

# CALCUTTA HIGH COURT

Dhirendra Krishna Biswas

Vs.

Corporation of Calcutta

Special Bench Ref in Civil Revn. Case No. 2025 of 1958

(D.N. Sinha, G.K. Mitter and P. Chatterjee, JJ.)

04.06.1965

## JUDGMENT

**Sinha, J.**

1. In this matter I have had the opportunity of reading the judgment of my learned brother Chatterjee, J. I agree with his findings and would like only to deal with the constitutional point involved in this application. That point is shortly as follows : Dr. A.T. Sen was appointed as a member of the State Public Service Commission on the 14th January, 1952. He was appointed as Chairman thereof on the 16th November 1954. Section 82 of the Calcutta Municipal Act 1951 provides that the State Government shall, as soon as may be after the commencement of the said Act, constitute a Municipal Service Commission consisting of a Chairman who shall be a member of the State Public Service Commission, deputed by such Commission from time to time and two members, one of whom shall be nominated by the State Government and the other by the Corporation. At the relevant time, that is to say, in March, 1958 Dr. A.T. Sen was purporting to act as the Chairman of the State Public Service Commission and was also acting as the Chairman of the Municipal Service Commission. On March 29, 1958 the Municipal Service Commission with Dr. A.T. Sen as the Chairman informed the Corporation that it recommended Sri Nirmal Chandra Gupta for permanent appointment to the post of Assistant Controller of Stores, in the grade of Rs. 300-20-400 with the usual allowances. This recommendation has been accepted by the Finance Standing Committee, by its resolution dated 17th June, 1958. Dhirendra Krishna Biswas, the petitioner in this application, who was a candidate for the said appointment has challenged the recommendation of the Municipal Service Commission mentioned above, on the ground that on the relevant date, Dr. A.T. Sen had ceased to be a member of the State Public Service Commission and therefore he could neither act as the Chairman of that Commission nor as the Chairman of the Municipal Service Commission. According to the petitioner, who recommendation was 'accordingly made by a body in which the person purporting to act as its Chairman was disqualified from holding office under the provisions of the Constitution. The

question is whether this is a ground of substance. The subject matter of Public Service Commissions is contained in Chapter II of Part XIV of the Constitution. Article 315(1) provides that, subject to the provisions of the said Article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State. Article 316 deals with the appointment and term of office of members. The wordings are important and are set out below :

"316 (1). The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a joint Commission, by the President and in the case of a State Commission, by the Governor of the State;

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

2. A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty five years and in the case of a State Commission or a Joint Commission the age of sixty years, whichever is earlier;

Provided that -

(a) A member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission to the President and in the case of a State Commission, to the Governor of the State, resign his office;

(b) A member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of Article 317.

3. A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for reappointment to that office."

(2) Article 317 deals with the removal and-suspension of members of a Public Service Commission. Clauses (1), (2) and (3) are important and are set out below :

"(1) Subject to the provisions of Clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on enquiry held in accordance with the procedure prescribed in that behalf under Article 145. reported that the Chairman or such other member, as the case may be ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a joint Commission and the Governor, in the case of a State Commission, may suspend from office the Chairman or

any other member of the Commission in respect of whom a reference has been made to the Supreme Court under Clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in Clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be, -

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is in the opinion of the President, unfit to continue in office by reason of infirmity by mind or body.

(3) Article 318 provides that in the case in a State Commission the Governor of the State may by regulations determine the number of members of the Commission and then conditions of service : and make provisions with respect to the number of members of the staff of the Commission and their conditions of service : Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment. So far as West Bengal is concerned such regulations have been made and I shall presently refer to the same. Article 319 lays down prohibition', as to the holding of offices by members of Commission on ceasing to be such members. It deals with both the Union Public Service Commission and the State Public Service Commission. We are, however, concerned only with the State Public Service Commission and the relevant clauses are clauses (b) and (d) which are as follows :

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of, a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State."

4. The question that has arisen is as follows : As stated above, Dr. A.T. Sen was appointed as a member of the State Public Service Commission on the 14th January, 1952. According to file provisions of Article 316(2), he ceased to hold office as a member of the State Public Service Commission on or about 13th January 1958. It is pointed out that under Section 32(1)(a) of the Calcutta Municipal Act 1951, the Chairman of the Municipal Service Commission shall be a member of the State Public Service Commission. Since, on the relevant date Dr. A.T. Sen was no longer a member of the State Public Service Commission, he could not act as the Chairman of the Municipal Service Commission, and, therefore, his participation in that body on the 29-3-

1958 vitiated the proceedings and/or rendered its recommendations invalid. Upon a plain reading of the provisions mentioned above, it appears that this proposition is quite sound. The argument advanced against it is as follows : It is stated that as soon as Dr. A.T. Sen became a Chairman of the State Public Service Commission on the 16th November, 1954 his period of service was prolonged for another 6 years, commencing from that date. It is argued that as such, he was sufficiently qualified on 29th March, 1958 to be the Chairman of the Municipal Service Commission. I shall now proceed to consider whether this is a possible position in law Article 316(1) starts with the expression The Chairman and other members of a Public service Commission 'In the proviso however it has been laid down that as nearly as may be one-half of the "members" of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State. It will be noted that no distinction is made here between the Chairman and other members of a Public Service Commission. Surely, it is not intended to leave out the Chairman from the application of this proviso. In clause (2) also there is a restriction as to the number of years for which a 'member' of Public Service Commission shall hold office. Here also no distinction has been made between a Chairman and an ordinary member. If it is urged that the word 'member' does not include the Chairman we come to the impossible conclusion that, while there is a time limit for the holding of an office for an ordinary member of a Public Service Commission, there is no limit at all as regards the Chairman, who then could hold office indefinitely. Provisions of this article and that of article 319 undoubtedly are based on public policy. Article 316 limits the term of office of a member of the Public Service Commission and Article 319 prohibits the holding of public office by a member of the Commission after ceasing to be such member. The Court must take note of that public policy, although it should not allow it to influence the interpretations of the provisions of the Constitution where the wordings are plain and unambiguous. In the proviso to Article 316 there are provisions for resignation or removal from office of a member of a Public Service Commission. Here also, there is no mention of the Chairman as apart from ordinary members. Clause (3) lays down that persons who hold office as members of a Service Commission shall, on the expiration of their term of office, be ineligible for reappointment to that office. Here also there is no distinction made between the Chairman and an ordinary member. It is necessary to note the difference in the expression "expiration of his term of office" as used in Article 316 with the expression used in Article 319, namely "on ceasing to hold office". There are two ways in which the term of office of a member of a State Public Service Commission may expire, namely after 6 years of office, or upon attaining the age of 60 years, whichever is earlier. But a member may cease to hold office for various other reasons, viz., resignation or removal. It is significant that clause (b) of the proviso refers to the removal of a "member" of a Public Service Commission and provides that it should be in the manner provided in clause (1) or clause (3) of Article 317. Both clauses (1) and (3) of Article 317 deal with both the "Chairman or any other "member" of a Public Service Commission. Indeed the relevant articles speak of "Chairman or any other member" of a Public Service Commission or "the Chairman and other members of a Public Service Commission'. In my opinion, there can be no doubt whatsoever that under the

Constitution, the Chairman of a Public Service Commission is also a member. Indeed a person cannot be a Chairman of a Public Service Commission without being a member. If that is so, the outside limit of 6 years provided for holding of office by a member of the Public Service Commission, namely 6 years from the date when he enters upon his office or until he attains the age of 60, is an absolute limit so far as that particular Commission is concerned and affects both an ordinary member as well as the Chairman This is not only clear from the provisions of the Constitution but from the regulations made under the Provisions of Article 318 which defines a "member" of the State Public Service Commission as follows :

"Member means a member of the Commission and includes the Chairman thereof."

5. Mr. Das Gupta did not argue before us that the Chairman is not a member of the Public Service Commission and yet he argues that the office of the Chairman is "distinct" from the office of an ordinary member. In my opinion, this is an inconsistent stand and difficult to understand. If it is conceded that the Chairman is a member of the Public Service Commission, he at once comes within the mischief of Clause (2) of Article 316 which contains no words of exclusion in the case of the Chairman so far as the term of the office is concerned or resignation and removal. Then again, if it is argued that the office of a Chairman is not the office of a "member" or even if it is argued that the office of a Chairman is "distinct from the office of a "member" of the Public Service Commission, there is immediate difficulty because under Section 82(1)(a) of the Calcutta Municipal Act 1951 no person can act as a Chairman of the Municipal Service Commission unless he is a "member" of the Public Service Commission. If the Chairman of the Public Service Commission is not a member, or his office is distinct from that of a member, he is not qualified under Section 82 of the Calcutta Municipal Act to act as a Chairman of the Municipal Service Commission since under Section 82 (1)(a) a Chairma"shall be a member of the State Public Service Commission." It is said that this construction would raise difficulties in the interpretation of Article 319, Let us see whether this is so. We are concerned here with the question as to whether, if a member of a State Public Service Commission is appointed as a Chairman thereof, he acquires a new lease of life, that is to say, whether his period of service would again be counted as extending for 6 years from the date of appointment as Chairman. I can see no provision in this article to that effect. The only relevant clause is clause (d) which has been set out above. The first part of it says that a member other than the Chairman of the State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission. That position does not arise in the instant case. The second part provides that a member other than the Chairman of the State Public Service Commission shall be eligible for appointment as the Chairman of "that or any other State Public Service Commission." In other words, he can become the Chairman of the very State Public Service Commission of which he is a member. But does it mean that he can be a Chairman of the State Public Service Commission, even if he can no longer be a member under clause (2) of Article 316 ? In my opinion, the answer is obviously in the negative. Article 319 does not purport to lay down the period of office, either of an ordinary member or that of a

Chairman. The term of office is laid down in Article 316. It will be noted that the marginal note of Article 316 is - "appointment and term of office of members." Since in the body of Article 316, the term of office of both the Chairman and other members are provided for, it is clear that the Chairman is a member and the term of his office is provided for in Article 316. During that outside term of 6 years, he can cease to hold office for various reasons. Those are mentioned in the proviso to clause (2) of Article 316 and clause (3) of Article 317. A member may cease to hold office if he is adjudged as an insolvent or if in the opinion of the President he is found unfit to continue in office by reason of infirmity of mind or body. In such cases it is difficult to visualise that an ordinary member would be made the Chairman of the State Public Service Commission. But there are other instances, for example, if he engages in any paid employment outside the duties of his office or is interested or concerned in any contract or agreement with the Government or participates in the profits thereof etc. In such cases, if the disqualification is removed, it may be that there is no further objection to the person being appointed as the Chairman. But such appointment, would make a person both a member as well as a Chairman, because he cannot be a Chairman if he is not a member. The provisions of Article 316(2) will however continue to apply. There is no reason whatsoever for holding that such an appointment would give the Chairman a new lease of life for 6 years in the same Public Service Commission. If we are to attribute a new lease of life at all to a Chairman who becomes a Chairman of the Public Service Commission upon ceasing to be a member thereof then why restrict it to 6 years? If Article 316(2) does not apply, there is no restriction at all. A Chairman under those circumstances can hold office for an indefinite term. In my opinion, this was never contemplated by the Provisions of the Constitution. If a Chairman is not a member of the Public Service Commission or holds office distinct from that of a member, then he does not come under the proviso (a) of clause (2) of Article 316 and cannot resign from office. He cannot also become a member of the Municipal Service Commission. The regulations framed under Article 318 are also defective inasmuch as it has treated a Chairman and an ordinary member in the same category. The argument is somewhat like this: Under Article 319 "on ceasing to hold office as a member of a Public Service Commission" one can be made its Chairman. On the expiry of the term under Article 316(2) a member ceases to hold office and inasmuch as Article 319(d) allows a member in such a case to become a Chairman, therefore he cannot be controlled by the limitation as to the term contained in Article 316(2). In my opinion, this argument is not a valid one. Article 316 deals with the term of office of both the Chairman and an ordinary member. Article 319 does not deal with the term of office at all but deals with an entirely different subject namely, whether a member including a Chairman, upon ceasing to hold office can hold other public offices. It is not a question of making Article 319 subject to the provisions of Article 316. It is a question of allotting to them their respective functions and not permitting one to transgress into the province of the other.

6. For the reasons aforesaid, I am of the opinion that Dr. A.T. Sen had ceased to become a member of the State Public Service Commission on the expiry of 6 years from the date of his appointment as a member thereof, on 14th January, 1952. The fact that he was subsequently

appointed as a Chairman of the State Public Service Commission on the 16th November 1954 did not extend his term as a member for another 6 years from that date In other words, it did not exclude him from the operation of Art.

316(2). If, however, being a Chairman of the Public Service Commission made him hold an office, not that of a "member" or as 'distinct" from that of a member thereof, he was disqualified from acting as the Chairman of the Municipal Service Commission under Section 82 of the Calcutta Municipal Act, 1951 which provides that such a Chairma"shall be a member of the State Public Service Commission." The result is that on the relevant date, Dr. A.T. Sen was not validly acting as a Chairman of the State Public Service Commission or as Chairman of the Municipal Service Commission and his participation in the recommendation dated 29th March, 1958 has rendered it invalid.

### **Mitter, J.**

7. In this matter a rule was issued at the instance of the petitioner to show cause why a writ in the nature of mandamus should not issue directing the opposite parties 1 to 7 to rescind, recall, and/or forbear from giving effect to the list as per annexure "G" the recommendation as per annexure "H" and the resolution as per annexure "J" complained of in the petition and also to act and proceed in accordance with law and/or to show cause why the proceedings relating to the said list, recommendation and the resolution should not be quashed and a writ in the nature of certiorari issue therefor.

8. The matter relates to the filling up of the post of an Assistant Controller of Stores, Stores Department, Corporation of Calcutta, the petitioner's case being that he was a person eminently qualified for the post and that his name was wrongfully left out of the list of candidates recommended by the Municipal Service Commission of the Corporation of Calcutta for filling up the vacancy by the Standing Finance Committee of the Corporation. The petitioner's further complaint is that the opposite party No. 8 Nirmal Chandra Gupta was not a person properly qualified for recommendation to the post. He challenges the recommendation of the Municipal Service Commission on the ground that the respondent No. 3 was not competent to serve on the said Commission and in any event should not have taken part in the deliberations of the Commission because he was related to the respondent No. 8 through his wife.

9. The, petitioner is an employee of tin Corporation of Calcutta. The respondent No. 1 is the Corporation itself, the respondent No. 2 being its Standing Finance Committee; the respondent No. 3 is the Chairman, Municipal Service Commission and also Chairman of the Public Service Commission of the State of West Bengal; respondents Nos. 4 and 5 are members of the Municipal Service Commission while respondent No. 6 is the Commission itself; the respondent No. 7 is the Controller of Stores of the Corporation of Calcutta and respondent No. 8 is, clerk in the Stores Department of the Corporation.

10. The case of the petitioner as laid in the petition is as follows : He obtained a degree in

Science from the University of Calcutta in the year 1927 and entered the services of the Corporation of Calcutta as a clerk in its Stores Department in September 1936. He was promoted to the post of the Store Keeper in the year 1945 and has since then been working in the said capacity. The Corporation has 17 different stores each under the charge of a Store Keeper who is solely responsible for the stores kept under him and has to maintain an independent office with the help of various subordinates including clerks, sarkars, darwans and khalasis. In December 1956 he was appointed as an acting assistant controller of stores on the recommendation of the Controller' of Stores by the Standing Finance Committee, the respondent No. 2 to the petition and has since then been holding the said appointment. For sometime he also had to work as the Controller of Stores during the absence of the permanent incumbent in June, 1957. The Calcutta Municipal Act (33 of 1951) under which the Corporation of Calcutta is constituted as a body Corporate has various Standing Committees one of them being the respondent No. 2, the Standing Finance Committee. Under the powers delegated to it the Committee has inter alia, the power to recommend for appointment of officers and servants to sanctioned posts the maximum salary of which exceeds Rs. 750 per month. It has also the power to appoint officers and servants, suspend or dismiss them from posts the maximum salary of which is not below Rs. 250 but does not exceed Rupees 750 per month. In exercise of the said powers the respondent No. 2 prescribed qualifications for the post of Assistant Controller of Stores to be appointed permanently in the vacancy caused on the promotion of the permanent incumbent to the post of Deputy Executive Engineer, Water Works. At its meeting held on May 16, 1956 the said Committee resolved to recommend to the Calcutta Municipal Service Commission the qualifications and conditions necessary for the appointment to the post of Assistant Controller of Stores, Grade 300-20-400. They were inter alia :

- (1) A degree in Engineering with experience in handling and in purchase of stores or a degree of a recognised University with three years experience in handling and in purchase of stores;
- (2) Age not more than 35 years relaxable in me case of departmental candidates and;
- (3) security deposit in cash or G. P. Notes of Rs. 5,000 and a personal security of Rupees 2,500.

Under Section 85(i) of the Calcutta Municipal Act the Standing Finance Committee is required to hold consultation with the Calcutta Municipal Service Commission- for framing regulations for prescribing the qualifications for employment of Municipal officers and servants. The respondents 3, 4 and 5 are the members of the Commission constituted under Section 82 of the Calcutta Municipal Act, 1951, the respondent No. 3 is the Chairman of the said body. The respondent No. 3 had become a member of the State Public Service Commission on January 14, 1952. He became the Chairman of the said body on November 16, 1954. The Municipal Service Commission modified the qualifications for the post of Assistant Stores Controller and this was sanctioned by the State Government in October, 1956. The Municipal Service Commission considered the question of making acting arrangement for the post of the Assistant Controller of

Stores at its meeting held on December, 11, 1956. Thereafter the Controller of Stores by his report dated November 21, 1956 recommended the petitioner for appointment as an acting assistant controller of stores and the Standing Finance Committee by a resolution appointed the petitioner as temporary assistant controller of stores. Further on December 11, 1956 the said Committee resolved that the post should be filled up by departmental promotion. The Municipal Service Commission called for a list of persons from the Corporation of Calcutta eligible for getting promotion as Assistant Controller of Stores. The Controller of Stores while sending the list called for submitted his recommendation that the petitioner was the fittest person for the appointment. The Controller of Stores however failed to consider that the clerks in the Stores Department (the respondent No. 8 being one such) could not have the qualification of three years experience in the matter of purchase and handling of stores. The list of persons compiled by the Controller of Stores of candidates possessing prescribed qualifications for the post of Assistant Controller of Stores forms annexure "G" to the petition. It contains 12 names with the name of the petitioner at the top and the name of the respondent No. 8 as the last but one. According to the said list the petitioner had put in 21 years of service in the Corporation of Calcutta and was acting as an Assistant Controller of Stores at the relevant time while the respondent No. 8 who was a graduate in Science had put in 16 years service and was working as a clerk in the said department. The list contains names of seven persons who were acting as Stores Keepers and five who were acting as clerks. On March 11, 1958 the Municipal Service Commission comprising of the respondents 3, 4 and 5 called the petitioner and two others including the respondent No. 8 at an interview and thereafter recommended the said respondent to the exclusion of the petitioner for appointment by the Standing Finance Committee. The petitioner's complaint is, first with regard to the respondent No. 3 functioning as the Chairman of the Commission and secondly on the ground that he was not qualified to take part in the deliberations of the Commission when the respondent No. 8 a relation of his through his wife was before the Commission seeking for the appointment to the post of the Assistant Controller of Stores.

11. With regard to the first point the charge is that under Article 316 of the Constitution of India the respondent No. 3 could only hold the office of a member of the State Public Service Commission for six years from January 14, 1952 and as the recommendation was made after the expiry of six years from the said date namely March 11, 1958 the Municipal Service Commission was not properly constituted under the law as the said respondent ;must be -deemed to have vacated his office as a member and/or Chairman of the Municipal Service Commission on January 14, 1958.

12. Under Section 82(1) of the Calcutta Municipal Act the State Government must constitute a Municipal Service Commission consisting of a Chairman who shall be a member of the State Public Service Commission deputed by such commission from time to time and two members one of whom shall be nominated by the State Government and the other by the Corporation. The Public Service Commissions of the country function under Chapter II of Part XIV of the Constitution containing Articles 315 to 323. Under clause (1) of Article 315 the Union and each

of the States must have a Public Service Commission. Clause (2) envisages provisions for the appointment of a Joint State Public Service Commission to serve the needs of more than one State. The appointment and term of office of the Chairman and other members of the Public Service Commission are provided for in Article 316. Clause (1) thereof lays down that "the Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President and in the case of a State Commission, by the Governor of the State." Clause (2) lays down that

"a member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years and in the case of a State Commission or a joint Commission, the age of sixty years, whichever is earlier :

Provided that -

(a) a member of a Public Service Commission may, by writing under his hand addressed, in the case of the Union Commission or a Joint Commission to the President and in the case of a State Commission, to the Governor of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of Article 317. Clause (3) of Article 316 lays down that "a person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for reappointment to that office." Clause (1) of Article 317 provides for removal from the office of the Chairman in any other member of a Public Service Commission on the ground of misbehaviour. Clause (3) empowers the President to remove from office the Chairman or any other member of a Public Service Commission on several grounds viz., in solvency, acceptance of paid employment outside the duties of his office, or infirmity of mind or body. Article 319 runs as follows : -"On ceasing to hold office :-

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State."

On behalf of the petitioner it was said that several conclusions followed from the above provisions of the Constitution, namely :-

- (1) The Chairman was a member of the Public Service Commission in common with its other members;
- (2) Neither a Chairman nor any other member of a Public Service Commission could hold office for a term exceeding six years from the date on which he became a member of the Commission subject to the limitation as to age;
- (3) On ceasing to hold office the Chairman of the State Public Service Commission became ineligible for any employment either under the Government of India or under the Government of a State other than the post of the Chairman or a member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission;
- (4) On ceasing to hold office a member other than the Chairman of a State Public Service Commission was eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State.

On the strength of the above it was contended that no matter if a person who was for some-time a member of a State Public Service Commission became its Chairman afterwards the total period of office which he could hold in the Commission was six years from the commencement of his membership. In other words, no one could function on a State Public Service Commission for more than six years. It was said that the principle underlying the provisions in the Constitution quoted above is that a member of a State Public Service Commission should not be able to hold office for a period longer than six years as public policy requires that the members of such a Commission should not be in office for so long a period that their familiarity with others might warp their independence. Such a policy is a matter of inference and in my view such inference ought not to be drawn unless the plain meaning of the words of the Constitution leads to it. I, however, feel unable to accept any canon of construction which directs the disregard of the meaning of plain words of a statute or Constitution and interpretation thereof in the light of a subjacent policy, Article 316(2) no doubt prescribes for a period of six years for the office of a member of a Public Service Commission. There is, however, no bar to his becoming a member of such a Commission of another State or a member of the Union Public Service Commission under Article 319(d) notwithstanding that he may already have completed six years of office unless he comes under the age bar in clause (2) of Article 316. Although a Chairman is a member of a State Public Service Commission just as the other members are, there is some distinction between the office of a Chairman and that of the other members. Leaving out of account the total period of office to be held it is open to a State Government to appoint a member of a State Public Service Commission its Chairman on his ceasing, to hold office as a member by

resignation or by efflux of 6 years but once a Chairman ceases to hold office say by resignation - he cannot be appointed a member of that Commission even if he has not completed six years in office. A member of a State Public Service Commission does not automatically become its Chairman by reason of his seniority on the retirement of a former Chairman. A person can become a Chairman only on appointment by the Governor of the State under Article 316(1). As a person cannot hold two posts at the same time it must be held that on appointment as a Chairman a person ceases to hold office as an ordinary member of the Commission. It cannot be gainsaid that there is difference in status between that of a Chairman and an ordinary member besides the difference in salary. As a person cannot function as a Chairman unless he is appointed expressly for the purpose it follows that on being appointed the Chairman of a Public Service Commission a person who was a member ceases to hold the office of an ordinary member although for many purposes he must be considered to be a member of the said Commission. We must read Article 316 along with the other articles including Article 319 so that they harmonise with one another. I do not see why Article 316(2) should control Article 319. If it is possible to arrive at an interpretation which gives effect to both we should adopt that construction. In my view the expressio "ceasing to hold office' in Article 319 is referable to any situation whereby a person who held an office before discontinues to hold it, may be by effluxion of the period of office or resignation or by appointment to another office. The Constitution does not seem to require that a member of a State Public Service Commission should resign his office before he can be appointed a member of the Union Public Service Commission. It would follow from this that by his appointment as a member of the Union Commission he would be held to have ceased to hold his office as a member of a State Public Service Commission. I see no reason why a person who resigns his office of a member of a State Public Service Commission, say at the end of a year after his appointment, on personal grounds can not be appointed to the office of the Chairman of that Commission and if he is so appointed why his term of office should not be six years from the date of the fresh appointment under clause (2) of Article 316. Similarly I see no reason why a person who completes a period of six years in office as a member of a Public Service Commission cannot be appointed Chairman of the said commission for a fresh term of six years, subject to the limitation as to age, under Article 319(d). In my opinion, if this is possible after completion of six years of office it is equally possible for a person to hold the office of a member of a State Public Service Commission for a period less than six years before his appointment as Chairman of that Commission. In my view, therefore, the first ground of objection raised by the petitioner is not one of substance and ought to be rejected.

13. So far as the second ground is concerned no doubt if we could satisfy ourselves on the affidavits that the respondent No. 3 was so related to the respondent No. 8 as to justify a reasonable apprehension in the minds of others that it would be difficult for him to act impartially, we would be inclined to hold on grounds of natural justice that it was not proper for him to function as a Chairman of the Municipal Service Commission when the respondent No. 8 was a candidate for a post under the Corporation of Calcutta. Paragraph 30 of the petition which contains the charge in this respect is evasively vague the only allegation being that the

respondent No. 8 is related to Dr. A.T. Sen through his wife. What the exact relationship is not divulged to the Court and the information about the relationship is said to have been received by the petitioner from the respondent No. 8 himself. Unfortunately there is no affidavit of the respondent No. 3 denying the vague allegation but Bibhuti Bhutan Bose, a responsible officer of the Corporation, who has affirmed the affidavit-in-opposition on behalf of the Corporation of Calcutta, its Standing Committee and the Controller of Stores, states that "the respondent No. 8 is not related to the respondent No. 3 through his wife or otherwise or at all." This averment is based on information derived from the respondent No. 3. The respondent No. 8 in his affidavit-in-opposition has denied that he is related to the respondent No. 3 through his wife. In the affidavit-in-reply there is a mere denial of the statements made in the affidavit-in-opposition. No attempt is made even at this stage to show the nature of the relationship between the respondent No. 8 and the wife of the respondent No. 3. If the exact relationship had been stated the Court would have been in a position to form an opinion as to whether the situation was such in which the respondent No. 3 could not be expected to act impartially. If for instance the respondent No. 8 is a distant cousin of the wife of respondent No. 3 we can hardly take the view that the relationship made it improper for the respondent No. 3 to function as a Chairman of the Municipal Service Commission in this particular case. In my opinion, the second objection also is without any foundation and the rule ought to be discharged.

### **Chatterjee, J.**

14. This is an application under Article 226 of the Constitution for a writ in the nature of mandamus commanding the respondent Nos. 1 to 7 to act in accordance with law after recalling the list contained in annexure "C" to the petition, a recommendation of the Municipal Service Commission and after rescinding the resolution of the Finance Standing Committee as contained in annexure 'T' to the petition.

15. The petitioner is a graduate in Science who obtained his degree from the Calcutta University in the year 1927. He entered the service of the Corporation as a clerk in the Stores Department in 1936. In 1945, he was promoted to the post of Store Keeper and furnished a security for Rs. 1600. The petitioner was appointed an Acting Assistant Controller of Stores on the recommendation of the Controller on the 11th December, 1956 and continued to act as such till the 22nd January, 1958.

16. The respondent No. 1 is the Corporation of Calcutta. Under the Calcutta Municipal Act there are various Standing Committees and one of them is known as Standing Finance Committee. The Standing Finance Committee has power to recommend qualifications for appointment of officers concerned and to sanction posts, the maximum salary of which exceeds Rs. 750 per month. It has other powers with which we are not now concerned. The Standing Finance Committee prescribed qualifications for the post of an Assistant Controller of Stores and by its resolution dated the 16th May, 1956 it recommended to the Calcutta Municipal Service

Commission the qualification for the post of an Assistant Controller of Stores.

17. The Calcutta Municipal Service Commission is constituted under the provision of Section 82 of the Calcutta Municipal Act. The Respondents Nos. 3, 4 and 5 were the members of the Commission at the relevant time. Under the provision of Section 82, the Municipal Service Commission is constituted; it consists of a Chairman, who 'shall be' a member of the State Public Service Commission and two Members, one of whom shall be nominated by the State Government and the other by the Corporation. The respondent No. 3 Dr. T.A. Sen was appointed as Chairman of the Municipal Service Commission for the relevant period.

18. Dr. Sen was appointed as a Member of the State Public Service Commission on the 14th January, 1952. He was appointed as Chairman of the State Public Service Commission on the 16th November 1954.

19. The Municipal Service Commission consisting of the respondent Nos. 3, 4 and 5 interviewed the petitioner, Shri Nirmal Chandra Gupta, who is respondent No. 8 among other 'persons. The said Commission consisting of the aforesaid respondents Nos. 3, 4 and 5 recommended the case of Nirmal Chandra Gupta to the exclusion of the petitioner. The Standing Finance Committee appears to have accepted the recommendation and it was apprehended by the petitioner that the said Nirmal Chandra Gupta would be appointed; the petitioner therefore moved this court for the aforesaid writ of mandamus and the present Rule was thereupon issued. The Rule came up for hearing before the Hon'ble Mr. Justice Sinha on the 8th February, 1961 and His Lordship was pleased to refer the matter to the Special Bench. The question is whether on the relevant date Dr. A.T. Sen ceased to be a member of the Public Service Commission under the provision of clause (2), Article 316 of the Constitution, as six years of service had already elapsed. Therefore, it is urged that Dr. Sen was not a member of the Commission at the date of the interview. But there was a decision of the Hon'ble Mr. Justice Mitter in Civil Revn. Case No. 2686 of 1958 (Cal). wherein it was decided that the term of a Chairman begins from the date of his appointment as a Chairman. Sinha, J. found difficulty in agreeing with the decision of Mitter, J. and, the matter has thus been referred to this Special Bench.

20. Mr. Nani Coomer Chakravorti on behalf of the petitioner has urged that Dr. Sen was not a member of the Commission at the date of the interview, or at the date of the recommendation and therefore, the interview was not by a properly constituted Commission nor was the recommendation that of a properly constituted Municipal Service Commission (ii) Nirmal Chandra Gupta was a relative of Dr. A.T. Sen through his wife and Dr. Sen should not have interviewed him at all and should not have recommended his name at all. (iii) In any case, the respondent No. 8, Nirmal Chandra Gupta is not a person who satisfied the qualification prescribed by the Standing Finance Committee and therefore, he was not a fit person to be interviewed nor a fit person to be recommended. Mr. Bijan Behari Das Gupta appears for the aforesaid (respondent) opposite party Nos. 1 and 7, namely the Corporation and the Controller of

Stores, Corporation of Calcutta. Neither Dr. A.T. Sen nor the other members of the Commission nor the Municipal Service Commission which is respondent No. 6 has entered appearance or contested the matter Respondent No. 8, Nirmal Chandra Gupta, whose name has been recommended, has appeared and Mr. Prodyut Kumar Banerjee has appeared on behalf of the respondent No. 8.

21. According to Mr. Das Gupta, Dr. A.T. Sen was a member of the Commission at the date when he interviewed the said candidates or at the date when he recommended Nirmal Chandra Gupta's name. He also says that there is sufficient evidence that Nirmal was no relation of Dr. Sen through his wife and further Nirmal Chandra, respondent No. 8, was a person who satisfied the qualification as recommended by the Standing Finance Committee.

22. The first question for determination is whether Dr. Sen was a member of the Municipal Service Commission at the date of interview or at the date of recommendation.

23. It is not disputed that under Section 82 of the Act, the State Government constituted a Municipal Service Commission consisting of a Chairman, who was a member of the State Public Service Commission and was deputed by such Commission. It is not further disputed that Dr. Sen was appointed a member of the State Public Service Commission on 14th January, 1952 and he was appointed the Chairman of the said Commission on the 16th May, 1954. It is not stated in the petition as to whether before Dr. Sen was appointed a Chairman, he resigned or otherwise ceased to be a member of the Public Service Commission, at the date of his appointment as a Chairman. In the affidavit-in-opposition on behalf of the opposite parties 1, 2 and 7, it was stated by Shri Bibhuti Bhusan Bose who affirmed an affidavit on behalf of the respondent Nos. 1, 2 and 7 that he had no knowledge as to whether the respondent No. 3 had ceased to be a member of that Commission at the date of his appointment as Chairman. There is another affidavit on behalf of the respondent No. 3, Dr. A.T. Sen and the respondent No. 6, the Municipal Service Commission by B.C. Chakrabortti who is the Secretary of the Municipal Service Commission who has stated as follows :-

"..... Art. 319 of the Constitution has provided for two different offices for each Public Service Commission, namely, the office of the Chairman and the office of the members other than the Chairman..... a person who is an ordinary member of the Commission on being appointed to and on entering upon his new office of Chairman will automatically cease to hold his previous office of ordinary member of that Commission."

It has been stated that a person cannot hold the office of an ordinary member as well as that of a Chairman simultaneously. But he never affirmed that Dr. Sen did ever resign his office or cease to be a member of the Public Service Commission before his appointment as a Chairman of the Commission. On the other hand his definite statement is on the appointment of Dr. Sen as Chairman he automatically ceased to be an ordinary member of the Public Service Commission.

We, therefore, see that the case of both the parties is that Dr. Sen did not cease to be an ordinary member before he was appointed a Chairman of the Public Service Commission but it is a case of the respondent that on his being appointed a Chairman he 'automatically ceased to be an ordinary member' and therefore he was fit to be appointed as a Chairman under Article 319(d) of the Constitution.

24. The Public Service Commission is constituted under Chapter II Part XIV of the Constitution. Part XIV refers to the "Service under the Union and the State". That part has two Chapters. Chapter I relates to 'service', Chapter II relates to 'Public Service Commission'. The first Article of that Chapter is Article 315. That provides for the constitution of Public Service Commission of the Union and for each State. The next Article is Article 316 which deals with the "appointment and terms of office of the members". The third Article is the Article 317 which deals with "Removal and suspension of a member of a Public Service Commission" Article 318 empowers the President or the Governor of a State to make regulations for their conditions of service among other things, Article 319 deals with "Prohibition as to holding of office by members of the Commission on ceasing to be such members". Article 320 deals with functions of the Commission. Articles 321 to 323 refer to other matters relating to the Commission and we are not much concerned with those Articles.

25. Mr. Nani Coomer Chakravorti has referred to Article 316(2) which provides as follows :

"A member of the Public Service Commission shall hold office for a term of 6 years from the date on which he enters upon his office or until he attains, in the case of State Commission, the age of 60 years whichever is earlier." The said tenure of service is limited in two ways. One is by resignation and the other by removal. According to Mr. Nani Coomer Chakravorti, the Chairman of the Public Service Commission because Article 316(1) provides that "a Chairman and other members of the Public Service Commission shall be appointed", (sic) Hence, the Chairman by Article 316 is a member of the Public Service Commission. Hence, it is urged by Mr. Chakravorti that the tenure of service of a Chairman who joins as a member of the Public Service Commission will continue for 6 years from the date of appointment as a member or until the age of 60 years is attained by him whichever is earlier. Dr. Sen was appointed a member on the 14th January, 1952 and therefore, his tenure of service could not have continued beyond 13th January 1958 in any case. According to Mr. Chakravorti, if an ordinary member be appointed a Chairman, the tenure is not extended nor he has a new term from the date of his appointment as Chairman because he continues to be a member even after his appointment as Chairman.

26. The argument of Mr. Das Gupta on the other hand is the office of the Chairman is different from the office of an ordinary member. Therefore, the term of 6 years would begin "from the date on which he enters upon his office". It is urged that Dr. Sen entered his office as Chairman on the 16th November, 1954 and therefore he continued to be a Chairman even at the date when he

interviewed the candidates aforesaid as also on the date of recommendation made by the Commission accepting the name of the respondent No. 8.

27. We have, therefore, to interpret Article 316(2) and construe the meaning of the phrase 'his office' in the context of Part XIV Chapter II of the Constitution and particularly with reference to Article 316 to Article 319 of the Constitution Article 316(1) provides for the appointment of "the chairman and other members of the Public Service Commission". It is urged by Mr. Chakravorti that the use of the phrase "the Chairman and other members of the Public Service Commission" implies that the Chairman is a member of the Commission. In support of that he also refers to the Regulations under Article 318 of the Constitution. Regulation (2) defines "Member" as follows :

"Member means a member of the Commission and includes the Chairman thereof'. Mr. Das Gupta, on behalf of the respondent does not contest the proposition that a Chairman is a member of the Commission. But according to Mr. Das Gupta he is distinct from the other members and the mentioning of the Chairman and other members of the Public Service Commission in Article 316 and most other Articles suggest, according to Mr. Das Gupta, that the office of the Chairman is different from the office of the ordinary members of the Public Service Commission. It is true, Article 316(1) refers to the "Chairman and other members of the Public Service Commission" whereas Article 316(2) refers to "a member of the Public Service Commission". Article 316(3) also refers to "a person who holds office as a member of the Public Service Commission", Article 317(1) however refers to the "Chairman and any other member of the Public Service Commission" Articles 317(2), 317(3) and 317(4) also refer to the "Chairman or any other member of the Public Service Commission". Article 318 does not refer specifically to the Chairman and other members but refers to a 'member of the Public Service Commission". Article '319 refers to the Chairman of a Commission and also to other members of the Public Service Commission. This analysis of the relevant Articles, according to Mr. Das Gupta, suggests that there are two different offices - the office of the Chairman and the office of an ordinary member of the Commission.

28. Article 316(1) says : The Chairman and other members of the Public Service Commission shall be appointed . . ." It is urged if the Chairman did not hold an office distinct from that of "other members" why should he (the Chairman) be specifically referred to ? This provision suggests - it is urged - two offices one a Chairman and the other a "member". If it was specifically provided that "the members of the Public Service Commission would be appointed, what would be the result ? It would certainly do away with the difficulty with which we are confronted; but there would be another trouble. Such provision might mean the members appointed will choose their Chairman. The framers of the Constitution desired that the Chairman shall not be elected but shall be appointed. Hence they provided that the Chairman shall be appointed and the members also shall be appointed or in other words "The Chairman and the other members of the Public Service Commission shall be appointed....." That is why the

Chairman has been specifically referred to in Article 316(1) and there is no question of a Chairman being elected by the members. But the result of the aforesaid provision for appointment is a suggestion that the Constitution contemplates two offices. What did the framers do to do away with such suggestion ? Article 316(2) refers to the tenure of service; it should have referred to the tenure of service of the Chairman and of the other members if two distinct offices were meant to be created by Article 316(1). But the marginal note refers to the "terms of office of members" as if the Chairman has no term. The Article is : Article 316(2) "A member of the Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office."

The aforesaid provision is not accidental but there is a deliberate departure from the language used in Article 316(1). There is a term of office for the members but none for the Chairman qua Chairman. The only term that the Chairman may expect to get is as a member.

29. Then follows sub-article (3) :-

'A person who holds office as a member of a Public Service Commission on the expiration of his term of office be ineligible for re-appointment to that office.

Here again the framers of the Constitution omitted to refer to the Chairman and not accidentally. No distinction has been made between the person who holds the office of the Chairman and the person who holds the office of a member. They suffer equally but only as a member. We shall discuss the matter again when we come to Article 319(b) and (d).

30. Article 317 refers to the removal and suspension of the Chairman and the members of the Public Service Commission": Article 316(1) provides the appointment of the Chairman and other members, The Chairman and the other members being appointed, necessarily there must be some provision for the removal and suspension of all persons appointed under Article 316(1); otherwise, a question may arise whether the Chairman should vacate his office if the other members have no confidence in him. In order to do away with such doubt, Article 317(1) refers to the Chairman and other members of the Public Service Commission. Further, there is an appointing authority, there should also be authority- for removal and suspension and a procedure for removal and suspension. Article 317 refers to the removal and suspension of persons appointed under Article 316(1). Necessarily, therefore, Article 317 must refer to the same persons who have been appointed under Article 316(1). Hence, as a corollary to Article 316(1), Article 317 refers to the 'Chairman' as also to 'any other member of the Public Service Commission'.

31. Article 319 deals with prohibition as to holding of office by the members of the Commission on ceasing to be such members. The marginal note, however, suggests that no distinction has been made between the Chairman and other members of the Commission. That note refers to 'a

prohibition as to holding of office by the members of the Commission'. This again suggests that the Chairman is a member. Article 316(1) refers to the appointment of the 'Chairman and other members of the Commission'. Necessarily, therefore provision has been made as to prohibition of the Chairman and the other members to hold certain office. Because of the specific reference in Article 316(1) regarding the appointment of the Chairman, the framers of the Constitution made specific provision for the removal of the Chairman in Article 317 and with the same scheme in mind, the framers of the Constitution laid down the prohibition with regard to Chairman as also with regard to other members. Therefore, because the Chairman was not intended to be elected but because the Chairman was intended to be appointed, Article 316(1) makes a specific reference to Chairman and other members; specific provision has to be made for the removal of the Chairman and other members; that is in Article 317. Similarly, specific provision has been made prohibiting the persons appointed under Article 316(1) from holding offices; that is Article 319. Article 319 relates to certain prohibition as to holding of office on ceasing to be a member. Article 319 was not intended to define or modify the tenure of service. It refers to consequence "on ceasing to hold office". Article 319 is therefore no guide to interpret. Article 316(2) which defines the tenure of the service; the conditions of service are to be made by the President or the Governor under Article 318. Hence, Article 316 refers to appointment and tenure. Article 317 relates to removal and suspension and Article 318 refers to conditions of service.

32. Because the Commission is authority for all responsible appointments under the Union or the State, it was found desirable that on ceasing to be members they would not hold any office under the State or the Union. That general rule is in Article 319. But the framers of the Constitution thought there should be some relaxation in some cases to the general rule laid. Hence, Article 319(a) provides for absolute prohibition and no relaxation, Article 319(b) provides for prohibition with some amount of relaxation of such prohibition. Article 319(c) refers to such prohibition but more relaxation. Utmost relaxation has been made in Article 319(d) but still there is prohibition.

33. In this Article, the Chairman and the members have been differently treated because the rules of relaxation apply to them differently. This article applies only when the tenure ends. This Article has no application if during his tenure of office, a member is appointed a Chairman.

34. Article 316(2) provides that a member of the Public Service Commission shall hold office for a term of six years from the date on which he enters upon 'his office'. Grammatical meaning is as follows :

"A member of the Public Service Commission shall hold office for a term of six years from the date on which that member of the Public Service Commission enters upon the office of a member of the Public Service Commission."

If we now refer to the definition of the word 'member' as in the regulation. Article 316(2) will

read as follows :

"A member of the Commission (including the Chairman) shall hold office for a term of six years from the date on which that member (including the Chairman) enters the office of a member."

This would mean that a Chairman as a member, shall hold office for a period of six years from the date on which he first enters his office. Hence, if a member during his term as an ordinary member be appointed a Chairman his tenure as a member would include his tenure as Chairman-member as well. Therefore, the member who is appointed subsequently a Chairman would not begin to hold a new office but would continue to hold the same office of the member whether he is a Chairman or not. If a person who is not a member is appointed a Chairman he will have a tenure of service for six years because he is a member. But if a member is appointed as a Chairman he merely continues as a member and there is no question of new term as a Chairman because a Chairman qua Chairman has no term at all.

35. If it was the intention of the framers of the Constitution that the Chairman should have a different tenure beginning. From the date of his appointment as a Chairman nothing prevented the framers of the Constitution from using the same language as in Article 316(1) and in that case again Article 316(2) would read as follows :

"A Chairman and any other member of the Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office as such".

36. Unless the phrase "as such" was added after the clause "he enters his office", the Chairman could not have a different term as a Chairman. But we cannot add the phrase "as such" and then interpret.

37. Further if the Chairman has a different office from the office of a member, Article 316(2) does not provide for the tenure of service of the Chairman. Article 316(3) does not make him ineligible for re-appointment to that office. The result would be Article 316(3) would at once conflict with Article 319(b). Article 316(3) does not refer to the Chairman. Hence, the bar under Article 316(3) would not affect the Chairman. But under Article 319(b) on releasing to hold office, the Chairman shall not be eligible for any other appointment except the appointment referred to in Article 319(b).

38. If we now refer to the regulations we shall find that the Chairman under regulation (4) will get higher salary but there would be no provision for leave or for pension or for travelling allowance or for recess or for provident fund. In other words the Chairman would have no conditions of service and no tenure of service. This would be absurd.

39. If we again refer to Article 318 which empowers the Governor to determine the number of the members of the Commission and their condition of service, we find that that Article makes no mention of the Chairman. The result would be if the Chairman holds a distinct office from the office of the member. Article 318 should not apply to him. This could not be the intention. Article 318 refers to the members of the Public Service Commission and the word member includes the Chairman. Hence, the Chairman is a member of the Public Service Commission. The condition of service of the Chairman is the same as that of any other member of the Commission except that he draws a higher salary. The regulation relating to leave, pension, provident fund, travelling allowance or recess does not refer to Chairman qua Chairman but only as a member. The definition of the word 'member' in the regulation help to clarify the matter. The Chairman has got no tenure under the Constitution. As he is a member, his tenure begins as a member; if he be appointed a Chairman, his tenure continues only as a member. No new tenure, no new office was ever intended by the framers of the Constitution. Article 316(1) refers to the Chairman and other members, for the purpose primarily that the other members will have no right to elect a Chairman but the Governor will have the right to appoint a Chairman; the provisions under Articles 317 and 319 are merely consequential to the provision of Article 316(1); Article 319 relates to prohibition o"ceasing to hold office". ‘

40. The office of the Public Service Commission is a very important office because it controls all services of the State or the Union which are of the better types The framers of the Constitution found danger in giving a second term to its members and that may be the reason why they had not provided for a different tenure for a Chairman but the tenure of service of the Chairman is the tenure of a member.

41. It is next urged by Mr. Chakraborty that no member can be appointed a Chairman under Article 319 unless he ceases to be a member. When Dr. A.T. Sen was appointed a Chairman he did not cease to be an ordinary member before, such appointment, Mr. Das Gupta urges on appointment as a Chairman, Dr. Sen ceased to be an ordinary member. The argument contradicts the definition of the word 'member in the regulation because a Chairman continues to be a member. It is also inconsistent with the provision of Article 316(1). An ordinary member on ceasing to be a member may be appointed a Chairman. But that does not mean that when an ordinary member is appointed a Chairman he ceased to be a member; this argument leads to the result that the effect of being appointed a Chairman, is cessation of membership. That is contradictory to the Constitution and the regulation and such interpretation would lead to the absurd result that Article 316(2), (3) and Article 318 do not refer to the Chairman.

42. It is urged that Article 319 recognises that there are two offices in the Commission; but the purpose to include that Article was to define prohibition and relaxation; to achieve that purpose it was necessary to state that a member other than the Chairman may on ceasing to hold office be appointed a Chairman. The provisions in Article 319 do not control the provisions in Articles 316 and 318; these Articles may appear to suggest two offices - one of the Chairman and the other of an ordinary member. But this is a specific provision for defining the scope of prohibition

on cessation of office and was not intended to control the terms of office as in Article 316(2) or the conditions of a service as in Article 318. Article 319 merely enacts the scope of prohibition and exceptions. Having considered all aspects, we hold Dr. A.T. Sen, could not be considered to be a member of the Public Service Commission at the date of the interview in question or at the date when the recommendation was made by that Commission.

43. We would now refer to Section 82(1)(n) of the Municipal Act. We find that the Chairman shall be a member of the State Public Service Commission; if the office of the Chairman of the State Public Service Commission is different from the office of the Chairman of the said Public Service Commission under Section 82(1)(a) of the Calcutta Municipal Act, 1951 the Chairman of the State Public Service Commission could not be appointed a Chairman of the Municipal Service Commission, because it specifically refers to a member of the said Public Service Commission and excludes the Chairman if the Chairman holds a different office. If that interpretation is given, the result is worse. Dr. A.T. Sen was disqualified to be Chairman of the Municipal Service Commission from the date of his appointment as Chairman of the State Public Service Commission and in that case as well neither the interview nor the recommendation would be proper.

44. The next question in support of the Rule is that only one of the members was not qualified to be a member at the relevant time. There were two other members. The question is whether these other members constituted the Municipal Service Commission. Section 82 provides that the State shall constitute a Municipal Service Commission consisting of a Chairman and two other members; therefore there is no question of a Municipal Service Commission being constituted with one or more members and no Chairman. If there has been some rule or some provisions for the constitution of the Commission with two members, the matter would be different. It is clear that the Municipal Service Commission is to consist of a Chairman and two members. There is no scope for doubt that no two members could constitute the Commission within the meaning of Section 82. Therefore, the result is that there was no interview by a properly constituted Municipal Service Commission and there was no recommendation by a properly constituted Municipal Service Commission.

45. The next question is whether Mr. Nirmal Chandra Gupta was a relative to Dr. A.T. Sen through his wife ? Dr. A.T. Sen is a party to the proceeding and has not sworn any affidavit. The Secretary, Municipal Service Commission has sworn in an affidavit saying that he has been informed by Dr. Sen that Nirmal Chandra Gupta was no relation of Dr. Sen through his wife. This is defective in two ways. The Secretary has not said that he is no relation of Dr. Sen but merely stated he is no relation through his wife; this denial is not sufficient. Further that best evidence is available namely an affidavit of Dr. Sen and which is not supplied by a party to the proceeding. We cannot hold that the affidavit of B.C. Chakraborty, Secretary of the Municipal Service Commission is sufficient. The third point is whether Nirmal Chandra Gupta was qualified candidate or not. We do not propose to express any opinion for the reason that that is a

matter which the Municipal Service Commission may have yet to decide hereafter.

46. In my opinion, therefore, the Rule should be made absolute.

47. Order Of The Court: - The Rule is made absolute and an appropriate writ be issued directing the Municipal Service Commission to withdraw its recommendations dated 29-3-1958 and treat the interview made on 11th March, 1958 as of no effect and to act now in accordance with law and an appropriate writ directing the respondents Nos. 1 and 2 not to give effect to the said recommendation. The cost of the rule should be paid by the opposite party no. 1.

48. The hearing fee is assessed at three gold mohurs.  
Rule made absolute.