

(1997) 01 P&H CK 0137
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1257 of 1997

Mohinder Kumar and others

APPELLANT

Vs

District Election Officer (Deputy Commissioner), Sangrur and others

RESPONDENT

Date of Decision : 31-01-1997

Acts Referred:

Constitution of India, 1950 — Article 12, 163(1), 310, 324, 324(4)
Evidence Act, 1872 — Section 115
Punjab General Clauses Act, 1898 — Section 2(30), 3(30)
Representation of the People Act, 1951 — Section 134, 159, 21, 22, 25

Citation : AIR 1997 P&H 272 : (1997) 116 PLR 431 : (1997) 2 RCR(Civil) 341

Hon'ble Judges : Iqbal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Amarjit Markan, for the Appellant; Mrs. Charu Tuli, Dy. Advocate Gen., for the Respondent

Judgement

G.S. Singhvi, J.—These two petitions have been filed by the employees of Sant Longowal Engineering and Technology Society, Longowal, District Sangrur, for quashing the letter No. 78 dated 14-1-1997 and orders Annexures P2/1 to P2/25 (attached with Annexure P-2 in C.W.P. No. 1257 of 1997) and Annexures F2/1 to P2/16 (attached with Annexure P-2 in C.W.P. No. 1258 of 1997). In view of the identical nature of relief claimed in the two petitions we are deciding them by a common order.

2. FACTS :

The petitioners of both the petitions are employed against different posts in the service of Sant Longowal Institute of Engineering and Technology Society, Longowal (for short "the Institutes"). The Institute is registered under the Societies Registration Act, 1960. Vide letters dated 14-1-1997 and 17-1-1997 written respectively by the Returning Officer, 85 Dhanola Vidhan Sabha constituency, Sangrur and the Sub-Divisional Officer (Civil) Returning Officer, 88

Sunam Vidhan Sabha constituency to the Institute these officers conveyed the decision of the District Election Officer-cum-Deputy Commissioner, Sangrur, regarding the appointment of the employees of the Institute as Presiding Officers/ Polling Officers with a direction that all the employees be served with the orders enclosed with those letters and they be asked to prepare themselves for election duties. In the letter dated 17-1-1997 which has been enclosed as Annexure P-2 with C.W.P. 1257 of 1997 the Sub-Divisional Officer also mentioned that any negligence with regard to election duty would invite action u/s 134 of the Representation of People Act, 1951. On receipt of these communications the President of Sliet Faculty Association which is a representative body of the employees of the Institute wrote to the District Election Officer-cum-Deputy Commissioner, Sangrur that in view of the judgments of the Supreme Court and of Allahabad High Court the employees of autonomous body like the Institute could not be put on election duties because they do not come under the definition of "such staff" under Article 324(6) of the Constitution of India. A copy of the order passed by the Allahabad High Court on 30-4-1996 in a writ petition filed by U.P. Cooperative Bank Employees Union, was also enclosed with the said letter. The Director of the Institute also wrote to the Deputy Commissioner, Sangrur requesting him to cancel the duties of the teachers on the ground that the courses were running behind the schedule. He also invited the attention of the Deputy Commissioner to the fact that the Institute was an autonomous body and a registered Society under the Societies Registration Act, 1860.

3. Sliet Faculty Association, Sangrur filed C.W.P. No. 893 of 1997 for quashing the orders issued at the behest of respondent No. 1 assigning election duties to the employees of the Institute. That petition was dismissed by this Court on 22-1-1997 on the ground that the Association did not have the locus standi. Thereafter the petitioners have jointly filed these petitions and have made the prayers as aforementioned. The main ground on which the petitioners have questioned the legality of the impugned orders is that respondent No. 1 is not vested with the jurisdiction to force the employees of the Institute to render duties in connection with election because they are neither the Government servants nor are they employees of the "local authority".

4. In the return filed by the respondents it has been pleaded that during the last Parliament election the petitioners were appointed to perform election duties and they did not object to the same and therefore the Court should not pass any order in their favour at this stage of the election. The respondents have also pleaded that they have jurisdiction to exercise powers u/s 26 of the Representation of the People Act, 1951 to depute the employees of the Institute for election duties.

5. After hearing learned counsel for the petitioners and the learned Deputy Advocate General, we have come to the conclusion that the writ petitions deserve to be allowed.

6. Article 324(4) and 324(6) of the Constitution of India and Sections 26 and 159

of the Representation of People Act, 1951, which are relevant in the context of the controversy raised in these petitions are reproduced below for ready reference:--

"324(4) :

Before each general election to the house of the people and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the commission by Clause (1).

324(6)

The President or the Governor of a State shall, when so requested by the Election Commission to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (1)."

Section 26

Appointment of presiding officers for polling stations :

(1) The District election officer shall appoint a presiding officer for each polling station and such polling officer or officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election:

Provided that if a polling officer is absent from the polling station, the presiding officer may appoint any person who is present at the polling station other than a person who has been employed or on behalf of, or has been otherwise working for, a candidate in or about the election, to be the polling officer during the absence of the former officer, and inform the district election officer accordingly:

Provided further that nothing in this sub-section shall prevent that district election officer for appointing the same to be the presiding officer for more than one polling station in the same premises.

(2) A polling officer shall, if so directed by the presiding officer, perform all or any of the functions of a presiding officer under this Act or any rules or orders made thereunder.

(3) If the presiding officer, owing to illness or other unavoidable cause, is obliged to absent himself from the polling station, his functions shall be performed by such polling officer as has been previously authorised by the district election officer to perform such functions during any such absence.

(4) Reference in this Act to the presiding officer shall, unless the context otherwise requires, be deemed to include any person performing any function which he is authorised to perform under sub-section (2) or sub-section (3), as the

case may be.

(5) Any reference to a district election officer in Section 25 and in this section shall, in relation to a constituency in a Union Territory, be construed as a reference to the returning officer for that constituency.

"Section 159 :

Staff of every Local authority to be made available for election work :

(1) Every local authority in a State shall, when so requested by a Regional Commissioner appointed under Clause (4) of Article 324 or the Chief Election Officer of the State, make available to any returning officer such staff as may be necessary for the performance of any duties in connection with an election."

Section 29 of the Representation of the People Act, 1951 is also reproduced for reference purposes:-

"Section 29 :

Staff of local authorities to be made available :

Every local authority in a State shall, when so requested by the chief electoral officer of the State, make available to any electoral registration officer such staff as maybe necessary for the performance of any duties in connection with the preparation and revision of electoral rolls."

6A. The only contention urged by Shri Amarjit Markan, learned counsel for the petitioners is that the petitioners cannot be appointed as Presiding Officers of the Polling Station and they cannot be asked to discharge the duties of the Polling Officers because they are neither the Government servants nor are they employees of a local authority. Learned counsel relied on the observations made by the Supreme Court in Election Commission of India Vs. State Bank of India, Patna and others, and the order passed by a Division Bench of Allahabad High Court on 30-4-1996. Shri Markan argued that the Institute of which the petitioners are employees is a Society registered under the Societies Registration Act, 1860 and it is neither a Government agency nor State within the meaning of Article 12 of the Constitution. He further argued that even if the Institute is receiving some grant-in-aid from the Government, it cannot be said that the employees of the Institute are Government servants or they hold civil posts. Learned counsel submitted that the petitioners do not fall within the meaning of the expression "such staff" used in Article 324(6) of the Constitution. The learned Deputy Advocate General, argued that the Institute falls within the scope of the term "local authority" and therefore it was within the jurisdiction of respondent No. 1 to ask them to discharge duties in relation of the impleading election. In the alternative she argued that the petitioners are not entitled to any relief because they had rendered election duties during the last Parliament election without any protest. The last submission of the learned Deputy Advocate General is that the Court should not issue any direction which may hamper the election

duty to be held on 7-2-1997.

7. At the conclusion of arguments, the learned Deputy Advocate General, after seeking instructions from the Deputy Commissioner-cum-District Election Officer, Sangrur, informed the Court that 25 persons are available in the reserve for doing election duties in Dhanola constituency and about 20 persons are available in the reserve for Sangrur constituency. She also stated that, as far as possible, the District Election Officer will depute the persons from the reserve for doing the election duties. At this juncture Shri Markan, learned counsel for the petitioners, submitted that even if the Court was to accept the plea of the petitioners they, as citizens of the country and residents of the constituency, will perform election duties in case of non-availability of sufficient number of persons from the reserve.

8. In Election Commission of India Vs. State Bank of India, Patna and others, , the controversy which arose before the Supreme Court in view of letter dated 22-9-1991 written by the District Election Officer, Patna to the Chief General Manager, StatcBankof India, Patna, was whether the District Election Officer could ask the authorities of the State Bank of India to spare its staff for election duties. The orders passed by the District Election Officer appointing and deputing some of the employees of the State Bank of India on election duties were challenged before the Patna High Court. The High Court accepted the writ petition and held that u/s 26 of the Act of 1951 the District Election Officer has no power to requisition the services of the staff of the State Bank of India for election duty because the State Bank of India was not a local authority within the meaning of Section 159. Their Lordships of the Supreme Court analysed the provisions of Article 324(6) and observed (Para 18 of AIR) :

"This will depend on the understanding of Clause (6) of Article 324. For the conduct of elections when the Election Commission makes a request to the President or the Governor to make available the staff they are obliged to provide the services. What is the meaning of such staff ? According to Mr. Dushyant Dave we should refer to Article 310 which talks of a member of Civil Service (in contradistinction to Defence Service of the Union or the State), holding office during the pleasure (Durate bene placito) of President or the Governor. Obviously "such staff" can only mean that staff which is under the control of the President or the concerned Governor and not any staff over which they do not exercise control. It could mean only the staff on which the President or the Governor, as the case may be, would be in a position to exercise disciplinary powers should they refuse the President's or Governor's directive. Although the Constitution-makers did not say the Union or the State Governments but only the President or the Governor, it is obvious they would have to act consistently with Articles 74(1) and 163(1) respectively. Therefore, on a request by the Election Commission the services of those Government servants who are appointed to public services and posts under the Central or State Governments will have to be made available for the purpose of election. When the Constitution came into force the services of these officers were readily available. Of course, there were also local authorities

and the services of the employees of the local authorities were also available. That is why Section 159 of the 1951 Act provides that on request from the Regional Commissioner or the Chief Electoral Officer of the State, the local authority of the State shall make available to any Returning Officer such staff as may be necessary to carry out the duties in connection with an election."

The Supreme Court rejected the arguments advanced on behalf of the Election Commission of India in the context of Sections 21 and 22 of the Act of 1951 and held (Paras 19 to 21 of AIR):

"It is important to note that their services came to be made available as Returning Officers and Assistant Returning Officers under Sections 21 and 22 of the 1951 Act introduced by Amendment Act 47 of 1966. Barring the services of these officers does the Election Commission have power to requisition the services of any other person? The argument of the appellant is based on several sections of the 1950 and 1951 Acts. We have referred to the relevant provisions of the two Acts hereinbefore.

Merely because the provisions of the two Acts require that they must be officers of Government or local authority, unlike in the case of officers falling u/s 27 of the 1951 Act, it does not, in our opinion, follow that the services of the officers of the State Bank of India could be requisitioned. Section 26 of the 1951 Act is not a source of power at all. It does not, in any manner, enable the Election Commission to draft in the services of officers other than officers of Government and local authority. To draw inspiration from these sections to support an argument that the services of any person could be drafted for the purpose of election is untenable. May be, to conduct the elections many polling stations are set up. Consequently the services of many persons may be required. May be, the Election Commission may draw the minimum staff from the banks to ensure that the banking business is not disrupted but the question here is of power and not discretion. If there is power it may be exercised with circumstances but if there is no power the question of the mode of its exercise will not arise at all. It is a question of existence of power and not the manner of its exercise.

Article 324 does not enable the Election Commission to exercise untrammelled powers. The Election Commission must trace its power either to the Constitution or the law made under Article 327 or Article 328. Otherwise, as was held by this Court in *Digvijay Mole's case* AIR 1993 SC 2895 (*supra*) (in which one of us, Mohan, J., was a party) it would become an *imperium in imperio* which no one is under our constitutional order."

9. In view of the judgment of the Supreme Court it is to be considered whether the Institute could be treated as a local authority for the purpose of Section 159 of the Act of 1951 or not. The expression "local authority" has not been defined either in the Representation of the People Act, 1950 or the Representation of the People Act, 1951. However, we can take help of the provisions contained in Punjab General Clauses Act, 1898. Section 3(31) of the General Clauses Act

defines the expression "local authority" in the following words:--

"Local authority means a municipal committee, District Board, or Body of Port Commissioner or other authority legally entitled to or entrusted by the Government with, the control or management of a municipal or local fund."

10. In *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, the Supreme Court examined the scope of the expression "local authority" and held (Para 2):--

"What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as corporate bodies. They must not be mere governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependents may vary considerably but, an appreciable measure of autonomy there must be. Next, they must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing, entrusted with the performance of civic duties and functions which would otherwise be governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfilment of their projects by levying taxes, rates, charges or fees. This may be in addition to monies provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority."

11. In *Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others*, the Supreme Court once again examined the concept of "local authority" in the context of the provisions contained in the General Clauses Act, 1897 and the Haryana Housing Board Act, 1971 as well as the Payment of Bonus Act, 1965 and held (at P.435 of AIR):--

"Concept of "local authority" is..... contained in Entry 5, which empowers the State Legislature to make law with respect to any subject relating to Local Government including the constitutional of "Local Authorities". The State Legislature can also confer such powers as it itself possesses upon a "Local Authority" including the power of taxation (within the limits of List H) for the purposes of Local Self-Government. The "Local Authority" undoubtedly, is a representative body but notwithstanding its representative character, it remains a subordinate authority created by a statute and, therefore, it cannot claim the power of taxation which belongs to the State Legislature except to the extent it is conferred upon it by the statute which creates it."

The Municipal Committees, the District Boards, Gram Panchayats and Panchayat

Samilis etc. represent the units of Local Self-Government where people of a local area govern themselves through their elected representatives in respect of a large number of matters including construction of buildings, roads, parks, lighting of streets, sewerage, conservancy and water works etc. These Local Self-Governments, namely, the Municipal Boards and the District Boards etc. are constituent under statutory provisions which elaborately provide for the election, through adult franchise, of persons who, on being elected, become members of the Municipal Boards or the District Board. These Boards are basically independent bodies with very little or minimal of Government control and that too in the limited field. They formulate their own policies and implement those policies through the machinery provided under law. They have power to levy Panchayat, municipal or other local taxes and have also the power to realise those taxes through coercive processes, if they are not paid immediately on demand. They have also the right to raise, build up and manage their "local funds";

Under the basic principle of statutory interpretation, the words "Other Authority" having been placed in the company of "Municipal Council" and "District Boards" etc. in the definition of "Local Authority" in the General Clauses Act and can be interpreted to mean a "Body" having and possessing practically all the attributes of a Municipal Board or the District Board so far as their independent existence is concerned."

12. In *Dalip Singh v. Faquir Singh and another*, a Division Bench considered the definition of "local authority" as given in Section 2(30) of the Punjab General Clauses Act, 1898 and held that a Co-operative Sugar Mills registered under the Punjab Co-operative Societies Act, 1961 does not fall within the ambit of the expression "local authority".

13. In our opinion the above mentioned decisions provide sufficient guidelines for determining the scope of expression "local authority". In the present case it has not been shown that the management of the Institute is done by the persons elected directly or indirectly" by the inhabitants of Sangrur. It is also not the case of the respondents that the Institute is entrusted with any governmental functions or duties which are ordinarily entrusted to municipal bodies. It has not been pleaded by them that the Institute performs civic duties and functions which are in the nature of governmental duties and functions. It has also not been shown that the Institute is vested with the powers under law to levy taxes or fees. Thus the main factors which may bring a body within the ambit of expression "local authority" are missing in the case of the Institute. We are, therefore, unable to agree with Mrs. Tuli that the Institute comes within the scope of the term "local authority".

14. In view of the above conclusion, it must be held that respondent No. 1 was not entitled to direct the Institute to depute the petitioners for election duties.

15. We also do not find any force in the argument of Mrs. Tuli that the petitioners

are estopped from questioning the legality of the orders passed by respondent No. 1 deputing them for election duties merely because they had performed such duties during Parliament election. The fact that the petitioners had not resisted the orders passed by the District Election Officer during the Parliamentary elections cannot lead to an inference that the petitioners have consciously waived their right to challenge the validity of the action taken by respondent No. 2. The facts of this case clearly show that that even before the issuance of the letters dated 14-1-1997 and 17-1-1997 the employees had expressed their reservations against their deputation for election duties. Immediately after the receipt of the impugned letters they had written to the respondent No. 2 expressing their unwillingness to perform election duties. This shows that the petitioners have not done anything which could give rise to an inference that they consciously gave up their right to challenge the directions given by respondent No. 2. Thus we reject the plea raised by the learned Deputy Advocate General, on the basis of the doctrine of estoppel.

16. For the reasons mentioned above the writ petitions are allowed. The directions given by the respondent No. 2, which have been impugned in these writ petitions deputising the petitioners for election duties are declared illegal and are quashed. However, keeping in view the statement made by the learned counsel for the petitioners, we direct that in case sufficient number of man power is not available from the reserve for the purpose of election duties, the petitioners shall volunteer for election duties and under no circumstance any situation should be allowed to be created which may hamper smooth conduct of election to be held on 7-2-1997. We hope that the Election Commissioner Punjab will issue clear instructions to the competent authority so that such situation may not arise in future.

17. Petitions allowed.