

PETITIONER:
KIRPAL SINGH, M.L.A.

Vs.

RESPONDENT:
UTTAM SINGH & ANR.

DATE OF JUDGMENT 09/10/1985

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
VENKATARAMIAH, E.S. (J)
ERADI, V. BALAKRISHNA (J)
MISRA, R.B. (J)
KHALID, V. (J)

CITATION:
1986 AIR 300 1985 SCR Supl. (3) 622
1985 SCC (4) 621 1985 SCALE (2) 749

ACT:
Constitution of India, 1950 - Article 191 (1) (a) read with section 10 of the Representation of the People Act, 1951 Disqualification for membership, applicability to Public Sector Undertakings - Right to be elected and Right to speak for the people are questions to be decided by Parliament and not by the Court - Nature of interim orders to be passed by the Court in an election appeal when the election was set aside on grounds not covered by part VII of the Act, explained.

HEADNOTE:

The appellant Kirpal Singh was elected to the Punjab Legislative Assembly from Majitha constituency at the general elections held in 1972. His election was set aside by High Court in an Election Petition filed by one of the defeated candidates on the ground that the nomination paper of another candidate was improperly rejected by the Returning Officer for the reason that he was a development officer in the employment of the Life Insurance Corporation under whose Staff Regulations he was prohibited from seeking election. The High Court was of the view that the staff regulations could, at best, make Basant Singh liable to disciplinary action only. In the appeal under section 116A of the Representation of the People Act, 1951, the Court passed an interim order enabling the appellant to attend the assembly and sign the register, without participating in the proceedings or voting, and without drawing any remuneration. Subsequent to the filing of the appeal, there were three general elections with the result the appeal became wholly infructuous.

Disposing of the appeal, the Court,

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HELD : 1.1. Where an election is set aside for no fault of the duly elected candidate, such as a corrupt practice committed by him or his agent or a disqualification suffered by him, but on the ground that someone else's nomination had been improperly rejected, the more appropriate interim order would perhaps be to grant an absolute stay so that the

Constituency may not go unrepresented for no fault of either the elected or those who elected. [624 C-D]

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1.2 The awarding of the costs by the High Court, in such circumstances is uncalled for. The appellant will receive his remuneration for the period for which he was elected as a legislator. [626 C-D]

1.3 The clear and undoubted object of Article 191(1)(a) to (e) and the provisions of the Representation of the People Act (including section 10) is the preservation of the purity and integrity of the election process by preventing Government or State employees from taking part in the elections. Nowadays the activities of the State are so manifold and prolific that the State has been forced, in the interests of better management and administration and in order to further the Directive Principles of State Policy, to set up various Corporations which are but mere instrumentalities of the State. Whether the principle of Article 191(1)(a) has to be extended to employees of State Corporations and other Public Sector Undertakings by suitable legislation is a question of policy better left to, be decided by the elected representatives of the people themselves and not to the Court whose decision can only be confined to interpretation. [625 E-H; 626 A]

The Court recommended to the Government to have several questions posed before it examined by the Law Commission early.)

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 650 (NCE) of 1975.

From the Judgment and Order dated 14.3. 1975 of the Punjab and Haryana High Court in Election Petition No. 27 of 1972.

R.K. Garg, A.K. Ganguli, M.M. Kshatriya and Mrs. Vandana Sharma for the Appellant.

G.L. Sanghi, P.H. Parekh and P.K. Manohar for the Respondents .

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. Shri Kirpal Singh was elected to the Punjab Legislative Assembly from Majitha Constituency at the general elections held in 1972. His election was set aside by High Court in an Election Petition filed by one of the defeated candidates on the ground that the nomination paper of another candidate was improperly rejected by the Returning Officer. The

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nomination paper of One Basant Singh had been rejected on the ground that Basant Singh was a development officer in the employment of the Life Insurance Corporation and was therefore ineligible to seek election to the Assembly under the Staff Regulations of the Life Insurance Corporation. The High Court took the view that if Basant Singh defied the Staff Regulations and sought election to the Assembly he might have made himself liable to disciplinary action but that did not disqualify him from seeking election to the Assembly. So the nomination paper of Basant Singh was held to have been improperly rejected and the election of Kirpal Singh was set aside. His election having been set aside he appealed to this Court under Section 116-A of the Representation of the People Act. While admitting the appeal, this Court made an interim order enabling the appellant to attend the Assembly and sign the register,

without participating in the proceedings or voting and without drawing any remuneration. Without meaning any disrespect to the learned judges who made the interim order we think that where an election is set aside for no fault of his, such as a corrupt practice committed by him or his agent or a disqualification suffered by him, but on the ground that someone else's nomination had been improperly rejected, the more appropriate order would perhaps be to grant an absolute stay so that the Constituency may not go unrepresented for no fault of either the elected or those who elected.

Subsequent to the filing of the appeal, there have been three more general elections. The present appeal has thus become wholly infructuous, indeed a sad commentary on the legal process. Though the question raised is an important one which may arise again and again in the future we do not propose to make any pronouncement upon it since we think the matter is one which should receive the consideration of the Parliament and suitable legislation be enacted. Under Art. 191(1) of the Constitution a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State -

- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;

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- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament.

Chapter III of the Representation of the People Act which certainly is a law made by Parliament within the meaning of Art. 191(1)(e) of the Constitution enumerates some further grounds of disqualification for membership of Parliament and State Assemblies. In particular we may refer to Section 10 which says,

"Disqualification for office under Government Company - A person shall be disqualified If, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share."

The clear and undoubted object of Art. 191(1)(a) to (e) and the provisions of the Representation of the People Act (including sec. 10) is the preservation of the purity and integrity of the election process by preventing Government or State employees from taking part in the elections. But then sec. 10 appears to confine the disqualification, in so far as it relates to employees of Government Companies to the 'top-brass' only if such an uncouth expression may be allowed to creep into the judgment of a Court. Nowadays the activities of the State are so manifold and prolific that the State has been forced, in the interests of better management and administration and in order to further the Directive Principles of State Policy, to set up various Corporations which are but mere instrumentalities of the State. Is the principle of Art. 191(1)(e) then to be

extended to employees of State Corporations also by enacting appropriate laws under Art. 191(1)(e)? Or are employees of Public Corporations to be treated differently from employees of the Government? Are not some of them in a better position to exert undesirable pressure, than Government employees? On the other hand, are a tremendously large number of employees of Public Corporations to be denied the opportunity of being chosen, as representatives of the People? Do

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all the considerations applicable to Government Employees equally apply to employees of Public Sector Undertakings? Is there no distinguishing feature. Are a large mass of highly or moderately literate people to be denied the right to speak for the people? Is the right to be elected, to be confined, without meaning any disrespect to anyone to the professional politicians only? These are some of the vital questions posed and which require to be answered. The answer should be best given by the elected representatives of the people themselves. We are not shirking the decision of these questions but our decision can only be confined to interpretation. Not so, Parliament which can decide upon the Policy. That is why, we recommend to the Government to have the matter examined by the Law Commission very early. When a suitable occasion arises in the future we will, of course, deal with the matter, probably helped by new legislation.

The High Court has awarded costs against the appellant. That was uncalled for. We set aside that part of the order. We express no opinion on the other questions. The appellant will receive his remuneration for the period for which he was elected as a legislator.

S.R.

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