

(1970) 12 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 1997 of 1970

Sri Ram Ishwar Singh

APPELLANT

Vs

Sri Jagat Nand Sahai and Another

RESPONDENT

Date of Decision : 21-12-1970

Acts Referred:

Constitution of India, 1950 — Article 316, 316(1), 319, 319(d)

Citation : (1971) PLJR 558

Hon'ble Judges : S. Sarwar Ali, J;G.N. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.N. Prasad and S. Sarwar Ali, JJ.—The petitioner, Sri Ram Ishwar Singh, a member of the Legislative Council, has filed this application for issue of a writ of quo warranto in order to restrain Shri Jagat Nand Sahai (respondent no. 1) from functioning as the Chairman of the Bihar Public Service Commission. The relevant facts are not in dispute. Respondent no. 1 was appointed as a member of the said Commission with effect from the 16th January, 1964. But before the expiry of the term of six years, as envisaged in Clause (2) of Article 316 of the Constitution, the said respondent was appointed as Chairman of the said Commission with effect from the 21st February, 1968, and he is continuing as the Chairman of the Commission even now. The stand taken on behalf of the petitioner is that under the provisions of Clause (2) of Article 316 of the Constitution, the term of six years in the case of the respondent no. 1 expired on the 15th January, 1970, after which, as stated in Paragraph 5 of the writ application, respondent no. 1 "is illegally usurping, holding and occupying the office of the Chairman of the Bihar Public Service Commission without any valid authority". Learned counsel for the petitioner contends that since Article 316 does not lay down any separate term of office for the Chairman of the Public Service Commission and since the Chairman is a member of the Commission, his tenure of office must be governed by Clause (2) of the said Article, the

substantive portion of which is in the following terms:

A member of the Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier.

It should be made clear that the limitation as to age is neither attracted nor pressed in this case. What is contended is that the tenure of the office of respondent no. 1 must be computed from the date of his first appointment, i.e., the 16th January, 1964, and that he did not get a fresh lease of the tenure of his office in consequence of his second appointment as the Chairman of the Commission with effect from the 21st February, 1968. Or, in other words, it is urged that upon his appointment as Chairman of the Commission, respondent no. 1 is not entitled to remain in that office beyond a term of six years computed from the 16th January, 1964. In support of this contention learned counsel for the petitioner relied upon a decision of the Full Bench of the Calcutta High Court in (1) Dhirendra Krishna Biswas Vs. Corporation of Calcutta and Others, . In that case, the majority opinion in substance, is that if a member of a State Public Service Commission is appointed as the Chairman thereof, he does not acquire a new lease of office and his period of service would not be counted as extending for six years from the date of his appointment as the Chairman. According to the majority opinion, if a member of a Commission is not appointed as a Chairman thereof, his tenure of service would be for six years; but if a member is appointed as the Chairman, there is no question of a new term for him because a Chairman qua Chairman has no term at all. In the words of P. Chatterjee, J., with whom D.N. Sinha, J. (as he then was) agreed, as stated at page 301 of the report:

The Chairman has got no tenure under the Constitution. As he is a member, his tenure begins as a member; if he be appointed a Chairman, his tenure continues only as a member. No new tenure, no new office was ever intended by the framers of the Constitution.

On the other hand, G.K. Mitter, J. (as he then was), held a different view. Referring to the provisions of Article 319(d) of the Constitution, his Lordship held, in substance, that a member of a State Public Service Commission does not become its Chairman automatically or by reason of his seniority on the retirement of a former Chairman, but he can become a Chairman only on being appointed as such by the Governor of the State under Article 316(1). And since a person cannot hold two posts at the same time, it must be held that upon his appointment as a Chairman, a person ceases to hold office as an ordinary member of the Commission, although for many purposes he must be considered to be a member of the said Commission. At page 297 of the report, his Lordship observed as follows:

In my view the expression "ceasing to hold office" in Art. 319 is referable to any situation whereby a person who held an office before discontinues to hold it, may be by effluxion of the period of office or resignation or by appointment to another office. The Constitution does not seem to require that a member of a State Public Service Commission should resign his office before he can be appointed a member of the Union Public Service Commission. It would follow from this that by his appointment as a member of the Union Commission he would be held to have ceased to hold his office as a member of a State Public Service Commission. I see no reason why a person who resigns his office of a member of a State Public Service Commission, say at the end of a year after his appointment, on personal grounds cannot be appointed to the office of the Chairman of that Commission and if he is so appointed why his term of office should not be six years from the date of the fresh appointment under Clause (2) of Article 316. Similarly I see no reason why a person who completes a period of six years in office as a member of a Public Service Commission cannot be appointed Chairman of the said Commission for a fresh term of six years, subject to the limitation as to age, under Article 319(d). In my opinion, if this is possible after completion of six years of office it is equally possible for a person to hold the office of a member of a State Public Service Commission for a period of less than six years before his appointment as Chairman of that Commission.

2. When this application was first moved before us on the 16th December, 1970, we intimated to the learned counsel for the petitioner that the view expressed by G.K. Mitter, J. in (1) *Dhirendra Krishna Biswas Vs. Corporation of Calcutta and Others*, appeared to us to be preferable, having regard to the relevant provisions of the Constitution, to the view of the majority of the Judges constituting the Full Bench. Accordingly, we gave time to the parties to make a further study of the relevant provisions of the Constitution so that the petitioner might be in a position to convince us that the view expressed by G.K. Mitter, J. does not lay down the law correctly. After hearing further arguments, we are still of the opinion that the view of G.K. Mitter, J. is more in consonance with the provisions of the Constitution, and as such preferable to the views expressed by the other two learned Judges in the aforesaid Calcutta case. We may mention that during the course of the arguments we were also referred to a Bench decision of the Orissa High Court in (2) *Sri Upendra Das Vs. State of Orissa and Another*, . At page 208 of the report, G.K. Misra, C.J. has observed as follows:

The moment a member is appointed Chairman, he ceases to be a member. The time-lag may be microscopic; yet cessation of membership proceeds his appointment as Chairman.....The cessation of the membership and the functioning as Chairman both operated simultaneously, the former preceding the latter. It is not necessary that, in fact, the member should first submit his resignation before his eligibility for appointment as Chairman is taken into consideration.

Towards the latter part of his judgment, the learned Chief Justice observed that

the moment the incumbent joins the new office, he ceases to hold the former office, and expressed his concurrence with the dissenting judgment of G.K. Mitter, J. in *Dhirendra Krishna Biswas Vs. Corporation of Calcutta and Others*, .

3. Having considered the further arguments of learned counsel for the petitioner, we find ourselves in respectful agreement with the minority opinion of G.K. Mitter, J. to which we have already referred. In our opinion, the distinct character of the office of the Chairman of a Commission in the context of his appointment to that post is also clear from the provision of Clause (1A) which was inserted in Article 316 by the Constitution (Fifteenth Amendment) Act, 1963, which is in the following terms:

If the office of the Chairman of the Commission becomes vacant or if any such Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall, until some person appointed under Clause (1) to the vacant office has entered on the duties thereof or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the President, in the case of the Union Commission or a Joint Commission, and the Governor of the State in the case of a State Commission, may appoint for the purpose.

Clause (1A) does not seem to have been brought to the notice of the learned Judges of the Calcutta High Court in (1) *Dhirendra Krishna Biswas Vs. Corporation of Calcutta and Others*, .

4. It must follow that the tenure of respondent no. 1 as Chairman of the Public Service Commission will be governed by Clause (2) of Article 316 of the Constitution with effect from the 21st February, 1968, the date on which he was appointed to that office by the Governor of Bihar. In other words, the period between the 16th January, 1964 and the 20th February, 1968, during which respondent no. 1 functioned as an ordinary member of the Commission will not be tagged on to his tenure of office as Chairman of the Commission and, therefore, respondent no. 1 will lawfully remain in office as Chairman of the Commission for a period of six years with effect from the 21st February, 1968 unless, of course, he attains the age of sixty years in the meanwhile.

5. We ought to mention that in course of his arguments before us, the learned Advocate General pointed out that this application is much too belated in view of the case sought to be made out by the petitioner that the tenure of the office of respondent no. 1 came to an end on the 15th January, 1970 (nearly eleven months ago). In this connection the learned Advocate-General wanted us to apply the *de facto* doctrine which was applied in the Full Bench decision of the Kerala High Court in (3) *P.S. Menon Vs. State of Kerala and Others*, at page 170). But we do not propose to base our decision on this ground. For the aforesaid reasons we decline to issue a rule and dismiss this application.