

(2014) 04 AHC CK 0138

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 2796 of 2014

Nutan Thakur [P.I.L.]

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

All India Services Act, 1951 — Section 3
Constitution of India, 1950 — Article 324
Representation of the People Act, 1950 — Section 13-CC
Representation of the People Act, 1951 — Section 28-A

Citation : (2014) 4 ADJ 243 : (2014) 104 ALR 410 : (2014) 2 ESC 1159

Hon'ble Judges : Imtiyaz Murtaza, J;Devendra Kumar Upadhyaya, J

Bench : Division Bench

Advocate : Asok Pande and Tripuresh Tripathi, Advocate for the Appellant;
Manish Mathur, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J.—Heard Sri Asok Pande, learned counsel for the petitioner, Sri Manish Mathur, learned counsel appearing for the Election Commission of India and learned standing counsel for Union of India as well as for State of U.P. This public interest litigation petition has been filed challenging the authority of the Election Commission of India in transferring certain officers belonging to Indian Administrative Service, Indian Police Service, Provincial Civil Service and Provincial Police Service after notification for election for constituting the new Lok Sabha 2014 was issued.

2. Prayer has been made to reassess and reevaluate all the transferred orders of various officers of the aforesaid services and to cancel the same which have allegedly been made against the procedure prescribed in the Indian Administrative Service (Cadre) Rules, 1954 and Indian Police Service (Cadre) Rules, 1954, as amended upto date.

3. The petitioner has further prayed that an appropriate order be issued to the

Election Commission of India requiring it to issue directions regarding transfer, of the officers of the aforesaid cadres only by speaking order and on proper application of mind and further, after getting some appropriate inquiry conducted against the officers, who are to be transferred.

4. The notification for conducting election of Loksabha-2014 was issued on 5.3.2014. The petitioner has quoted two instances of transferred members of Indian Administrative Service and Indian Police Service who have been transferred by the State Government on the directions issued by the Election Commission of India, one on 26.3.2014 whereby 44 officers belonging to Indian Police Services and District Magistrates of 22 districts were transferred and second on 30.3.2014 when few more members of Indian Administrative Service and Indian Police Service in the State of U.P. were transferred.

5. Submission made by learned counsel for the petitioner, in nutshell, is that transfer orders passed by the State Government on the directions of Election Commission of India are illegal and irrational inasmuch as while passing the said orders, the newly added provisions in Indian Administrative Service (Cadre) Rules, 1954 and Indian Police Service (Cadre) Rules, 1954 have not been adhered to. According to learned counsel for the petitioner non-adherence to the provisions of aforesaid Cadre Rules, 1954 renders the entire exercise of power by Election Commission of India in transferring the officers illegal and irrational. It has been submitted that in the year 2014 by way of amendment the relevant Rules in the Indian Administrative Service (Cadre) Rules and Indian Police Service (Cadre) Rules were amended.

6. Submission is that by not adhering to the amended provisions of the Cadre Rules, the Election Commission has violated the mandate of the Hon'ble Apex Court as can be found in the cases of Prakash Singh and Others Vs. Union of India (UOI) and Ors, , T.S.R. Subramanian and Others Vs. Union of India (UOI) and Others, and Lok Prahari through its General Secretary v. Union of India and others (Writ Petition No. 2425 (M/B) of 2011), which has been decided by a Division Bench of this Court.

7. Sri Pande, learned counsel for the petitioner has submitted that keeping in view the amendments in the Cadre Rules and the aforesaid judgments, it was not open to the Election Commission to have ordered transfer of the members of Indian Administrative Service and Indian Police Service without referring the matter of transfer and posting to the Civil Services Board and without taking into account the minimum period of posting of the officers at a particular place.

8. On the other hand, vehemently opposing the prayers made in this public interest writ petition, Sri Manish Mathur, learned counsel appearing for Election Commission of India has submitted that Election Commission of India derives the plenary powers under Article 324 of the Constitution of India which include all powers necessary for conducting the election in a free, fair and smooth manner. He has also referred to the provisions of Section 13-CC of the Representation of

People Act, 1950 and Section 28-A of Representation of the People Act, 1951 to assert that the officers employed in connection with the election related affairs are to be deemed to be on deputation to the Election Commission for the period during which there are so-employed and further that such officers and staff shall be subject to the control, superintendence and discipline of the Election Commission. He has also drawn attention of the Court to paragraph 46 of the judgment of Hon''ble Apex Court in the case of Union of India (UOI) Vs. Association for Democratic Reforms and Another, , to defend the power of Election Commission requiring the State to effect the transfer of officers belonging to Indian Administrative Service, Indian Police Service, Provincial Civil Service and Provincial Police Service.

9. We have considered the competing arguments made by learned counsel appearing for the respective parties and have also gone through the record of the writ petition.

10. There cannot be any dispute that so far as the transfer and posting of the members of Indian Administrative Service and Indian Police Service is concerned, the Cadre Rules of the respective services hold the field and the amendment brought thereto are to be followed by the respective State Governments while ordering transfers and postings of such officers.

11. According to the Indian Administrative Service (Cadre) Rules as it exists in the statue book after the amendment, the cadre officer shall hold office for at least two years unless he stands promoted or retired or is sent on deputation outside the State or goes for training. The posting/transfer can be effected only on the recommendation of Civil Services Board constituted as per specifications available in the schedule appended to the cadre Rules. The amendment Rules provide that the Government may transfer a cadre officer even before the minimum specified period on the recommendation of the Civil Services Board. The Board has been constituted to discharge similar functions in respect of members of Indian Police Service as well.

12. However, what needs to be considered in the matter at hand in the present case is as to whether the power conferred on and enjoined to Election Commission of India under Article 324 of the Constitution of India is all encompassing and the same can be put to service for requiring the State Governments to pass transfer orders of the officers employed in connection with the conduct of election without taking recourse to the provisions of the Cadre Rules.

13. As far as the nature of powers conferred upon the Election Commission is concerned, we may observe that the same are plenary in nature which can be employed for smooth conduct of elections. The said plenary character of power of Election Commission of India is subject to limitation only in case where parliament or state legislature has made a valid law in connection with the elections.

14. The issue relating to nature and character of power of the Election Commission of India under Article 324 of the Constitution of India has already been considered by the Hon"ble Apex Court in the case of Union of India v. Association for Democratic Reforms and another (supra). It has been held by the Hon"ble Apex Court in an unambiguous term that the jurisdiction of the Election Commission is wide enough to include all powers necessary for fair and smooth conduct of elections. It has also been held by the Hon"ble Apex Court that the word "elections" in the present context is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

15. The Hon"ble Apex Court has further observed in the aforesaid case that limitation on plenary character of powers of the Election Commission is only when Parliament or State Legislature has made a valid law relating to or in connection with elections.

16. We are satisfied that the Election Commission has, in the present case, acted in conformity with the said settled law. It has been settled by the Hon"ble Apex Court in the case of Union of India v. Association for Democratic Reforms and another (supra) that the powers of Election Commission can be limited only in case there exists a Parliamentary enactment or a piece of legislation enacted by the State Legislature relating to or in connection with elections. In this view, what needs to be examined in this case is as to whether the provisions of Cadre Rules which have heavily been relied upon by learned counsel for the petitioner, can be said to be a piece of legislation enacted either by the Parliament or by the State Legislature operating in the fields connected with elections.

17. We have no doubt that the Indian Administrative Service (Cadre) Rules, 1954 and Indian Police Service (Cadre) Rules, 1954 as amended upto date are statutory in nature having been framed in exercise of powers conferred by Section 3 of All India Services Act, 1951. The said rules, though statutory in nature, have been framed only to regulate the postings, appointments and transfers of the members of Indian Administrative Service and Indian Police Service. The said Rules do not operate in any area or field or activity connected with elections. The Cadre Rules cannot be said to be a law relating to or in connection with the elections.

18. Since, we have already held that the Cadre Rules of the aforesaid services have not been framed for regulating any field or activity relating to or in connection with the elections, any limitation imposed therein in respect of transfers or postings of the members of Indian Administrative Service" and Indian Police Service cannot be said to be operative on the plenary nature of jurisdiction/power of the Election Commission during course of elections.

19. We may also notice that during the election period, the officers or staff employed in connection with conduct of the elections are to be treated to be on deputation to the Election Commission and further the said officers and staff are

subject to control, superintendence and discipline of Election Commission. The said legal position is amply clear from perusal of Section 13-CC of the Representation of People Act, 1950 and Section 28-A of the Representation of People Act, 1951 which are quoted hereinbelow:

Section 13-CC, 13-CC- Chief Electoral Officers, District Election Officers, etc. deemed to be on deputation to Election Commission.--The officers referred to in this Part and any other officer or staff employed in connection with the preparation revision and correction of the electoral rolls for, and the conduct of, all elections shall be deemed to be on deputation to the Election Commission for the period during which they are so employed and such officers and staff shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

28. A Returning officer, presiding officer, etc., deemed to be on deputation to Election Commission.--The returning officer, assistant returning officer, presiding officer, polling officer, and any other officer appointed under this Part, and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission.

20. The words "control", "superintendence" and "discipline" occurring in Section 13-CC of Representation of the People Act, 1950 and Section 28-A of Representation of the People Act, 1951, in our considered opinion, embrace the power, authority and jurisdiction of the Election Commission to require transfer of the officers employed in connection with conduct of elections. Thus, the submission advanced by learned counsel for the petitioner that the State Government ought to act in consonance with the provisions of the Cadre Rules even in case where Election Commission requires it to transfer and post the officers belonging to Indian Administrative Service and Indian Police Service during election period is absolutely misconceived for the reason, as discussed above, that Cadre Rules have not been framed nor they can be said to be a law framed in relation to or in connection with elections.

21. At the cost of repetition, we may further observe that plenary character of power of the Election Commission is subject only to limitation in case where Parliament or State Legislature has made a valid law in connection with elections.

22. It may be of some interest to observe at this juncture that the transfer and posting of officers connected with the election at the behest of or at the directions of Election Commission does not infringe any right of the officer concerned and the officer employed in connection with conduct of election are supposed to act and conduct themselves in aid of Election Commission.

23. In view of discussions made and reasons given above, we do not find any

force in the contention and submission made by learned counsel for the petitioner.

24. The writ petition, therefore, fails and is hereby dismissed. However, there will be no order as to costs.