

(1961) 04 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 27 of 1960

Daudayal Onkarlal

APPELLANT

Vs

Gulabchand Shankerlal and Others

RESPONDENT

Date of Decision : 17-04-1961

Acts Referred:

Madhya Bharat Municipalities Act, 1954 — Section 14(1)

Madhya Pradesh General Clauses Act, 1957 — Section 3(20)

Citation : AIR 1962 MP 47 : (1962) ILR (MP) 490

Hon'ble Judges : V.R. Newaskar, J; M.A. Razzaque, J

Bench : Division Bench

Advocate : S.D. Sanghi, for the Appellant; M.P. Bhatnagar, for Opposite Party No. 1 and Gulabchand and Mathur for Opponent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Newaskar, J.—Short question which arises for consideration in this petition under Article 226 of the Constitution is whether "The Life Insurance Corporation" can be called a "local authority" For the purpose of Section 14 (1) (f) of the Madhya Bharat Municipalities Act No. 1 of 1954.

2. The question arose for consideration under the following circumstances.

3. On 26-4-1959 election to the Khachrod Municipality took place under the provision of the Madhya Bharat Municipalities Act and the Rules made thereunder. Four Candidates had been nominated for the purpose of this election including the petitioner and the opponents. On 1-4-59 the nomination papers in respect of each of the aforesaid four candidates were scrutinized. At that time opponent Gulabchand objected to the nomination of the petitioner on the ground that he was disqualified by reason of his being in the service of the Life Insurance Corporation, which according to him, was a local authority within the meaning of the term as used in Section 14 (1) (f) of the Madhya Bharat Municipalities Act No. 1 of 1954 hereinafter called "the Act". The polling officer rejected this contention of the opponent No. 1. There was an appeal to the

Returning Officer. This was dismissed. Later two of the candidates namely opponents Mannalal and Shantilal withdrew and the petitioner was elected. This was followed by an election petition filed by Gulabchand u/s 10 of the Act read with Rule 131. In this petition all the four candidates were impleaded. The petition was heard by the learned District Judge Ujjain who by his order dated 3-3-1960 upheld Gulabchand's contention and allowed his election petition by holding the Petitioner to be disqualified u/s 14 (1) (f) of the Act.

4. The present petition is directed against the aforesaid decision of the District Judge,

5. The petitioner's contention is that there is an obvious error in the District Judge's decision in holding that the Life Insurance Corporation is a local authority within, the meaning of the term as used in Section 14 (1) (f) of the Act. Section 14 (1) (f) of the Act which lays down one of the disqualifications for becoming a Councillor of a Municipality is as follows ;

"14 (1): No person may be a Councillor who :

... ..

(f) is in the service of the Government or any local authority or is a Government Pleader.

... .."

6. It is not disputed before us that the persons in the service of the Life Insurance Corporation are not the servants of the Government as if the said Corporation were merely either a department of the Central Government or its agent. It is therefore not necessary to examine that question in detail. Suffice it to say that although the Central Government has in certain respects powers of control over the Corporation in the matter of its policy by reason of it having contributed a portion of public fund, yet it cannot interfere in its day to day working nor can it appoint, or dismiss its servants. It is a body corporate with perpetual succession and common seal and can in no way be called a department of Government. This view has been taken in *Madan Mohan Lal v. Om Prakash*, (S) AIR 1957 Ail 384 by Mehrotra, J., and also in Writ Petition No. 1010 of 1959 by Bishan Narain J., of the Punjab High Court. Other such statutory Corporations which though, are, subject to certain Governmental control in the matter of policy, are held not be mere Government Departments are, *Baleshwar Prasad Vs. Agent, State Bank of India*, , *Subodh Ranjan Ghosh Vs. Sindri Fertilisers and Chemicals Ltd.* and Another, , *Bibhuti Bhusan Ghosh Vs. Damodar Valley Corporation and Others*, and *Ranjit Ghosh Vs. Damodar Valley Corporation and Others*, . Servants of these statutory Corporations cannot therefore be held to be in the service of the Government.

7. The next question to be considered is whether the Life Insurance Corporation can be called a "Local Authority" so that its servants can be treated as persons in the service of a local authority, Section 3(20) of the Madhya Bharat General

Clauses Act which is material for the purpose of interpreting the term "local authority" as used in the Act in question defines it thus :

""Local Authority" shall mean a municipal board, district board or other authority legally entitled to, or entrusted by the Madhya Bharat Government with the control or management of municipal or local fund."

8. The learned District Judge took the view that because the said corporation has certain powers of issuing Rules, Bye-laws or Regulations having the force of law and it has control over its fund it is a local authority.

9. It is contended by Mr. Sanghi, the learned counsel for the appellant, that this view of the learned District Judge is erroneous. According to him an authority, in order that it can be called local authority must be one which performs functions not dissimilar to functions, performed either by a Municipal Committee, District Board, Port Commissioners or the like, such authorities must be meant to serve a locality. Such authorities must derive its funds under the authority of Government by resort to some kind of taxation which they are required to utilize for the benefit of the locality in the matter of health, sanitation, education and the like. The function which they performed must in the absence of entrustment to them by the Government, be these of the Government to be carried out with Government fund. It is not possible, according to the learned counsel to call Life Insurance Corporation as a local body in that sense.

10. In my opinion this contention is correct. Life Insurance Corporation has no hand in what may be called Municipal administration of any locality. Prior to the coming into force of the Life Insurance Corporation Act of 1956 the work of Life Insurance was a private commercial venture and it was in the hands of several commercial bodies such as Insurance Companies both Indian and foreign. The Parliament with a view to nationalise this business made law and set up a statutory corporation under it which would take up the entire life Insurance business to itself and thereafter to run it on commercial basis ensuring to the general public going in for it safety for their investment, and certainty about its availability at appropriate time.

The Life Insurance Corporation may have its branches and agents throughout the country. It may have with it certain Government fund, but all that has nothing to do with administering a locality with the aid of funds derived by some kind of taxation. In that sense neither the State Bank of India with its numerous branches throughout India nor Life Insurance Corporation can be called local authority. The criterion is not whether it has statutory power to make rules, bye-laws and regulations and whether it has some fund of its own which it can manage and control but it is whether there is delegation to it of some of the functions and powers of Government with reference to a locality. It should be miniature Government for a limited purpose and area. Viewed in that light the Life Insurance Corporation cannot be called a Local Authority.

11. The learned District Judge was not therefore right in treating the petitioner to

be in the service of a local authority. This erroneous view of law which went to the root of the matter has deprived the petitioner of his legitimate right to be elected as a Councillor.

12. We would therefore consider this to be a fit case for interference in exercise of our powers under Article 227 of the Constitution.

13. The petition is therefore granted and order passed by the District Judge allowing the election petition of opponent Gulabchand is set aside and the petitioner's election to the Khachrod Municipality is held to be proper. The petitioner is entitled to costs of this petition. Counsel's fees to be taxed at Rs. 50/-.

M.A. Razzaque, J.

14. I agree.