

**PUNJAB AND HARYANA HIGH COURT**

Uttam Singh

Vs

Kirpal Singh

Election Petition No. 27 of 1972

(Bal Raj Tuli, A.D. Koshal, Prem Chand Jain, Man Mohan Singh Gujral and Bhopinder Singh Dhillon, JJ.)

03.03.1975

**ORDER**

**Bal RajTuli, J.**

1. A Division Bench has referred the following question of law for determination by this Bench :-

"Whether the restriction placed by regulation 25(4) of the Life Insurance Corporation of India (Staff) Regulations, 1960, framed under Section 49(2)(b) and (bb) of the Life Insurance Corporation Act debarring the employees of the Corporation from taking part in any election does or does not amount to a disqualification for begin chosen as a member of the Punjab Legislative Assembly within the meaning of Sub-clause (e) of clause (1) of Article 191 of the Constitution."

Regulation 25(4) of the Life Insurance Corporation of India (Staff) Regulations, 1960 (hereinafter referred to as the Regulations), which places the restriction reads as under :-

"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) an employee qualified to vote at such election may exercise his right to vote but, where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;

(ii) an employee shall not be deemed to have contravened the provisions of this regulation by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force;

(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."

2. On behalf of the respondents, it is submitted that this regulation prescribes a disqualification for an employee of the Life Insurance Corporation (hereinafter referred to as the Corporation) from being chosen or for being a member of the Legislative Assembly of the State as it has been made under a law made by Parliament, that is Life, Insurance Corporation Act, 1956 (hereinafter referred to as the Act).

3. The Act was enacted to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. The Corporation has been established under Section 3 of the Act. It is a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property, and may be its name sue and be sued. Original capital of the Corporation was Rupees five crores which was provided by the Central Government after due appropriation by Parliament. Section 6 states the various functions of the Corporation and is in the following terms :-

"6(1) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the general duty of the Corporation to carry on life insurance business, whether in or outside India, and the Corporation shall so exercise its powers under this Act as to secure that life insurance business is developed to the best advantage of the community.

2. Without prejudice to the generality of the provisions contained in Sub-section (1), but subject to the other provisions contained in this Act, the Corporation shall have power.

(a) to carry on capital redemption business, annuity certain business or reinsurance business in so far as such re-insurance business appertains to life insurance business;

(b) subject to the rules, if any, made by the Central Government in this behalf, to invest the funds of the Corporation in such manner as the Corporation may think fit and to take all such steps as may be necessary or expedient for the protection or realisation of any investment; including the taking over and administering any property offered as security for the investment until a suitable opportunity arises for its disposal;

(c) to acquire, hold and dispose of any property for the purpose of its business;

(d) to transfer the whole or any part of the life insurance business carried on outside India to any other person or persons, if in the interests of the Corporation it is expedient so to do;

(e) to advance or lend money upon the security of any movable or immovable property or otherwise;

(f) to borrow or raise any money in such manner and upon such security as the Corporation may think fit;

(g) to carry on either by itself or through any subsidiary any other business in any case where such other business was being carried on by a subsidiary of an insurer whose controlled business has been transferred to and vested in the Corporation under this Act;

(h) to carry on any other business which may seem to the Corporation to be capable of being conveniently carried on in connection with its business and calculated directly or indirectly to render profitable the business of the Corporation.

(i) to do all such things as may be incidental or conducive to the proper exercise of any of the powers of the Corporation;

3. In the discharge of any of its functions the Corporation shall act so far as may be on business principles."

Section 7 provides for the transfer of assets and liabilities of existing insurers carrying on controlled business, to the Corporation. Section 21 provides that Corporation shall be guided, in the discharge of its functions under the Act, by such directions in matters of policy involving public interest as the Central Government may give to it in writing and the decision of the Central Government as to whether any question relates to a matter of policy involving public interest or not, shall be final. Section 23 provides for the employment of the staff by the Corporation and is in the following terms :-

"23(1) For the purpose of enabling it to discharge its functions under this Act, the Corporation may employ such number of persons as it thinks fit.

2. Every person employed by the Corporation or whose services have been transferred to the Corporation under this Act, shall be liable to serve anywhere in India."

Section 30 vests in the Corporation the exclusive power to carry on Life Insurance business in the country. Under Section 37, all policies issued by the Corporation are guaranteed by the Central Government. Section 48 authorises the Central Government to make rules to carry out the purposes of the Act. All such rules are to be laid for not less than 30 days before both Houses of Parliament as soon as possible after they are made and are subject to such modifications as Parliament may make during the session in which they are so laid or in the session immediately following. Section 49 gives power to the Corporation to make regulations, with the previous approval of the Central Government, which shall not be inconsistent with the Act and the rules made thereunder, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. Clauses (b) and (bb) of Sub-section (2) of Section 49 read as under :-

"In particular and without prejudice to the generality of the foregoing power, such regulations made provide for -

(b) the method of recruitment of employees and agents of the Corporation and the terms

and conditions of service of such employees or agents;

(bb) the terms and conditions of service of persons, who have become employees of the Corporation under Sub-section (1) of Section 11."

4. It is evident from the provisions of Section 49, that the regulations to be framed by the Corporation are to provide for such matters for which provision is expedient for the purpose of giving effect to the provisions of the Act. There is no provision in the Act which necessitates the framing of a regulation for placing any restriction on the employees of the Corporation debarring them from being chosen or for being a member of the State Legislature or Parliament. Section 23 of the Act only authorises the Corporation to employ such number of persons as it thinks fit to carry on its business. The preamble of the Regulations reads :-

"Whereas it is necessary to frame Regulations defining the terms and conditions of service of the staff of the Life Insurance Corporation of India, the Corporation, in exercise of the powers vested in it under clauses (b) and (bb) of Sub-section (2) of Section 49 of the Life Insurance Corporation Act, 1956, and with the previous approval of the Central Government, is pleased to make the following Regulations."

It is, therefore, apparent that the object of the Regulations is to define the terms and conditions of service of the staff of the Corporation and not to provide for any disqualification for its employees to be chosen or being a member of the Legislative Assembly. Regulation 25(4), therefore, only constitutes, a condition of service of the whole-time salaried employees of the Corporation and any breach of that regulation can be punished under regulation 39 by inflicting any of the penalties mentioned therein. Regulation 2 states that the Staff Regulations shall apply to every whole-time salaried employee of the Corporation unless otherwise provided by the terms of any contract, agreement or letter of appointment. This regulation clearly means that it is open to the Corporation to make individual contracts of service with any whole-time salaried employee which may be even contrary to the regulations and that regulation 25 may not form part of his contract of service. Regulation 86 authorises the Executive Committee of the Corporation to relax regulation 25(4) in the case of any employee. It is conceded by Shri H.L. Sibal, the learned Senior Advocate for the respondents, that a disqualification prescribed by or under any law made by Parliament cannot be waived, condoned or relaxed, except by Parliament cannot be waived, condoned or relaxed, except by Parliament itself. If regulation 25(4) is to be considered as a disqualification prescribed under Article 191(1)(e) of the Constitution, then it cannot be relaxed by the Executive Committee of the Corporation in the case of any employee; nor can the Corporation enter into a contract of service with any employee which does not contain regulation 25 as one of its terms. The special provisions in regulations 2 and 86 clearly lead to the conclusion that the restriction prescribed in regulation 25(4) is a disqualification for the employee to be retained in the service of the Corporation and cannot be termed as a disqualification for being chosen or for being a member of the Legislative Assembly. It has nothing to do with any election or disqualification of a person to be a candidate for any election. If this restriction is interpreted a disqualification for being elected to a Legislative Assembly, then the regulation is in excess of the powers conferred on the Corporation under Section 49 of the Act as such a provision is not necessary to be made to give effect to the provisions of the Act. It is also significant that a breach of any of the Regulations by an employee is punishable with one

of the penalties provided in regulation 39, which are from censure to dismissal. In the light of these provisions, it is evident that regulation 25(4) is only one of the terms of service of an employee, the breach of which is punishable and not that it can be termed as a disqualification of an employee to seek election to the Legislative Assembly of a State.

5. Disqualification for being a member of a Legislative Assembly can be prescribed by Parliament and, therefore, it is said that it must be by or under an Act made by Parliament. If a disqualification is contained in an Act, it is said to be by the Act but if it is provided for in a delegated legislation made under an Act, it may be said to have been provided under the Act. In order to give power to the delegate to legislate on the matter of prescribing disqualification for elections, the Act must provide that the delegate is authorised to make rules or regulations on this particular subject, just as in Sections 48(2) and 49(2), the matters for which provision can be made by Rules and Regulations, have been stated. In Section 49(2), the prescribing of disqualification under Article 191(1)(e) of the Constitution has not been stated as a purpose for which a regulation can be made by the Corporation. It cannot, therefore, be said that any disqualification has been provided, in respect of the whole-time salaried employees of the Corporation, to seek election to the Legislative Assembly and to be members thereof by regulation 25(4).

6. The learned counsel for the respondents has strongly relied on a Division Bench judgment of the Madras High Court in *G. Narayanaswamy Naidu v. C. Krishnamurthi and another*<sup>1</sup>, wherein it was held that regulation 29, which was similar to regulation 25 of the Regulations, constituted a 'law' which disqualified C. Krishnamurthi from standing for election under Article 191(1)(e) of the Constitution. We respectfully disagree with the decision of the learned Judges on this point. It is argued by Mr. Sibal, that N. Rajagopala Ayyangar, J., who prepared that judgment for the Division Bench, later became a Judge of the Supreme Court and approved of this decision in *Dr. Indramani Pyarelal Gupta and others v. W.R. Natu and Ors.*<sup>2</sup>. The submission is not correct. What was approved in para 15 of the report was an interpretation of the words 'by the Corporation, prescribed a disqualification for an employee to seek election to a Legislative Assembly. On the other hand, Mr. H.S. Doabia, learned counsel for the petitioner, has relied on a Division Bench judgment of the Calcutta High Court in *Md. Sarafatulla Sarkar v. Surja Kumar Mondal and others*<sup>3</sup>, which is on identical facts and is helpful for the decision of the point of law debated before us. The question for decision in that case was whether rule 23 of the Government Servants' Conduct Rules provided a disqualification for a Government servant to stand for election to any of the bodies mentioned in that rule. That rule was thus similar to regulation 25(4). A Government servant offered himself for election to the Union Board and was elected. His election was challenged on the ground that he was ineligible to offer himself for election in view of the provisions of rule 23 of the Government Servants' Conduct Rules. Chakravarti, C.J., spoke for the Bench, thus -

"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 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 this 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."

Further observation in paras 10 and 11 of the report are also pertinent and may be reproduced. They are as under :-

"What the Rule 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 Rule does not say that a Government servant, so long as he holds a post in the service of the Government, shall be ineligible for election to any of the bodies mentioned. The prohibition is directed at personal conduct and not at rights owned by the Government servant concerned. Illustrations of an absolute prohibition 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. I am entirely unable to persuade myself that the kind of disqualification imposed by sub-rules (2) and (3) of Rule 23, Government Servants' Conduct Rules, is of the nature of the disqualification created by the provisions in the Constitution Acts to which I have referred. The former is limited kind of disqualification, operating only within the sphere of Government service and indicating what acts will constitute a lapse from conduct proper to a Government servant, but not creating a legal incompetence for doing the acts declared undesirable or forbidden.

In my view, the fact that the appellant was at the relevant time holding a post in the service of the Provincial Government did not make him a person ineligible for election to the Union Board. His violation of the sub-rules might well have led to other unpleasant consequences and we were informed that they did so lead, because he has since been dismissed from Government service. His right to offer himself as a candidate for election and the validity of the election which he secured were not, to my mind affected in any way by reason of his being a Government servant at the time."

With respect I find myself in complete agreement with the observations of Chakravarti, C.J.

7. Lastly, the learned counsel for the respondents has argued that there is a conflict between duty and interest of a whole-time salaried employee of the Corporation and the membership of a Legislative Assembly inasmuch as such an employee as member of a Legislative Assembly shall be under the influence of the Government, because the Corporation is controlled by the Government. I do not find any merit in this submission. The Corporation is a statutory body incorporated under the Act and its management vests in a committee consisting of not more than fifteen persons nominated by the Government of India, one of whom is appointed as its chairman. That the members of the Corporation for managing its affairs are appointed by the Central Government, which has also the power to issue direction in matters of policy involving public interest and that the profits of the Corporation after meeting all expenses, are taken by the Central Government, do not mean that the Corporation is under the control of the Government, or that an employee of the Corporation cannot be said to be an independent person. The purpose of the Corporation is to carry on life insurance business to the best advantage of the community, as it has been granted the monopoly of carrying on that business and it cannot be said that an employee of the Corporation if he becomes a member of the Legislative Assembly, will not be able to carry out that object. In any case, if Parliament wanted that the employees of the Corporation should not offer themselves for election to a Legislative Assembly or to a House of Parliament, such disqualification would have been prescribed in Section 10 of the Representation of the People Act and would not have been left to the Life Insurance Corporation to provide while prescribing the terms and conditions of service of its employees.

8. For the reasons given above, or answer to the question referred is that the restriction placed by regulation 25(4) of the Regulations debaring the employees of the Corporation from taking part in any election does not amount to a disqualification for being chosen as a member of the Punjab Legislative Assembly within the meaning of sub-clause (e) of clause (1) of Article 191 of the Constitution. The case will now go back to a Division Bench for further trial and decision. The parties are directed to appear before the First Division Bench on March 13, 1975. The costs of this reference will be costs in the cause.

**Koshal, J.** - I agree.

**Jain, J.** - I agree.

**Gujral, J.** - I agree.

**Dhillon, J.** - I agree.

Cases Referred.

1AIR 1958 Mad 343

2AIR 1963 sc 274

3AIR 1955 Cal 382