

ELECTION COMMISSION OF INDIA

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v.

STATE BANK OF INDIA STAFF ASSOCIATION LOCAL HEAD
OFFICE UNIT, PATNA AND ORS. ETC.

FEBRUARY 7, 1995

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[A.H. AMHADI, CJ, S. MOHAN AND N.P. SINGH, JJ.]

Constitution of India, 1950: Article 324 (6)—Interpretation of—Election Commission—Requisition of staff for election duty—Expression 'Such staff' refers to staff which is under the control of President or Governor—Requisition of staff of State Bank of India held not permissible—Held Commission's power under Article 324 is not untrammelled.

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Representation of People Act, 1951: Section 26 and 159. Elections—Conduct of—Requisition of staff for duty—Held section 26 does not enable the commission to draft in the services of officers other than officers of Government and local authority.

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The District Election Officer-Cum-District Magistrate, Patna addressed a letter dated 22nd September, 1991 to the Chief General Manager, State Bank of India, Patna requisitioning the services of large number of officers and staff of the State Bank for appointment as Presiding Officer and Polling Officer for Mid-term Parliamentary Election and Assembly by-election, 1991. Further by its orders dated 30th October, 1991 and 1st November, 1991 he appointed and deputed some of the employees of the State Bank on election duty. The respondent-Bank Association filed a petition before the Patna High Court challenging these communications which quashed the orders on the ground that (i) the District Election Officer had no power under section 26 of the Representation of People Act, 1951 to requisition the services of employees of the State Bank of India for election duty; (ii) the State Bank of India was not a local authority within the meaning of section 159 of the 1951 Act. In the connected appeal also the High Court of Rajasthan quashed the order of the District Election Officer, Ajmer dated 8.8.89 by which he has requisitioned the services of the employees of Life Insurance Corporation of India, Ajmer for election duty. Against the decision of both the High Courts, Election Commission of India preferred appeals before this Court contending that under section

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A 26 of 1951 Act, anyone could be appointed as Presiding Officer for polling station and not necessarily a Government servant or an employee of local authority.

B On behalf of the respondents, it was contended that merely because anyone could be appointed as Presiding Officer or Polling Officer does not necessarily lead to the conclusion that the services of any person even though not a government servant could be sought under Article 324(6) of the Constitution.

C Dismissing the appeals and upholding the impugned judgments of the High Court, this Court

D HELD : 1. The impugned communications issued by the District Election Officer-cum-District Magistrate, Patna have been rightly quashed by the High Court of Patna. The High Court of Rajasthan was also right in quashing the order of the District Election Officer, Ajmer dated 8.8.1989. [946-G]

E 2. Clause (6) of Article 324 empowers the Election Commission to request the President, or the Governor of the concerned State to make available such staff as may be necessary for it to carry out its duty under clause (1). 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 that 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 F Union or the State Government 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 Government can be made G available for the purpose of election. [944-C, G, H, 945-A]

H 3. 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 it would become an *imperium in imperio* which no one is under our constitutional order. [946-A]

Digvijay Mote v. Union of India and Ors., [1993] 3 S.C.C. 175, referred to. A

K.P. Roy v. D. Rudra, Distt. Magistrate, Howrah, AIR (1971) Cal 461; *Sukhdev Singh v. Bhagatram*, [1975] SCR 619 and *Shyam Lal Sharma v. Life Insurance Corporation and Anr.*, (1970) 2 FLR 357; distinguished. B

4. Under Section 26 of the Representation of People Act, 1951, a Presiding Officer for polling station could be anyone, not necessarily a Government servant or an employee of a local authority. However, section 26 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. [942-G, 945-F] C

5. The penalty provisions under the Representation of People Act, 1950 and 1951 cannot be invoked against those employees whose services the Election Commission cannot requisition. [946-D] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6026 of 1993 Etc. D

From the Judgment and Order dated 21.5.93 of the Patna High Court in C.W.J.C. No. 7815 of 1991. E

S. Muralidhar for the Appellant. E

D.A. Dave, Ms. Nishan Bagchi and Ms. Indu Malhotra for the Respondent Nos 2 and 5.

B.B. Singh for the Respondent No. 6. F

Sanjay Kapoor and M.K. Michael for the Respondent No. 7.

M.A. Krishnamoorthy for the Respondent in C.A. No. 4611/89

The Judgment of the Court was delivered by G

AHMADI, CJ. Both these appeals can be disposed of by this common judgment as the question under consideration in both cases bears on the language of clause (6) of Article 324 of the Constitution of India.

The Election Commission of India is the appellant in both the H

A appeals. Article 324 of the Constitution vests in the Election Commission the power of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to Parliament and to the legislature of every State.

B Clause (6) of Article 324 reads as under :

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

C Article 327 enables Parliament to make provision with respect to all matters relating to, or connected with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

D In exercise of the power vested in the Parliament under these Articles it enacted the Representation of the People Act, 1950 and the Representation of the People Act, 1951 (hereinafter referred to as 'the 1950 and 1951 Acts' respectively). The 1950 Act provides for the allocation of seats and the delimitation of constituencies for the purpose of elections to the House of People and the Legislatures of the States, the qualifications of voters at such elections, the preparation of electoral rolls and the matters connected therewith. The 1951 Act provides for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections. Section 26 of 1951 Act enables a District Election Officer to appoint a Presiding Officer for each polling station. Section 159 of the said reads as follows :

G "159. *Staff of every local authority to be made available for election work.* - Every local authority in a State shall, when so requested by a Regional Commissioner appointed under clause (4) of article 324 or the Chief Electoral Officer of the State, make available to any returning officer such staff as many be necessary for the

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performance of any duties in connection with an election." A

From a conspectus of the above provisions it seems clear to us that on the request of the Election Commission the President or the Governor of the State must make available to the Election Commission such staff as may be necessary for the discharge of functions conferred on the Election Commission under clause (1) of Article 324. In view of clause (6) of Article 324 the President or the Governor of the State when requested will make available to the Election Commission the services of such staff as may be necessary for the discharge of the functions conferred on the Election Commission. By this, it is meant that the persons whose services may be placed at the disposal of the Election Commission must be persons who are either employees of the Central Government or of the State Government. Again, in view of Section 159 extracted above when a requisition is made by the Regional Commissioner, the local authority shall make available its staff for the purpose of duties in connection with an election. B C

Thus far there is no dispute but the controversy arises in view of the action taken by the District Election Officer making the following requisition: D

"OFFICE OF THE DISTRICT ELECTION OFFICER-CUM-DISTRICT MAGISTRATE E

Ref. No 522/Elec. Patna, the 22nd Sept. 91

ELECTION TOP PRIORITY

To F

Chief General Manager
State Bank of India
Jajej Road, Patna

Sub : List of Officers & Staff for appointment as Presiding Officers & Polling Officers in Mid Term Parliamentary Election I Assembly bye-election, 1991. G

Sir,

I am to inform you that services of large number of officers & H

A staff will be required for appointment as Presiding Officers, Polling Officers and Patrolling-cum-Ballot Box Collecting Officers in the forth coming Mid-term Parliamentary Election & Assembly Bye-election, 1991 in this district.

B You are requested to send complete list of officers and staff of your office & field offices located in the District Patna under you in the proforma given below in TRIPLICATE through Special Messenger to Shri Keshav Prasad, Additional District Magistrate (Establishment), Patna Collectorate, Patna latest by 5th October, 1991 positively. Such Officer or Staff who is either female or disabled or appointed as cashier or deployed no night Guard duties, or is unavoidably necessary to be retained as Skeleton Staff in your office or is on long leave or training deputation may please be suitably indicated in the remarks column against his/her name in the list so that they may be considered for exemption from Election Duties as far as possible and practicable. You are also requested to certify that no officer or staff has been left out.

D Please given full name & exact location & address of the office on the top of the list to facilitate service of appointment letters, Telephone number of your office & residence, if available may also be indicated below the address.

E I sincerely hope that you will extend your full co-operation & the list relating to your office complete in all respect will be made available to Shri Keshav Prasad, Additional District Magistrate (Establishment), Patna Collectorate latest by 5th October, 1991 positively.

F Please accord highest priority. Please acknowledge receipt.

G Yours faithfully,
Sd/-
(ARBIND PRASAD)
DISTRICT ELECTION OFFICER
cum-District Magistrate
PATNA."

H It appears, on 30.10.1991 and 1.11.1991 certain orders were issued by

the said District Election Officer appointing and deputing some of the employees of the State Bank of India on election duty in connection with the Elections to the Barh Parliamentary Constituency and Pali Assembly Constituency which were to be held on 16.11.1991. Thereupon the first respondent filed a writ petition (CWJC No. 7815 of 1991) in the High Court of Patna praying for quashing these communications on the ground that the District Election Officer had no authority to requisition the services of the Bank employees for election duty.

While this writ petition was pending, sometime in May, 1993, in connection with the polling to be held in 35-Patna Parliamentary Constituency, similar letters of appointment of employees of the State Bank of India for election duty were issued by the District Election Officer, Patna. Therefore, the first respondent moved an application for amendment to include a challenge to these letters of appointment as well. The amendment was allowed.

The High Court, by the impugned judgment dated 21.5.1993, held that the District Election Officer had no power under Section 26 of the 1951 Act to requisition the services of employees of the State Bank of India for election duty. The High Court took the view that the State Bank of India was not a local authority within the meaning of Section 159 of the 1951 Act. Accordingly, the High Court quashed the orders and issued a writ in the nature of mandamus commanding the Election Commission of India not to requisition the services of the employees of State Bank of India in exercise of its power under Section 26 of the 1951 Act.

It may here be mentioned that during the pendency of the writ petition, the counsel for the Election Commission brought to the notice of the High Court that by a judgment dated 7.11.1989 the High Court of Rajasthan had quashed the order of the District Election Officer, Ajmer dated 8.8.1989 by which he had requisitioned the services of the employees of the Life Insurance Corporation of India, Ajmer for election duty. This was in writ Petition No. 4644 of 1989. Civil Appeal No. 4611 of 1989 is against that judgment.

The submissions of Mr. S. Muralidhar, learned counsel for the appellants, Election Commission of India, in Civil Appeal No. 6026 of 1993 run thus:

A Under Article 324, the superintendence, direction, control and the conduct of all elections to Parliament and to the Legislature of every State vests in the Election Commission. These elections have to be conducted fairly and properly. A large number of officers are required to man a number of polling stations that are required to be set up in each State. For each polling station five personnel are required in the minimum. That is why clause (6) of Article 324 of the Constitution of India envisages that when a request is made by the Election Commission or a Regional Commissioner, the President or the Governor will provide such staff as may be necessary for discharging the functions stated in Clause (1) thereof. The question then is, whether the words 'such staff' occurring in clause (6) are to be confined only to the staff under the government? In this connection, Article 327 may also be seen. In regard to all matters concerning the elections, the Parliament can make provision by law. In exercise of that power the 1950 and 1951 Acts came to be enacted. Therefore, in ascertaining the meaning of 'such staff' we will have to necessarily look at the 1950 and 1951 Acts.

D Section 13A of the 1950 Act deals with the Chief Electoral Officer for each state. He will have to be a Government servant. Similarly, Section 13AA deals with the District Election officers. Under Section 13CC, Officers and staff-members employed in connection with the preparation, revision and correction of the electoral rolls are deemed to be on deputation. They are subject to control, superintendence and discipline of the Election Commission. Similarly, under Section 28A of the 1951 Act Returning Officers, Presiding Offices, etc., are deemed to be on deputation and are subject to control, superintendence and discipline of the election Commission.

F Section 21 of the 1951 Act enables the Election Commission to nominate a Returning Officer. So also an Assistant Returning Officer can be appointed by the Election Commission. Both are expected to be Government Officers or employees of a local authority. In contrast, under Section 26, a Presiding Officer for polling station could be anyone, not necessarily a Government servant or an employee of a local authority. This is an important distinction. Section 134 talks of breaches of official duty in connection with election and includes the District Election Officers, Returning Officers, Polling Officers, etc. So also Rules 17(C) 34, 35 and 53(2) speak of non-government servants as well. In support of the submis-

sions reliance was placed on the decisions in *K.P. Roy v. D. Rudra, District Magistrate, Howrah*, AIR (1971) Calcutta 461 and the judgment in Civil Appeal No. 4611 of 1989. In the first case Railways employees were involved while in the latter employees of Life Insurance Corporation were involved.

Before the High Court, an argument was raised that the State Bank of India must be held to be a local authority under Section 159 of the 1951 Act. That argument is not advanced before us.

Mr. Dushyant Dave, learned counsel for respondents 1 to 5 in Civil Appeal No. 6026 of 1993 countered: the source of power to requisition the services being Article 324, court should first read the plain words of clause (6). That clause clearly states that the request must be made to the President or the Governor of a State. On receipt of such a request from the Election Commission, such staff as may be necessary for discharge of the function under clause (1) must be made available to the Election Commission or Regional Commissioner. No doubt, under Article 327 the Parliament may empower drafting the services of others by enactment of law. That is why section 29 of the 1950 Act and section 159 of the 1951 Act talk of the obligation of the local authority to make its staff available. Merely because anyone could be appointed as Presiding officer or Polling Officer does not necessarily lead to the conclusion that services of any person even though not a Government servant could be sought under Article 324(6). If the power, as contended by the appellant, is granted to the Election Commission, it will become an *imperium in imperio*. Therefore, it was expressly negated by this Court in *Digvijay Mote v. Union of India and Others*, [1993] 3 SCC 175 at 178.

Now, we come to Article 324. It will be useful to extract the following clauses of the said Article which have a bearing on the issues involved :

"324. Superintendence, direction and control of elections to be vested in an Election Commission. - (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every state and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

A xxx xxx xxx xxx

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)."

C We have already extracted clause (6) of Article 324 which empowers the Election Commission to request the President, or the Governor of the concerned State to make available such staff as may be necessary for it to carry out its duty under clause (1). Such a provision was necessary for the obvious reason that since the Election Commission has to hold elections at intervals it is not required to maintain a huge staff at considerable expense to the exchequer and therefore the power to seek on request such staff as is necessary came to be engrafted in the constitution itself.

E We assume that the powers of the Election Commission under Article 324 are plenary. Therefore, the Election Commission may issue any direction in the matter of conduct of elections. But the question is, in the garb of conduct of elections, can the Election Commission usurp the power not vested in it? 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 contradiction to Defence Service of the Union or the State), holding office during the pleasure *Durante 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 that 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.

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 appellants 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 required that they must be officers of Government or local authority, unlike in the case of officers falling under Section 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 drift 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 circumspection and minimum staff may be requisitioned 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.

A 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 Mote's case* (supra) (in which one of us, Mohan, J., was a partly) it would become an *imperium in imperio* which no one is under our constitutional order.

B In *K.P. Roy's* (supra) it dealt with the appointment of Railway employees as Polling or Presiding Officers. The question was whether the consent of these officers whose services were requisitioned was necessary? This has no bearing on the issue under our consideration. Besides, Railway employees are Government servants.

C The penalty provisions under the two Acts on which reliance was placed cannot but relate to those officers who are covered thereunder and not any person as is urged by the Election Commission. There can be no question of invoking the penalty provisions against those employees who services the Election Commission cannot requisition. We are, therefore, unable to appreciate how these provisions found in two statutes can be of any assistance in determining the scope and ambit of the power to requisition the services of employees belonging to different organisations. In our view, there is no co-relation.

D The decision of this Court in *Sukhdev Singh v. Bhagatram*, [1975] 3 SCR 619 and the decision of the Allahabad High Court in the case of *Shyam Lal Sharma v. Life Insurance Corporation & Another*, (1970) 2 FIR 357 are not relevant for our purpose. The question there was whether rules or regulations framed in exercise of statutory powers prohibiting employees from indulging in political activities and taking part in electioneering, etc, could be legally made. No such question arises here.

E In view of the foregoing discussion, we hold the impugned communications issued by the District Election Officer-cum- District Magistrate, Patna have been rightly quashed by the High Court of Patna. Equally so, the High Court of Rajasthan was right in quashing the order of the District Election Officer, Ajmer dated 8.8.1989. We, therefore, uphold the impugned judgments of the High Courts. The civil appeals are accordingly dismissed. However, there shall be no order as to costs.

G H T.N.A.

Appeals dismissed.