion than is warranted by its plain text and make it plausible or justify it by spacious references to the object, purpose or scheme of the legislation or in the name of judicial activism.

23. Election of Councillors to the Municipal Corporation of City of Nagpur was held on January 29, 1975, whereat from Ward No. 34 Manohar Samarth (Appellant in Civil Appeal No. 2406/77), Marotrao Jadhav and three others (being respondents 1 to 4 in the said Civil Appeal) were the contesting candidates. After the polling was over Manohar Samarth (hereinafter called 'the returned candidate') was declared successful. he having secured 1428 votes as against 943 secured by Marotrao Jadhav, 849 by respondent No. 2, 572 by respondent No. 3 and 748 by respondent No. 4. Marotrao Jadhav (hereinafter referred to as 'the election petitioner') challenged the election of the returned candidate from the said ward by filing an election petition (being Election Petition No. 6 of 1975) before the District Judge, Nagpur under S. 428 of the City of Nagpur Corporation Act, 1948, (for short 'the Corporation Act') principally on the ground that the returned candidate being a Development Officer and a salaried employee in the Life Insurance Corporation (for short 'the L.I.C.') had neither sought nor obtained the Chairman's permission for offering his candidature and as such was disqualified from standing at the election under S. 15 (g) of the Corporation Act read with Regulation 25 (4) of L.I.C. (Staff) Regulations, 1960. The election was also challenged on grounds of corrupt practices communal propaganda and distribution of malicious and defamatory handbills on the part of the returned candidate. In his written statement the returned candidate

refuted all the grounds on which his election was challenged. On the evidence and materials produced by the parties the learned Assistant Judge, who heard the matter came to the conclusion that the returned candidate who was working as a Development Officer in the L.I.C. was its whole-time salaried employee and since he had contested the election without seeking or obtaining the permission of the Chairman of the L.I.C. he suffered a disqualification under S. 15 (g) of the Corporation Act read with Regulation 25 (4) of the L.I.C. (Staff) Regulations, 1960 which vitiated his election. On the other ground of challenge, namely, commission of corrupt practices and indulgence in communal propaganda and distribution of malicious and defamatory hand-bills a finding was recorded in favour of the returned candidate and against the election petitioner. In the result by her order dated December 21, 1976, the learned Assistant Judge set aside the election of the returned candidate as being null and void and acting under S. 428 (2) granted a further declaration that since the election petitioner had secured second highest votes, he shall be deemed to have been elected as a Councillor from that ward.

24. The decision of the learned Assistant Judge was challenged by the returned candidate by filing a writ petition (Special Civil Application No. 1 of 1977) before the Nagpur Bench of the Bombay High Court. The High Court confirmed the view of the learned Assistant Judge that the returned candidate suffered a disqualification which vitiated his election but quashed the declaration granted in favour of the election petitioner on the ground that though he had secured the next highest votes there was no material on record from which it could be inferred that had the disqualification of the returned candidate been known to the voters they (the voters) would have definitely returned him as their Councillor to the Municipal Corporation from Ward No. 34, the High Court, therefore, directed that a fresh election to fill the vacancy be held in accordance with law. Civil Appeal No. 2406/77 has been preferred by the returned candidate challenging the High Court's view on his disqualification while Civil Appeal No. 356/78 has been filed by the election petitioner against that part of the decision which has gone against him.

25. Dealing first with Civil Appeal No. 2406/1977 counsel for the returned candidate (the appellant) pressed only one contention in support of the appeal. He contended that Regulation 25 (4) framed under S. 49 (b) and (bb) of the L.I.C. Act, 1956, upon proper construction was a mere prohibition and not a measure laying down any disqualification. According to him the L.I.C. (Staff) Regulations 1960 merely laid down the terms and conditions of service of the staff of the L.I.C. and Regulation 25 (4) prescribed a Code of Conduct for the staff, a breach whereof would entail any of the penalties specified in Regulation 39 and since in the instant case the returned candidate had offerred his candidature without seeking or obtaining permission of the Chairman he could be said to have committed a breach of one of the terms or conditions of his service for which any penalty ranging from censure to dismissal could be imposed upon him but the purpose of Regulation 25 (4) was not the enactment of any disqualification and as such the terms of S. 15 (g) of the Corporation Act were not answered by the mere fact that the returned candidate was an employee of the L.I.C. and was subject to Regulation 25 (4). Reference was also made to Regulation 2 and proviso (iii) to Regulation 25 (4) to lend support to the said contention. It was pointed out that Regulation No. 2 made the Staff Regulations applicable to every whole-time salaried employee of the L.I.C. in India "unless otherwise provided by the terms of any contract, agreement or letter of appointment" which clearly suggested that certain whole-time salaried employees of the L.I.C. whose terms and conditions of service were otherwise governed by a contract, agreement or letter of appointment

would be outside the purview of these Regulations and the prohibition contained in Regulation 25 (4) would not apply to such employees; similarly, it was pointed out that the prohibition under Regulation 25 (4) itself was not absolute inasmuch as under proviso (iii) thereto the employee could offer himself as a candidate for election to a local authority with the permission of the Chairman. It was contended that these aspects also showed that the prohibition under Regulation 25 (4) did not amount to a disqualification. In support of the construction sought to be placed on Regulation 25 (4) counsel relied upon two decisions one of the Calcutta High Court in Sarafatulla Sarkar v. Surja Kumar, AIR 1955 Cal 382 and the other a Full Bench decision of the Punjab and Haryana High Court in Uttam Singh v. S. Kripal Singh, AIR 1976 Punj and Har 176. On the other hand, counsel for the election petitioner (first respondent) supported the view of the High Court that Regulation 25 (4) read with S. 15 (g) of the Corporation Act clearly amounted to a disqualification or ineligibility which vitiated the election of the returned candidate. He relied upon the Madras High Court's decision in Narayanaswamy Naidu v. C. Krishnamurthi, ILR (1958) Mad 513 : (AIR 1958 Mad 343) and urged that the Calcutta decision was clearly distinguishable and as against the Full Bench decision of Pun. and Har. High Court which merely followed the Calcutta decision he pressed the Madras High Court's view for our acceptance. According to him the aspects emerging from Regulation 2 and proviso (iii) to Regulation 25 (4) had no relevance to the issue of the proper construction of Regulation 25 (4) read with S. 15 (g) of the Corporation Act. He pointed out that cases falling within the two aspects emerging from Regulation 2 and proviso (iii) to Regulation 25 (4) were completely outside the prohibition, while the real issue was whether or not a case properly falling within the prohibition contained in Regulation 25 (4) would entail a disqualification or ineligibility.

26. Since the question turns upon the proper construction of Regulation 25 (4) of the L.I.C. (Staff) Regulations 1960 read with S. 15 (g) of the Corporation Act it will be desirable to set out the material provisions. Section 15 of the Corporation Act enumerates in cls. (a) to (i) the several disqualifications of candidates for election and S.15(g), which is by way of a residuary provision, runs thus:

"15. No person shall be eligible for election, selection, or appointment as a Councillor if he –

(g) is under the provisions of any law for the time being in force, ineligible to be a member of any local authority:

Provided that a disqualification under clauses (e), (f), (g) or (i) may be removed by an order of the Provincial Government in this behalf."

Regulation 25 (4) together with proviso (iii) runs thus:

"25. Prohibition against participation in Politics and standing for Elections:

(4) No employee shall canvass or otherwise interfere or use his influence in connection with or take part in an election to any legislature or local authority.

Provided that –

(iii) the Chairman may permit an employee to offer himself as a candidate for election to a local authority and the employee so permitted shall not be deemed to have contravened the provisions of this regulation."

It may be stated that Regulation 39 provides for imposition of several penalties ranging from censure to dismissal upon an employee if he were to commit a breach of any of the Staff Regulations.

27. The simple question is whether Regulation 25 (4) read with S. 15 (g) constitutes or amounts to an ineligibility or disqualification for a whole-time salaried employee of L.I.C. to become a member of any local authority. In other words, is Regulation 25 (4) a provision of law for the time being in force that renders a whole-time salaried employee of L.I.C. ineligible to be a member of the Municipal Corporation within the meaning of S. 15 (g) of the Corporation Act? Before I consider this question of construction certain positions which were not disputed during the course of the arguments may be stated. It was not disputed that at the relevant time, that is, at the time of the nomination as well as the time of election the returned candidate was a wholetime salaried employee of the L.I.C. working as its Development Officer and as such he was subject to the Staff Regulations. It was also not disputed that under proviso (iii) to Regulation 25 (4) he did not obtain the permission from the Chairman of the L.I.C. for the purpose of offering himself as a candidate at the election of the Municipal Corporation. It was further not disputed that Regulation 25 (4) being a statutory regulation framed under S. 49 (2) of the L.I.C. Act, 1956, had the force of law. Further, though before the High Court a contention was strenuously urged that the words "any law for the time being in force" occurring in S. 15 (g) referred to a law which ought to have been in existence at the commencement date of the Corporation Act, such a contention was not pressed before us and it was conceded by the counsel for the returned candidate that the said words would include Regulation 25 (4) as being the law for the time being in force. Indeed, the concession, in my view, was rightly made by counsel for the returned candidate for the words "any law for the time being in force" occurring in S. 15 (g) must, in the context refer to the law in force at the relevant time, that is, at the time of nomination or election when the question of disqualification or ineligibility arises for consideration. It is in light of these undisputed positions that the question set out above will have to be considered. The contention is that on proper construction Regulation 25 (4) merely creates a prohibition but does not amount to a disqualification or ineligibility because the Staff Regulations were and are intended to define the terms and conditions of service of the employees of the L.I.C. It is not possible to accept such construction for more than one reason. In the first place the heading of the Regulation clearly shows that it deals with the topic and intends to provide a prohibition against

standing for election. Secondly, cl. (4) of the said Regulation in plain and express terms provides : "No employee shall..... take part in an election to any local authority". In other words, by using negative language it puts a complete embargo (subject to proviso (iii) upon every employee from taking part in an election to any local authority. How else could a disqualification or ineligibility be worded? To say that Regulation 25 (4) merely creates a prohibition against standing for election but does not create any ineligibility or disqualification to stand for an election is merely to quibble at words. In my view, there is no distinction between a legal prohibition against a person standing for election and the imposition of an ineligibility or disqualification upon him so to stand. It is true that the purpose of framing Staff Regulations was and is to define the terms and conditions of service of the employees of the L.I.C. and that being the purpose it is but natural that a provision for imposition of penalties for breach of such Regulations would also be made therein. In fact the validity of such prohibition contained in the concerned Regulation rests upon the postulate that it prescribes a code of conduct for the employees and as such it would be within the Regulation making power conferred on the L.I.C. under S. 49 of the L.I.C. Act, 1956 but while prescribing a code of conduct the Regulation simultaneously creates a disqualification or ineligibility for the employee to stand for election to any local authority. Moreover, to construe Regulation 25 (4) as merely prescribing a code of conduct breach whereof is made punishable under Regulation 39 and not imposing a disqualification or ineligibility upon the employee to stand for election to a local authority would amount to rendering a residuary provision like S. 15 (g) in the Corporation Act otiose. In my view, therefore, on proper construction Regulation 25 (4) read with S. 15 (g) of the Corporation Act imposes a disqualification or creates an ineligibility for the employee of L.I.C. to stand for election to any local authority.

28. Reliance on the aspects emerging from Regulation 2 and proviso (iii) to Regulation 25 (4) cannot avail the returned candidate at all for it is obvious that cases falling within those aspects are completely taken out the prohibition contained in Regulation 25 (4) while the real issue is whether a case properly falling within the prohibition contained in Regulation 25 (4) on its proper construction entails a disqualification/ineligibility or not? In fact, proviso (iii) to Regulation 25 (4) is similar to the proviso to S. 15 of the Corporation Act under which a disqualification under cls. (e), (f), (g) or (i) could be removed by an order of the Provincial Government in that behalf and obviously when any one of those disqualifications is removed by an order of the Provincial Government under the proviso the case would clearly be outside S. 15. In other words, the two aspects (i) that certain employees under Regulation 2 would not be governed by the Staff Regulations at all and would not, therefore, be hit by the prohibition and (ii) that upon permission being obtained from the Chairman under Proviso (iii) the employee would be outside the prohibition have no bearing on the question of proper construction of Regulation 25 (4).

29. Turning to the decided cases, it may be observed that a construction similar to the one which I have placed on Regulation 25 (4) of L.I.C. (Staff) Regulations 1960 was placed by the Madras High Court on a similar L.I.C. Staff Regulation No. 29 read with Article 191 (1) (e) of the Constitution in Narayanaswamy Naidu's case (AIR 1958 Mad 343) (supra) and the very argument that Regulation 29 was merely a rule of conduct prescribed for the employees of the L.I.C., the breach of which might result in disciplinary action being taken against them but it did not render the employees disqualified for standing for election was in terms negatived. At p. 549 (of ILR Mad) : (at p. 360 of AIR) of the report the relevant observations run thus :

"Though the point is not free from difficulty, we have reached the conclusion that this argument of the respondents must be rejected. We see no distinction between a legal prohibition against a person standing for election, and the imposition of a disqualification on him so to stand. It might be that the object of the regulation was to ensure that the employees of the Corporation bestowed undivided attention upon their duties as such employees, but this does not militate against the prohibition operating as a disqualification. If a person is disabled by a lawful command of the Legislature, issued directly or mediately, from standing for election, it is tantamount to disqualifying him from so standing. We, therefore, hold that regulation 29 framed by the Life Insurance Corporation constituted a Law which disqualified C. Krishnamurthi from standing for election under Article 191 (1) (e) of the Constitution".

Though the observations have been prefaced by the words "though the point is not free from difficulty", it seems to me clear that those words were used out of deference to the arguments advanced by learned counsel for the respondents in that case but the Court construed the Regulation as imposing a disqualification because its plain language warranted it without getting boggled by the object or purpose of the staff Regulation that had been framed under S. 49 (2) of the L.I.C. Act 1956.

30. The Calcutta decision in Sarafatulla Sarkar's case (AIR 1955 Cal 382) (supra) relied on by the counsel for the returned candidate is clearly distinguishable. It was a case dealing with an election to Union Board under the Bengal Village Self-Government Act (5 of 1919) and the question was whether Rule 23 of the Government Servants' Conduct Rules, 1926 made under Rule 48 of the Civil Services (Classification, Control and Appeal) Rules framed by the Secretary of State under S. 96B of the Government of India Act, 1915-19, imposed a disqualification on a Government servant against offering himself for an election to one of the bodies mentioned in Rule 23 and the Calcutta High Court took the view that it, did not, so as to render his election invalid but that the prohibition contained therein was of a nature of a personal bar which could be overstepped by the Government servant at his own peril as regards his membership of a service under the Government. It must be pointed out that S. 10-A of the Bengal Village Self-Government Act (5 of 1919) which provided disqualifications for candidates from being a member of Union Board did not contain either a specific disqualification for a Government servant or any residuary provision similar to S. 15 (g) of the Corporation Act. 1948 or Article 191 (1) (e) of the Constitution and it was in the absence of any such provision, either specific or residuary that the Calcutta High Court considered the impact of the prohibition contained in Rule 23 of the Government Servants' Conduct Rules. In fact, this aspect of the matter has been emphasized by the learned Chief Justice in para 5 of his judgment where he observed:

"The learned single Judge considered it immaterial that the holding of a post under the Government had not mentioned as one of the disqualifications for election in S. 10A, Bengal Village Self Government Act, 1919 because in his view, the enumeration of disabilities in that section was not exhaustive".

In other words, it is clear that had S. 10A of the Bengal Village Self-Government Act, contained either a specific disqualification or a residuary provision of the type that is to be found in S. 15 (g) of the Corporation Act, 1948 or Article 191 (1) (e) of the Constitution, Rule 23, it appears, might have been differently construed. Construing Rule 23 by itself the learned Chief Justice came to the conclusion that the prohibition therein was directed at personal conduct and not at right owned by the Government servant concerned. In the instant case Regulation 25 (4) has to be read with S. 15 (g) of the Corporation Act, 1948. The learned Chief Justice referred to Rule 8 of the said Rules, which forbade a Gazetted officer to lend money to any person possessing land within the local limits of his authority and pointed out that even so if a Gazetted Officer were to lend money to a person of the specified category, none could say that the officer shall not be entitled to recover the amount of the loan. The test so suggested by the learned Chief Justice may hold good if Rule 8 simpliciter were to be construed. But, if in addition to Rule 8 there was simultaneously in operation a usury law which made certain loans irrecoverable including a loan prohibited by any law for the time being in force then obviously Rule 8 read with such usury law would render the loan given by the Gazetted Officer irrecoverable. Similar would be the position regarding the two Regulations No. 32 and No. 33 referred to by my learned brother Krishna Iyer, J. in his judgment. Therefore, the Calcutta decision is clearly distinguishable mainly on the ground that Rule 23 of the Government Servants' Conduct Rules standing by itself came up for construction before that Court in the absence of any specific disqualification or a general disqualification of a residuary nature being enacted in S. 10A of the Bengal Village Self-Government, Act, 1919. The Full Bench decision of the Punjab and Haryana High Court, in my view, merely follows the reasoning of the Calcutta decision without considering the distinction indicated above and, therefore, it is clear to me that the construction placed by that High Court on Regulation 25 (4) of the L.I.C. (Staff) Regulation, 1960 read with Article 191 (1) (e) of the Constitution should be rejected as an erroneous one and the construction placed by the Madras High Court deserves to be approved. Having regard to the above discussion I am clearly of the view that the returned candidate suffered a disqualification or rather was under an ineligibility under Regulation 25 (4) read with S. 15 (g) of the Corporation Act, 1948 which vitiated his election; if he were keen on active participation in the democratic process it was open to him to do so by either resigning his post or obtaining the Chairman's permission before offerring his candidature but his right as a citizen to keep up the Republic's vitality by active participation in the political process cannot be secured to him by a purpose-oriented construction of the relevant Regulation. His appeal, therefore, deserves to be dismissed.

31. Before parting with this appeal I feel constrained, as a part of my duty, to give vent to my feelings of discomfiture and distress over one thing which is exercising my mind for a considerable time in this Court. In all humility I would like to point out that prefaces and exordial exercises, perorations and sermons as also theses and philosophies (political or social), whether couched in flowery language or language that needs simplification have ordinarily no proper place in judicial pronouncements. In any case, day in and day out indulgence in these in almost every judgment irrespective of whether the subject or the context or the occasion demands it or not, serves little purpose, and surely such indulgence becomes indefensible when matters are to be disposed of in terms of settlement arrived at between the parties or for the sake of expounding the law while rejecting the approach to the Court at the threshold on preliminary grounds such as non-maintainability, laches and the like. I am conscious that judicial activism in many cases is the result of legislative inactivity and the role of a Judge as a lawmaker has been applauded but it has been

criticised also - lauded when it is played within the common law tradition but criticised when it is carried to extremes. Lord Radcliffe in his address titled 'The Lawyer and His Times' delivered at the Sesquicentennial Convocation of the Harvard Law School observed thus:

"I do not believe that it was ever an important discovery that judges are in some sense lawmakers. It is much more important to analyse the relative truth of an idea so far-reaching; because, unless the alalysis is strict and its limitations observed, there is real danger in its elaboration. We cannot run the risk of finding the archetypal image of the judge confused in men's minds with the very different image of the legislator." And the risk involved is the possible destruction of the image of the judge as "objective", impartial, erudite and experienced declarer of the law that is which "lies deeper in the consciousness of civilisation than the image of the law-maker, propounding what are avowedly new rules of human conduct.... Personally, I think that judges will serve the public interest better if they keep quiet about their legislative function. No doubt they will discreetly contribute to changes in the law, because as I have said, they cannot do otherwise, even if they would. But the judge who shows his hand, who advertises what he is about, may indeed show that he is a strong spirit, unfettered by the past, but I doubt very much whether he is not doing more harm to the general confidence in the law as a constant, safe in the hands of the judges, than he is doing good to the law's credit as a set of rules nicely attuned to the sentiment of the day".

32. Turning to the election-petitioner's appeal (C. A. No. 356 of 1978) I am in complete agreement with the view expressed by the High Court that the declaration granted to him by the learned Assistant Judge under S. 428 (2) of the Corporation Act. 1948 should never have been granted. It is true that the election-petitioner secured the next highest number of votes but that by itself would not entitle him to get a declaration in his favour that he be deemed to have been duly elected as a Councillor from Ward No. 34. I may point out that S. 428 (2) is not that absolute as was suggested by counsel for the election-petitioner, for, the relevant part of sub-sec. (2) provides that if the election of the returned candidate is either declared to be null and void or is set aside the District Court "shall direct that the candidate, if any, in whose favour next highest number of valid votes is recorded after the said person or after all the persons who have returned at the said election and againstwhose election no cause or objection isfound shall be deemed to have been elected." The underlined words give jurisdiction to the District Court to deny declaration to the candidate who has secured the next best votes. The High Court has rightly taken the view that there was no material on record to show how the voters, who had voted for the returned candidate, would have cast their votes had they known about the disqualification. Therefore, this appeal also deserves to be dismissed.

33. In the result I propose that both the appeals should be dismissed with no order as to costs in each.

34. **PATHAK, J :-** Manohar Nathurao Samarth was a development officer in the service of the Life Insurance Corporation of India. His employment was governed by the Life Insurance Corporation of

India (Staff) Regulations, 1960 (shortly referred to as the '(Staff) Regulations'). Desirous of being a Councillor in the Corporation of the City of Nagpur (to which I shall refer as the 'Nagpur Corporation'), he stood for election to that office, and was elected. But Regulation 25 (4) of the (Staff) Regulations forbade him from taking part in any election to a local authority. He could have taken part in the election if he had sought and obtained the permission of the Chairman of the Life Insurance Corporation of India under the third proviso to Regulation 25 (4). He did not obtain permission. His election as Councillor was challenged by an election petition filed by an unsuccessful candidate, Marotrao. It was said that Samarth was ineligible to stand for election because of Section 15 (g) of the City of Nagpur Corporation Act, 1948 (to be referred to hereinafter as the 'Nagpur Corporation Act') read with Regulation 25 (4) of the (Staff) Regulations. The ground found favour with the learned Assistant Judge trying the election petition, and she declared the election void. She also granted a declaration that Marotrao was the duly elected candidate.

35. Samarth filed a writ petition in the Bombay High Court. The High Court agreed with the learned Assistant Judge that Samarth was not eligible for election and that his election was void. But it also set aside the declaration granted in favour of Marotrao, and directed a fresh election. The judgment of the High Court has been challenged by these two appeals, one by Samarth and the other by Marotrao.

36. The central question is whether Samarth is ineligible for election as a Councillor of the Nagpur Corporation because of Section 15 (g) of the Nagpur Corporation Act read with Regulation 25 (4) of the (Staff) Regulations.

37. Section 15 (g) of the Nagpur Corporation Act provides:

"15. No person shall be eligible for election as a Councillor if he-

....

(g) is, under the provisions of any law for the time being in force ineligible to be a member of any local authority;

...."

38. And Regulation 25 (4) of the Staff Regulations declares:

"(25) (1) to (3) .....

(4) No employee shall canvass or otherwise interfere or use his influence in connection with or take part in an election to any legislature or local authority.

Provided that –

(i) and (ii) .....

(iii) the Chairman may permit an employee to offer himself as a candidate for election to a local authority and the employee so permitted shall not be deemed to have contravened the provisions of this regulation".

39. the Nagpur Corporation act contains a number of provisions concerned with holding elections to the Nagpur Corporation. Sections 9 to 22 deal with various matters, the electoral roll, the qualification of candidates, disqualification of candidates, term of office, filling up of casual vacancies, and so on. There is an entire code of election law. And Section 15 is one of its provisions. Now, Section 15 of the Nagpur Corporation Act declares a person ineligible for election as a Councillor on any one of several grounds. He may be ineligible because he is not a citizen of India, that is to say, he lacks the requisite legal status. He may also be ineligible in point of want of capacity defined by reference to disqualifying circumstances, for example, he may have been adjudged by a competent court to be of unsound mind. The disqualification may be found, by virtue of clause (g), under the provisions of any subsisting law. But that law must provide that he is ineligible to be a member of any local authority. The law must deal with ineligibility for membership, and in the context of Section 15, that must be ineligibility for election. It must be a law concerned with elections. Clause (g) is a residual clause, not uncommonly found wherever a provision of an election law sets forth specified categories of disqualified or ineligible persons and thereafter includes a residual clause leaving the definition of remaining categories to other laws. These other laws must also be election laws. An example is the Representation of the People Act, 1951 which is relevant to Article 102 (1) (e) and Article 191 (1) (e) of the Constitution. Since Section 15 of the Nagpur Corporation Act is a provision of the election law, clause (g) must be so construed that the law providing for ineligibility contemplated therein must also be of the same nature, that is to say election law.

40. Regulation 25 (4) of the (Staff) Regulations is not a law dealing with elections. Chapter III of the (Staff) Regulations, in which Regulation 25 is found, deals with 'conduct, discipline and appeals' in regard to employees of the Life Insurance Corporation of India. A conspectus of the provisions contained in the Chapter, from Sections 20 to 50, shows that it deals with nothing else. This is a

body of provisions defining and controlling the conduct of employees in order to ensure efficiency and discipline in the Corporation, and providing for penalties (Regulation 39) against erring employees. Regulation 25 prohibits participation in politics and standing for elections. Regulation 25 (4) forbids an employee not only from taking part in an election to any legislative or local authority, but also from canvassing or otherwise interfering, or using his influence, in connection with such an election. If he does, he will be guilty of a breach of discipline, punishable under Regulation 39. Regulation 25 (4) is a norm of service discipline. In substance, it is nothing else. In substance, it is not a provision of election law. It cannot be construed as defining a ground of electoral ineligibility. All that it says to the employee is: "While you may be eligible for election to a legislature or local authority by virtue of your legal status or capacity, you shall not exercise that right if you wish to conform to the discipline of your service". The right to stand for election flows from the election law. Regulation 25 (4) does not take away or abrogate the right; it merely seeks to restrain the employee from exercising it in the interests of service discipline. If in fact the employee exercises the right, he may be punished under Regulation 39 with any of the penalties visited on an employee - a penalty which takes its colour from the relevance of employment, and has nothing to do with the election law. No penalty under Chapter III of the (Staff) Regulations can provide for invalidating the election of an employee to a legislature or a local authority. That would be a matter for the election law. It is significant that when the restraint on standing for election imposed by Regulation 25 (4) has to be removed, it is removed by the Chairman of the Life Insurance Corporation of India under the third proviso. When he does so, it is as a superior in the hierarchy of service concerned with service discipline. He does not do so as an authority concerned with elections.

41. Therefore, in my judgment, Regulation 25 (4) of the (Staff) Regulations is not a law within the contemplation of Section 15 (g) of the Nagpur Corporation Act.

42. In reaching that view, I find myself, with regret, unable to subscribe to what has been observed by the Madras High Court in Narayanaswamy v. Krishnamurthi, ILR (1958) Mad 513 : (AIR 1958 Mad 343). I would say that the Calcutta High Court in Sarafatulla Sarkar v. Surja Kumar, AIR 1955 Cal 382 and the Punjab and Haryana High Court in Uttam Singh v. S. Kripal Singh, AIR 1976 Punj and Har 176 (FB) appear to have come to a more accurate conclusion.

43. Samarth must, therefore, succeed in his appeal. That being so Marotrao must fail in his. Samarth having been duly elected to the Office of Councillor, Marotrao cannot claim the same office for himself.

44. In the result, Civil Appeal No. 2406 of 1977 is allowed and Civil Appeal No. 356 of 1978 is dismissed. The judgment of the Bombay High Court is set aside and the election petition filed by Marotrao is dismissed. In the circumstances of the case, the parties will bear their costs.

Order accordingly.