

(1959) 08 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 20 of 1959

Nirpendra Nath Banerjee

APPELLANT

Vs

Senior Deputy Accountant General, Posts and Telegraphs and
Others

RESPONDENT

Date of Decision : 27-08-1959

Acts Referred:

Central Civil Services (Conduct) Rules, 1955 — Rule 4, 4(4)
Constitution of India, 1950 — Article 309

Citation : AIR 1960 Cal 283

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Judgement

D.N. Sinha, J.—The facts in this case are shortly as follows : On the 18th August, 1948 the petitioner was appointed as an Upper Division. Assistant in the office of the Deputy Accountant General, Posts and Telegraphs, Calcutta. In September, 1954 while serving in that post the petitioner stood for election and was elected as a Councillor of the Corporation of Calcutta from Constituency No. 77 (Tollygunge). Certain proceedings were taken against the petitioner in 1954, hut for the purpose of this application it is not necessary to refer to them. It is sufficient to say that on 7-3-1955 the Central Civil Services (Conduct) Rules 1955 were framed and came into operation. It is admitted that these Rules apply to the petitioner. The Rules have been set out in Annexure "A" to the petition and the relevant Rules are as follows:

"(4) No Government servant shall canvass or otherwise interfere or use his influence in connection with, or take part in, an election to any legislature or local authorities;

Provided that:

(i) A Government servant qualified to vote at such election may exercise his right to vote, but where he does so, he shall Rive no indication of the manner in which he proposes to vote or has voted;

(ii) A Government servant shall not be deemed to have contravened the provisions of this rule 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 Government may permit a Government servant to offer himself as a candidate for election to a local authority and the Government servant so permitted shall not be deemed to have contravened the provisions of this rule."

2. It is stated in the petition that on 6-12-1956 an information was given to the petitioner that he had been confirmed in his service with effect from the 1st of March, 1954. The next General Election of the Corporation of Calcutta was to be held in March, 1957. On 13-2-1957 the petitioner applied to the Deputy Accountant General, Posts and Telegraphs, Calcutta for permission to contest the said election. On 21-3-1957 the petitioner was informed that his prayer had been rejected. On 23-3-1957 the petitioner wrote a letter asking for the grounds of such refusal, but no grounds were furnished. The petitioner contested the election of the Corporation of Calcutta without such permission as an independent candidate from Constituency No. 77. On 30-3-1957 he was declared as elected. It is not disputed that the petitioner was not only elected but was acting as a Councillor of the Corporation. On 24-5-1957 the petitioner was informed that he had contravened the rules and he was asked to resign or else proceedings would be taken against him. Thereafter, three reminders were given but remained unanswered. According to the petitioner, at this period he became ill. Be that as it may, the petitioner did not resign from the Councillorship of the Corporation but even now continues to be a sitting Councillor. On 26-11-1957 a charge-sheet was drawn up by the Deputy Accountant General," Posts and Telegraphs, Calcutta, a copy whereof is annexed to the petition and is to be found at page 31. The charge-sheet enumerated all the relevant facts, namely, that the petitioner had asked for permission to contest a seat in the Corporation of Calcutta, but that such permission had been refused. Nevertheless, he contested the election and was elected. Thereafter, he was asked to resign but he failed to do so and continued to act as a Councillor of the Corporation. It was pointed out that the competent authority which had declined to give permission had no liability to furnish reasons therefore, and that in any case this was no ground for avoiding compliance with the statutory rules. The petitioner was therefore charged with grave misconduct and indiscipline for having contravened rule 4(4) of the Central Civil Services (Conduct) Rules 1955 and for deliberately continuing to disobey the orders issued by constituted authority. The petitioner showed cause and on the 3rd of January, 1958 a provisional order was made for removal of the petitioner, who was found guilty and thereafter he again showed cause against punishment and ultimately on 20-1-1958 an order was passed removing the petitioner from Government service. Against this order there was an appeal but the appeal has failed. The petitioner has now come up to this Court.

3. The first point made by Mr. Dutt on behalf of the petitioner is that the petitioner had not violated the rules inasmuch as he did apply for permission and although the permission was refused he had asked for the reasons and the reasons were not given to him in time with the result that he had to go on with the election, the statutory time for withdrawal having expired. It is argued that once the petitioner had been elected, the rules could no longer be enforced against him, because the rules did not contemplate any notice asking an elected person to resign his seat to which he had already been elected. In my opinion, this argument cannot be accepted. It is quite clear that the petitioner was not asked to resign his seat simpliciter. The Rules contemplate, and it appears to me to be obvious on the face of it, that Government servants should not normally be allowed to contest seats in an election to a Municipality. The basic idea underlying the rules appear to me to be thoroughly reasonable and beneficial, not only for the efficiency of public service, but also from the point of view of public morality. It is eminently undesirable that a person should be a Government servant and at the same time be elected a Councillor of the Corporation of Calcutta. I do not therefore understand how the rules are not applicable because the petitioner was not given the reasons for refusal of permission in time. As was pointed out by Mr. Roy Chowdhury appearing on behalf of the respondents, the rules contemplate that permission should be asked even for "offering" himself as a candidate. In this case, permission was necessary to be obtained before the petitioner offered himself as a candidate for an election to a seat in the Corporation of Calcutta. It appears from the facts that he applied for leave but did not wait for the permission to be granted before he offered himself as a candidate for election. That by itself is in violation of the Rules. I think that the respondents are correct in their attitude, namely, that the rules do not compel Government to communicate the reasons for refusal of permission to the Government servant asking for such leave. Then again, the contention that the rules do not contemplate an order upon a Government employee to resign his post appears to me to be rather naive. The rule is that before a Government servant offers himself as a candidate for a seat in a Municipality he should obtain permission, if he fails to do so, and continues to take part in the election in violation of the rules and is ultimately elected, I do not see how it lies in his mouth to take the objection that the rules do not apply in his case because he has already been elected. -The process of election itself, in such a case, so far as he is concerned, is in violation of the rules. In my opinion, there is no substance in this point. In fact, the entire argument in this case has been advanced without considering the basic fact that the petitioner cannot be permitted to act both as a Councillor to the Corporation and as a Government servant. It is for him to choose, and he has been given ample opportunity of making a choice. It appears from the facts of this case that he wants to carry on in both capacities, which clearly violates the rules and cannot be permitted. I could have understood such an argument if the petitioner at the proper stage made up his mind to remain in Government service and give up his Councillor-ship. In that event, it might have been said that he had been misled

by the delay in official communications, thinking that his case will be considered as special and that permission will be accorded. As I have said, that is not the position in this case. The petitioner has nowhere stated and is not now stating that he wishes to stop acting as a Councillor of the Corporation. What he says is that acting in a dual capacity has not impaired the quality of his service to the Government. That is a matter of Opinion, and into such a question I cannot enter. Obviously, Government does not think on those lines.

4. The next point taken is that the permission has been unreasonably withheld. Again, this is a ground into which I cannot possibly enter. As I said, the basically idea in the promulgation of this Rule was to stop a Government servant from acting in a dual capacity. Sub-clause (iii) of the proviso to Rule 4 speaks about the power of Government to permit a Government servant to offer himself as a candidate for an election to a local authority. The grounds are not mentioned. It is obvious that in doing so, an exception is made to the normal procedure and therefore there must exist special grounds for according such permission. What these special grounds may be, depend on the facts of each case and is indeed wholly an administrative matter and cannot be agitated here.

Mr. Dutt has argued that in this case there were special reasons, namely, that the petitioner had been repeatedly elected as a Councillor and that his resignation from the Councillorship would result in great hardship to his constituency, which might have to go unrepresented. As I said, whether the facts in a given case constitute special reasons for granting permission, it is for the competent authority to consider, and not for this court. Whether the resignation of the petitioner would entail hardship on his constituency is a matter for the competent authority under these rules to consider. Obviously, they have not come to the opinion that any such state of facts exists.

5. These are the points taken in the case which have all failed and in my opinion no ground for interference by this court has been shown. The application is dismissed.

6. The Rule is discharged.

7. Interim order, if any, is vacated.

8. There will be no order as to costs.