

(2008) 11 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 10279 of 2008

Y.N. Nagaraja

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Right to Information Act, 2005 — Section 15 (3), 16 (5) (a), 16 (5) (b), 17

Citation : (2009) 4 KarLJ 576 : (2009) 2 KCCR 1304

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : X.M. Joseph, for the Appellant; Niloufer Akbar, AGA for R-1 and Ashok Harnahalli, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—Petitioner being an Advocate practicing before this Court has filed the above public interest litigation petition for issue of a writ of quowarrantor against the respondent No. 2 to oust him from the office of Karnataka State Information Commissioner by determining the invalidity of his appointment.

2. We have heard Sri. X.M. Joseph, Advocate for petitioner, Smt. Niloufer Akbar, learned Additional Government Advocate for R-1 and Sri. Ashok Hamahalli, learned Advocate appearing for respondent No. 2.

3. The petitioner has challenged the appointment of 2nd respondent as "State Information Commissioner" mainly on two grounds viz., (1) earlier the 2nd respondent was a member and Chairman of the Karnataka Public Service Commission and (2) his appointment as State Information Commissioner is barred under Article-319 of the Constitution of India.

4. Per contra, Sri, Ashok Harnahalli, learned Advocate appearing for the contesting respondent No. 2 submits that appointment of 2nd respondent as "State Information Commissioner" was made by His Excellency Hon"ble Governor of Karnataka, after evaluating the recommendation made by the

Committee constituted by the Chief Minister and there is no constitutional illegality in the said appointment and prays for dismissal of the writ petition.

5. It is not in dispute that the 2nd respondent who was a dentist by profession, earlier functioned as a member of Karnataka Public Service Commission during the period 1996 to 2000 and thereafter he was appointed as Chairman of the Karnataka Public Service Commission during the year 2001 to 2007. In view of the contentions urged by the respective counsel, to determine the question as to whether there is a constitutional bar for appointing 2nd respondent who was working as a member and Chairman of the Karnataka State Public Service Commission as "Karnataka State Information Commissioner", it is just and necessary to refer the provisions of Sections - 15, 16 & 17 of the Right to Information Act 2005 (hereinafter referred to the Act" for short) and Article - 319 of the Constitution of India which are extracted below:

Section-15. Constitution of State Information Commission:- (1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the...(name of the State) Information commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consists of:

(a) The State Chief Information Commissioner, and

(b) Such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of;

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the leader of opposition in the Legislative Assembly; and;

(iii) a Cabinet. Minister to be nominated by the Chief Minister.

Explanation.- For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information

Commissioner shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance,

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

16. Term of office and conditions of service.- (1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every State Information Commissioner shall hold office for a term of live years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner.

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in Sub-section (3) of section 15:

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(3) The State Chief Information Commissioner or a State Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified u/s 17.

(5) The salaries and allowances payable to and other terms and conditions of service of

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that, if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect, of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government, or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

17. Removal of State Chief Information Commissioner or State Information Commissioner.- (1) Subject to the provisions of Sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a

reference has been made to the Supreme Court under Sub-Section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in Sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be,-

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(4) If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of Sub-section (1), be deemed to be guilty of misbehaviour.

319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members- On ceasing to hold office-

(a) The Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) The Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(c) A member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(d) A member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

(emphasis supplied)

6. Before advertizing to the illegality or otherwise of the appointment of 2nd respondent as "State Information Commissioner", it is just and necessary to note that the very purpose, aim and object of introduction of the Right to Information Act 2005 is for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto.

6.2 The democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Thus, the provisions of Section - 15(3) of the "the Act" provides for constitution/appointment of the "State Chief Information Commissioner" and the "State Information Commissioner" by the Governor on the basis of the recommendation of a committee consisting of (i) the Chief Minister of State, who shall be the Chairperson, (ii) leader of Opposition in the Legislative Assembly and (iii) a Cabinet Minister to be nominated by the Chief Minister. Further, Sub-section (4) of Section - 15 provides that the general superintendence, direction and management of the affairs of the State Information Commission shall vest in the "State Chief Information Commissioner" who shall be assisted by the "State Information Commissioner" and may exercise all such powers and do all such acts and things which may be exercised or done by the "State Information Commission" autonomously without being subjected to directions by any other authority. Thus it is clear that the "State Information Commission" is an autonomous entity not subject to any direction by any other authority under the "the Act". There is no dispute as to the fact that the candidature of 2nd respondent was recommended to the impugned post by the Committee constituted u/s 15(3) of the "the Act" and the State Information Commission is an autonomous body.

7. As could be seen from the provisions of Section - 16(3) of the "the Act" referred to above, the "State Chief Information Commissioner" or "State Information Commissioner" upon their appointment, before they enter the office, subscribe before the Governor or the person appointed by him in that behalf, an oath or affirmation as prescribed in the First Schedule which reads as under:

The First Schedule

[See Sections 13(3) and 16(3)] Form of oath or affirmation to be made by the

Chief Information Commissioner/The Information Commissioner/The State Chief Information Commissioner/The State Information Commissioner

I,.....having been appointed Chief Information Commissioner/Information Commissioner/State Chief Information Commissioner/State Information Commissioner swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.

8. Further, provisions of Section 16(5)(a) & (b) referred to above deal with salaries and allowances payable to the "State Chief Information Commissioner" and "State Information Commissioner" and other terms and conditions of services. The provisions of Section - 16(5) referred to above are self-explanatory in that where an incumbent to the post of the "State Chief Information Commissioner" or "State Information Commissioner" if, at the time of their appointment, is in receipt of a pension, his salary shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent or retirement gratuity shall be reduced from the said salary and allowances payable to them.

9. The provisions of Section - 17 of the "the Act" referred to above empowers the Governor of the State for removal of "State Chief Information Commissioner" and "State Information Commissioner" on the ground of proved misbehaviour and incapacity, after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner" and "State Information Commissioner" ought on such ground be removed. Further, Sub-section (2) of Section-17 empowers the Governor to suspend the "State Chief Information Commissioner" and "State Information Commissioner" and if deemed necessary prohibit them from attending the office during enquiry until the Governor has passed orders on receipt of the report of the Supreme Court. Sub-section - (3) of Section - 17 also provides for removal of the Officers, notwithstanding anything contained in Sub-section (1), if such officers viz., "State Chief Information Commissioner" or "State Information Commissioner" acquires the disqualification enumerated thereunder.

10. A bare reading of Section - 15 of the "the Act" referred to above makes it amply clear that very constitution of State Chief Information Commissioner and State Information Commissioner is to achieve the aims and object of the enactment referred to supra, as intended by the Legislature and it is not only to ensure and to promote the transparency and accountability in the working of the every public authority but also to ensure the independence of the members of the commission in mid to give them autonomous protection in the matter of their tenure. As, by law, the Commission shall exercise its power conferred under "the

Act" autonomously without being subjected to direction by any other authorities under "the Act" for which purpose, both the "State Chief Information Commission" and "State Information Commission" shall take oath of office as provided in the first Schedule referred to above. The proviso to Section - 16(5) of the "the Act" which provides for reduction of pension from the salaries and allowances provided to thereunder makes it clear that there is no total bar for considering the persons who are receiving the pension after their employment in a different capacity.

10.1 As could be seen from the provisions of Section - 17 of the "the Act" the same would empower the Governor to remove the "State Chief Information Commissioner" and "State Information Commissioner" as and when their misbehavior and incapacity is proved after submission of the report by the Supreme Court on enquiry. Till then, the incumbent of above two posts which are autonomous cannot be removed and nor could the said posts filled up or appointed over again by the Government. Merely because the Committee who recommends the incumbent to the said posts is headed by the Chief Minister, Opposition leader and a Cabinet Minister to be nominated by the Chief Minister, no constitutional illegality or mala fide ness could be attached to the decision taken by the Governor. On the other hand, even though the incumbent posts are created under the statute, it is explicitly made clear in the statute itself that such incumbent is independent and autonomous and the incumbent to the said posts are not appointed by the Government but they are appointed by the Governor, after evaluation of the recommendation of the Committee constituted under statute and the provisions contained under Article - 319(a), (b), (c) & (d) will not be a bar for appointment of the incumbent to the posts of "State Chief Information Commission" and "State Information Commission".

10.2 The above view of ours is also fortified by the Apex Court in the case of Hargovind Pant v. Dr. Raghukul Tilak and Ors. reported in (1979) Scc 458 wherein the Apex Court has held as under:

2. We shall have to consider the true nature of the office of Governor in order to determine whether it is an employment under the Government of India, but before we do so, we may first have a look at Article - 319. This Article consists of Clauses (a) to (d) and these clauses, on a combined reading, impose prohibition on holding of any employment under the Government of India or the Government of State by the Chairman or member of the Union Public Service Commission or a State Public Service Commission on his ceasing to be such Chairman or member. This prohibition has been enacted in public interest with a view to ensuring that no allurements are held out to the chairman or members of the Union Public Service Commission or a State Public Service Commission which would deflect them from the path of rectitude and duty. The Union and State Public Service Commissions are charged inter alia with the duty of advising the Government on various matters relating to civil services and civil posts such as methods of recruitment, appointments, promotions and transfers and disciplinary

matters and it is of utmost importance for the efficiency and integrity of the civil services that this duty should be performed by the Union and State Public Service Commissions objectively, impartially and without being influenced by any extraneous considerations. The Union and State Public Service Commissions have vast powers of recruitment to an immense and increasing host of Government posts and in a country with considerable unemployment, these powers may be prone to be abused if the office of Chairman and member of the Union and State Public Service Commissions is exposed to executive or political pressures. The prospect and peril of the executive or the politician trying to influence overtly or covertly the Chairman and members of the Union and State Public Service Commissions by dangling the carrot or holding out the possibility of employment under the Government after the expiry of their term of office may corrupt the integrity of the institution of the Union and State Public Service Commissions. It is true that by and large the Chairman and members of the Union and State Public Service Commissions would be men of proven merit and integrity and no allurements, howsoever attractive, would deflect them from doing their duty without fear or favour, but even so, the possibility of obtaining employment under the Government in future may consciously or unconsciously induce them to fall in line with the wishes of the executive or the politician. The office of Chairman and member of the Union and the State Public Service Commissions must, therefore, be zealously kept beyond reproach and above suspicion. It was pointed out as far back as 1924 by the Royal Commission on Superior Services in India, popularly called the Lee Commission:

Wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it as far as possible from political or personal influence and give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the "spoils system" has taken its place, an inefficient and disorganised civil service has been the inevitable result and corruption has been rampant.

It was as a result of this recommendation that Public Service Commissions were set up in the country with the objective outlined by the Lee Commission. When Article -285(3) of the Draft Constitution providing for ineligibility of the Chairman and members of the Union and the State Public Service Commissions for future employment under the Government was being debated in the Constituent Assembly, Dr. Ambedkar pointed out the *raison d'être* of that provision in the following words:

Now I come to the other important matter relating to the employment or eligibility for employment of the members of the Public Services Commission - both the Union and State Public Service Commissions. Members will see that according to Article - 285, Clause (3) we have made both the Chairman and the members of the Central Public Services Commission as well as the Chairman of

the State Commission and the members of the State Commission, ineligible for reappointment to the same posts; that is to say, once a term of office of a Chairman and member is over, whether he is a Chairman of the Union Commission or the Chairman of a State Commission, we have said that, he shall not be re-appointed. I think that is a very salutary provision, because any hope that might be held out for re-appointment, or continuation in the same appointment, may act as a sort of temptation which may induce the member not to act with the same impartiality that he is expected to act in discharging his duties. Therefore, that is a fundamental bar which has been provided in the draft article.

Shri. H.V. Kamath also spoke in the same strain while adverting to this topic:

It is agreed on all hands that the permanent services play an important role in the administration of any country. With the independence of our country the responsibilities of the services have become more onerous. They may make or mar the efficiency of the machinery of administration - call it steel frame or what you will a machinery which is so vital for the peace and progress of the country.

If a member of the Public Service Commission is under the impression that by serving and kowtowing to those in power he could get an office of profit under the Government of India or in the Government of a State, then I am sure he would not be able to discharge his functions impartially or with integrity.

The public here have sometimes been made to feel that family or group interests have been promoted at the expense of the national; and to protect the Ministers against such a charge, it is necessary that the Public Service Commissions must be kept completely independent of the executive....

It is, therefore, clear that the Constitution makers were anxious to insulate the Chairman and members of the Union and State Public Service Commissions from executive or political pressures or influences and to place them beyond the reach of any allurements or temptations which may cloud their judgment and deflect them from doing their duty. The Constitution makers were keen to ensure that the Chairmen and members of the Union and State Public Service Commissions were above reproach, free from coercion and political influence and they could, if necessary, stand up against the executive and defy any political pressure. It was with this end in view that the Constitution makers enacted Clauses (a) to (d) of Article 319 prohibiting future employment under the Government of India or under the Government of a State for the Chairmen and members of the Union and State Public Service Commissions.

3. We are concerned in this SLP only with Clause (d) of Article 319 since respondent - 1 was a member of the Rajasthan Public Service Commission and it is on account of that fact that it is claimed that he was ineligible to be appointed Governor of Rajasthan. Clause (d) of Article - 319 provides:

On ceasing to hold office - a member other than the Chairman of a State Public

Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as Chairman of that or any other State Public Service (Commission, but not for any other employment either under the Government of India or under the Government of a State.

It is, therefore, obvious that respondent 1 could be appointed Chairman or any other member of the Union Public Service Commission or chairman of the Rajasthan or any other State Public Service Commission, but he was ineligible for any other employment either under the Government of India or under the Government of a State. Now, it was not the case of the petitioner that the office of Governor was an employment under the Government of a State and the only question which, therefore, requires to be considered is whether the office of Governor can be said to be an employment under the Government of India. If it is, then undoubtedly respondent 1 could not be appointed Governor of Rajasthan and his appointment would be invalid. But we are of the view that howsoever wide and expansive a meaning we may give to the words "employment...under the Government of India", the office of Governor cannot come within it.

4. the first question that arises on the applicability of the words "employment...under the Government of India" is whether the office of Governor is an "employment" within the meaning of that expression in Clause (d) of Article - 319. What is the sense in which that word has been used in this Article? Semantically, the word "employment" is not a word with a single fixed meaning but it has many connotations. On the one side it may bear the narrow meaning of relationship of employer and the employee and on the other, it may mean in its widest connotation any engagement or any work in which one is engaged. If the former be the sense in which the word "employment" is used in Clause (d) of Article - 319, the office of Governor would certainly not be an employment, because the Governor of a State is not an employee or servant of anyone. He occupies a high constitutional office with important constitutional functions and duties. The executive power of the State is vested in him and every executive action of the Government is required to be expressed to be taken in his name. He constitutes an integral part of the legislature of the State though not in the fullest sense, and is also vested with the legislative power to promulgate ordinances while the Houses of the Legislature are not in session. He also exercise the sovereign power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. He is vested with the power to summon each House of the Legislature or to prorogue either House or to dissolve the legislative assembly and this power may he exercised by Mm from time to time. He is also entitled to address either House of Legislature or both Houses assembled together and he may send messages to the House or Houses of the Legislature with respect to a bill then pending in the legislature or otherwise. No bill passed by the Houses of the Legislature can become law unless it is assented to by him and before assenting to the bill, lie may return the bill, provided it is

not a money bill, to the Houses of the Legislature for reconsideration. He has also the power to reserve for consideration of the President any bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill. There is also one highly significant role which he has to play under the Constitution and that is of making a report where he finds that a situation has arisen in which the Government, of the State cannot be carried on in accordance with the provisions of the Constitution. It is the Governor's report which generally forms the basis for the President taking action under Article - 356 of the Constitution, it will be seen from this enumeration of the Constitutional powers and functions of the Governor that he is not an employee or servant in any sense of the term. It is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President. It is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot, therefore, even by stretching the language to a breaking point, be regarded as an employee or servant of the Government of India. If, therefore, the word "employment" were construed to mean relationship of employer and employee, the office of Governor would certainly not be an "employment" within the meaning of Clause (d) of Article - 319.

5. But if we accept the wider meaning of the word "employment" as connoting any engagement or any work in which one is engaged, as in the expression "self-employment", the office of Governor would clearly be an "employment" within the meaning of Clause (d) of Article - 319. That, however, would not be enough to attract the applicability of this provision. There is a further requirement which is necessary and that is the employment must be under the Government of India. Now, what is the meaning of this expression "Under the Government of India"? Fortunately, there are two decisions of this Court which throw some light on this question. The first is the decision in *Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court* where the question was as to whether the officers and members of the staff of the High Court could be said to be persons "Serving under the Government of India or the Government of a State in a civil capacity" so as to be within the scope of Article - 320(3)(c) which requires consultation with the appropriate Public Service Commission in disciplinary matters. This Court, speaking through Jaganathdas, J., pointed out:

The phrase "a person serving under the Government of India or the Government of a State" seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments

functioning in the name of the President or the Governor or of a Rajpramukh. The Officer and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice....

The question which arose in the other decision in *Baldev Raj Guliani v. Punjab and Haryana High Court* was a similar one and it related to the applicability of Article 320(3)(c) to Judicial Officers in the State. Here in this case also the Court took the same view and, after referring to the earlier decision in *Pradyat Kumar Bose* case with approval, held that "just as the High Court staff are not serving under the Government of the State, the Judicial Officers are also not serving under the State Government", because they are "entirely under the jurisdiction of the High Court for the purpose of control and discipline". It will, therefore, be seen that the employment can be said to be under the Government of India if the holder or incumbent of the employment is under the control of the Government of India vis-a-vis such employment. Now, if one applies this test to the office of the Governor, it is impossible to hold that the Governor is under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. He is an independent constitutional office which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. There can, therefore, be no doubt that the office of Governor is not an employment under the Government of India and it does not come within the prohibition of Clause (d) of Article - 319".

The dictum laid down by the Apex Court cited supra is squarely applicable to the facts and circumstances of the present case.

10.3 Even in the present case, the Governor has not independently chosen to appoint the 2nd respondent merely based on the recommendation made by the Committee but, as evident from the records, after applying his mind to the facts and circumstances of the case and after evaluating the recommendation made by the committee and after being satisfied himself that his doubt and reservations stood clarified with regard to the bar under Article - 319 of the Constitution of India.

11. The words employed by the Legislature u/s - 17(1), (2) & (3) of the "the Act" are identical to Article - 319 of the Constitution of India. With the risk of repetition, we feel appropriate to refer to Section - 17(1)(2)(3) of the Act and Article - 319 of the Constitution.

17. Removal of State Chief Information Commissioner or State Information Commissioner.- (1) Subject to the provisions of Sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be

removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under Sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in Sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be.-

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members- On ceasing to hold office-

(a) The Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) The Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;

(c) A member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the

Government of a State;

(d) A member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State".

11.1 Therefore, the question that arise for our consideration is whether the office of the "State Chief Information Commissioner" or "State Information Commissioner" is an "employment" within the meaning of that expression in Clause (d) of Article - 319?. Semantically, the word "employment" is not a word with a single fixed meaning but it has many connotations.

11.2 On the one side it may bear the narrow meaning of relationship of employer and the employee and on the other, it may mean in its widest connotation any engagement or any work in which one is engaged. If the former be the sense in which the word "employment" is used in Clause (d) of Article - 319, the office of "State Information Commissioner" would certainly not be an employment, because the "State Information Commissioner" of a State is not an employee or servant of anyone. He occupies a high constitutional office with important constitutional functions and duties. It will be seen from this enumeration of the Constitutional powers and functions of the "State Information Commission" that he is not an employee or servant in any sense of the term. It is no doubt, true that the "Information Commissioner" is appointed by the Governor which means in effect and substance, by the Government of Karnataka, but that is only a mode of appointment and it does not make the "Information Commissioner" an employee or servant of the Government of India. Every person appointed by the Governor is not necessarily an employee of the Government of Karnataka. If, therefore, the word "employment" would certainly not be an "employment" within the meaning of Clause (d) of Article - 319. But if we accept the wider meaning of the word "employment" as connoting any engagement or any work in which one is engaged, as in the expression "self-employment", the office of "State Information Commission" would clearly be an "employment" within the meaning of Clause (d) of Article - 319. However, the office of "State Information Commissioner" is not an office of profit and the same is not subject to the control of the Government of Karnataka. We are, therefore, of the considered view that the office of the "State Chief Information Commissioner" and "State Information Commissioner" is not an employment under the Government of Karnataka and it does not come within the prohibition of Clause (d) of Article - 319".

11.3 On careful consideration of the material on record in consonance with the relevant provisions of the "the Act" and Article - 319 of the Constitution of India and the dictum laid down by the Apex Court in Hargovind Pant's case cited supra, we are of the considered view that there is no illegality or capriciousness in the decision taken by the Governor while appointing the 2nd respondent as "State Information Commission". Therefore, none of the grounds urged by the

petitioner, as stated supra, are sustainable in law and consequently, petition tiled by the petitioner is devoid of merits and the same liable to be dismissed with costs.

Accordingly, the writ petition is dismissed.