

(1995) 02 SC CK 0006

Supreme Court of India

Case No: Civil Appeal No"s. 6026 of 1993

Election Commission of India

APPELLANT

Vs

State Bank of India, Patna and
others

RESPONDENT

Date of Decision: Feb. 7, 1995

Acts Referred:

- Constitution of India, 1950 - Article 163(1), 310, 324(6), 327, 328
- Representation of the People Act, 1950 - Section 13A, 29
- Representation of the People Act, 1951 - Section 134, 159, 21, 22, 26

Citation: AIR 1995 SC 1078 : (1995) 2 JT 61 : (1995) 2 PLJR 43 : (1995) 1 SCALE 466 : (1995) 2 SCC 13 Supp : (1995) 1 SCR 935

Hon'ble Judges: A. M. Ahmadii, C.J.; S. Mohan, J; N. P. Singh, J

Bench: Full Bench

Advocate: S. Muralidhar, for the Appellant; D.A. Dave, Nisha Bagchi, Indu Malhotra, for the Respondent Nos.2 and 5., B.B. Singh, for the Respondent No. 6 and Sanjay Kapoor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.H. Ahmadi, C.J.

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.

2. The Election Commission of India is the appellant in both the 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.

3. 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)

4. 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.

5. 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 :

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 performance of any duties in connection with an election.

6. 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.

7. 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:

OFFICE OF THE DISTRICT ELECTION OFFICER-CUM-DISTRICT MAGISTRATE

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

ELECTION TOP PRIORITY

To 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.

Sir,

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

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 TRIPPLICATE 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.

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.

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.

Please accord highest priority. Please acknowledge receipt.

Yours faithfully,

Sd/-
(ARBIND PRASAD)
DISTRICT ELECTION OFFICER
cum-District Magistrate
PATNA.

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.

8. 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.

9. The High Court, by the impugned judgment dated 21.5.1993, held that the District Election Officer had no power u/s 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 u/s 26 of the 1951 Act.

10. 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.

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

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.

12. 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. u/s 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, u/s 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.

13. 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, u/s 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 submissions reliance was placed on the decisions in K.P. Roy Vs. D. Rudra, District Magistrate, Howrah, 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.

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

15. 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 imperia. Therefore, it was expressly negated by this Court in [Digvijay Mote Vs. Union of India \(UOI\) and Others,](#).

16. 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).

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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).

17. 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.

18. 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 be 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.

19. 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 appellant is based on several sections of the 1950 and 1951 Acts. We have referred to the relevant provisions of the two Acts hereinbefore.

20. 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 u/s 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.

21. 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 party) it would become an imperium in imperia which no one is under our constitutional order.

22. 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.

23. 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.

24. The decision of this Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and the decision of the Allahabad High Court in the case of Shyam Lal Sharma v. Life Insurance Corporation and Anr. (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.

25. 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 Raj as than 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.