

Before : A. L. Bahri & V. K. Bali, JJ.

ZILE SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF HARYANA ETC.—Respondents

C.W.P. 2263 of 1992

Dated 14th February, 1993

Constitution of India, 1950—Art. 226, 21 Representation of People Act S. 26—Petitioners deputed for election duty in Punjab—As conditions in Punjab are disturbed, petitioners apprehensive about assuming election duty—Fear for life and personal liberty—Whether such action of respondents in deputing petitioners to do election duty under S. 26 of the Act violative of Article 21.

Held, that Article 21 itself contemplates for depriving the person of his life as well as the personal liberty except according to the procedure prescribed by law. So rule of law has been enshrined in the Constitution. The Representation of people Act is in-force, which is under consideration. Although present is not a case of depriving any person of his life and at the most it could be said that the personal liberty is going to be jeopardised, as the petitioners, against their wishes, are being deputed to visit Punjab, which is a disturbed area, however, this action is being taken section 26 of the Act aforesaid and if the action is in accordance with law, it cannot be said that Article 21 of the Constitution has been infringed. (Para 5)

Representation of People Act Ss. 26 & 28A—Deputation to election duty—Petitioners challenging action of respondents deputing them on duty outside the State or from local Authority within their area concerned—If deputed to another State, there would be change in service conditions of the petitioner—Only those who opt for duty in other States to be appointed—Such action of the respondents is justified under section 26 the District Election Officer can call upon any person to do election duty of Presiding Officer.

Held, that Section 26(1) empowers the District Election Officer for appointing the Presiding Officer and if such person happened to be in Government Service in view of Section 28-A would be deputation with the Election Commission for the period mentioned therein. Their Service conditions would be changed and only those persons could be appointed who had given their willingness. The procedure suggested by counsel for the petitioners is that as and when such appointments are to be made under section 26 of the Act options of all the employees should be called and then persons to be selected and appointed. We are afraid, this approach to interpret the provisions of Section 26 and Section 28 of the Act, cannot be accepted.

(Para 7)

Held, that it is in this sense that word 'appoint' is used in Section 26 giving power to the District Election Officer to appoint Presiding Officer. Some special duties are required to be performed by the Presiding Officer at the election booths. Keeping in view the same, the District Election Officer is required to depute such persons which are considered suitable. Obviously, the Court cannot sit on judgment of the District Election Officer in this respect. (Para 7)

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may please call for the records of the case and after perusal of the same :—

- (i) *to issue a writ of certiorari quashing the impugned orders Annexure P-1 and Annexure P-2 and P-2/A by which the petitioners have been deputed to perform duties in the State of Punjab i.e. other than the State of Haryana under which the petitioners are working and of which Government the petitioners are employees ;*
- (ii) *to issue a writ of mandamus directing the respondents to allow the petitioners to work in the Haryana State only and not to send anywhere outside the State of Haryana without seeking options from the petitioners ;*
- (iii) *to issue any other writ, order or direction as this Hon'ble Court deems fit under the facts and circumstances in the interest of justice ;*
- (iv) *issuance of advance notices upon the respondents and filing of the certified copies of Annexures P-1 and P-2 be dispensed with ;*
- (v) *costs of this petition may please be also awarded.*

It is further prayed that operation of the impugned orders Annexures P-1 and P-2, P-2/A may kindly be stayed during the pendency of the writ petition.

Girish Agnihotri, Advocate, for the Petitioners.

ORDER

(1) *Vide this order two writ petitions (C.W.P. Nos. 2263 and 2272 of 1992) are being disposed of.*

(2) *In these writ petitions, petitioners are mostly Government servants and in one of the petitions some of the petitioners are employees of Semi-Government Corporations. They have been appointed as Presiding Officers for holding elections of Lok Sabha*

and State Assembly in the State of Punjab which are scheduled to be held on February 19, 1992. Annexure P-1 in CWP No. 2263 is the order dated February 11, 1992 passed by District Election Officer (Deputy Commissioner) Sangrur. This order has been passed in the exercise of powers under section 26 of the Representation of People Act (for short called 'the Act'). Conditions for deputing such persons as Presiding Officers are also mentioned in this order. Some of them may be noted :—

- (i) The petitioners would be getting half month's salary as bonus ;
- (ii) Normal T.A. ;
- (iii) 1½ times of the entitled D.A. ;
- (iv) Free boarding and lodging; and
- (v) *Ex gratia* payment to next of kin of Rs. 200,000 in case of death within 120 days of the notification of polls in Punjab.

In response to this order the Deputy Commissioner, Jind, passed orders like Annexure P. 2 on February 12, 1992 deputing for election duty in Sangrur district of Punjab. Such a letter is addressed to one of the petitioners. It is taken that similar letters were issued to other petitioners. Almost similar Annexures have been attached with the other writ petition.

(3) For paucity of time notices could not be issued to the respondents and we have given full hearing to counsel for the petitioners.

Three questions have been argued by counsel for the petitioners which are briefly noticed as under :—

- (1) That the order Annexure P. 1 has been passed in violation of the provision of Articles 14 and 21 of the Constitution.
- (2) That the order Annexure P. 1 has been passed without following the procedure as prescribed under different provisions of the Representation of people Act ; and
- (3) The District Election Officer was not competent to pass the order Annexure P. 1.

(4) On going through several provisions of the Representation of People Act, we notice that the process of election is required to be completed within a short span of time and those provision have been made to enable the authorities to act promptly and make all necessary arrangements for conducting the elections. As presently to be discussed, District Election Officer, in exercise of power under section 26 of the Act could appoint any person as Presiding Officer. This power is not only to be exercised in respect of Government servants but could be exercised *qua* other persons. The question of discrimination as contemplated under Article 14 of the Constitution will not arise. Firstly no person can say that since someone has been appointed Presiding Officer whereas his name has been ignored. Likewise no one can say that he should not have been appointed and somebody else's name has not been considered. In the democratic process which is to be followed in conducting elections under the aforesaid Act only the persons authorised under the Act could call upon such person, if the authority considers appropriate, to perform the duty. No procedure was required to be followed in the selection of Presiding Officers. The only embargo contained in section 26 of the Act is that such persons would not be appointed as Presiding Officers who were employed by or on behalf of a person working for a candidate in or about the election. The applicability of Article 14 of the Constitution in the facts aforesaid is entirely misconceived.

(5) In the grounds, reference was also made to Article 21 of the Constitution which provides that no person shall be deprived of his life or personal liberty except according to the procedure prescribed by law. It was argued that because of the disturbed conditions in Punjab, persons could not be deputed on election duty there, as their life or personal liberty would be jeopardised. This contention again cannot be accepted. Article 21 itself contemplates for depriving the person of his life as well as the personal liberty except according to the procedure prescribed by law. So rule of law has been enshrined in the Constitution. The Representation of People Act is in-force, which is under consideration. Although present is not a case of depriving any person of his life and at the most it could be said that the personal liberty is going to be jeopardised, as the petitioners, against their wishes, are being deputed to visit Punjab, which is a disturbed area, however, this action is being taken section 26 of the Act aforesaid and if the action is in accordance with law, it cannot be said that Article 21 of the Constitution has been infringed.

(6) Learned counsel for the petitioners, after referring to certain provisions of the Act, has argued that only persons from the State of Punjab could be deputed to work as Presiding Officers or members of the staff to help in the conduct of the election. Reference has been made to the provisions contained in Chapter IV of the Act. Section 19-A of the Act provides for delegation of functions of Election Commission to the Deputy Election Commissioner. Section 20 gives general duties of the Chief Electoral Officer which are subject to Superintendence, directions and control of the Election Commission. Section 20 A is pressed into service which deals with general duties of the District Election Officer which are of course subject to superintendence, directions and control of the Chief Electoral Officer. The Election Officer is to co-ordinate and to supervise all work *in the district or in the area within his jurisdiction* in connection with the conduct of the elections of the parliament or the Legislature of the State. Emphasis has been supplied to the work in the district or in the area within his jurisdiction. Section 21 further gives power to take assistance of Officer of the Government or of the Local Authority. Further reference has been made to Section 159 of the Act which provides that staff of every Local Authority when requested shall make available to any Returning Officer such staff as may be necessary for the performance of any duty in connection with the election. The contention of learned counsel for the petitioners is that on persual of the provisions aforesaid it should be held that the persons in connection with the conduct of the elections could be deputed on duty from the State or from the Local Authority within the area concerned. This is not the correct approach. These provisions, as referred to above, do not particularly refer to the appointment of Presiding Officers. These are to be read as enabling provision for the persons mentioned therein, such as services of such staff members to be obtained for helping the conduct of the elections. With respect to the appointment of Presiding Officer there is specific provision contained in Section 26 which is to be read along with Section 28-A of the Act. Extract from Section 26 (1) and Section 28-A are reproduced below :—

“26 (1) The district election officer shall appoint a Presiding Officer for each polling station and such Polling Officer or Officers as he thinks necessary, but he shall not appoint any person who has been employed by or on behalf of, or has been otherwise working for, a candidate in or about the election : ”

“28-A The returning officer, assistant returning officer, presiding officer, polling officer and any other officer appointed under this part, and any Police Officer designated for time being the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and accordingly, such officers shall, during that period, be subject to the control, superintendence and discipline of the Election Commission”.

(7) As already briefly discussed above, section 26 (1) empowers the district election officer for appointing the Presiding Officer and he may appoint any person as Presiding Officer and if such person happen to be in Government service in view of Section 28-A would be on deputation with the Election Commission for the period mentioned therein. The contention of the learned counsel for the petitioners is that by so appointing any Government servant the conditions of service are changed. To elaborate the contention is that all the petitioners are employees of the State of Haryana and if they are deputed to work in State of Punjab *their service conditions would be changed and only those persons could be appointed who had given their willingness*. The procedure suggested by counsel for the petitioners is that as and when such appointments are to be made under section 26 of the Act options of all the employees should be called and then persons to be selected and appointed. We are afraid, this approach to interpret the provisions of Section 26 and Section 28-A of the Act, cannot be accepted. This exercise of calling options of all Government employees of all the States, Union Territories or the Union of India is not contemplated and it is otherwise not feasible. Only few employees are required to work as Presiding Officers in a particular State when elections are to be held there and for that it is not considered appropriate that options of all the Government employees should be called for. It is in this sense that word ‘appoint’ is used in Section 26 giving power to the District Election Officer to appoint Presiding Officer. Some special duties are required to be performed by the Presiding Officers at the election booths. Keeping in view the same, the District Election Officer is required to depute such persons which are considered suitable. Obviously the Court cannot sit on judgment of the District Election Officer in this respect.

(8) Learned counsel for the petitioners has argued that service is always on the basis of contract and since the petitioners at no stage

gave their concurrence for doing this duty they cannot be deputed on the election duty. A distinction was sought to be drawn in respect of police force or Military force that employees of any such force could be deputed anywhere. This contention again cannot be accepted. The Act is on the Statute book and every citizen is supposed to know it. The conduct of the election is one of the functions of the Government as contemplated under the provisions of this Act and if the provision provides for appointment of any person as Presiding Officer, this fact is also known to every citizen of India and if he joins any service, he joins with the knowledge that he could be deputed on election duty as contemplated under the Act. The District Election Officer, therefore, could legitimately call upon any person including the petitioners to do the election duty of Presiding Officers.

(9) For the reasons recorded above, finding no merit, these writ petitions are dismissed.

J.S.T.

Before A. L. Bahri & V. K. Bali, JJ.

Smt. KRISHNA GUPTA,—Petitioner.

versus

THE COMMISSIONER OF WEALTH-TAX,—Respondent.

Wealth Tax Reference No. 5 of 1980.

March 4, 1992.

Wealth Tax Act—Section 18(1) (c)—Penalty—Mens rea—Assessee purchased plot measuring 500 sq. yards in 1966 for Rs. 50,000 Return filed for assessment year 1968-1969 without declaring plot or value thereof as part of assessable wealth—Return finalised in 1969—Notice under section 17 issued subsequently—Fresh return filed disclosing purchase of plot and its value—Assessment finalised and thereafter penalty of Rs. 50,000 imposed under section 18(1) (c) for concealment of wealth—Validity of imposition of such penalty—Mens rea on assess's part to be established before imposing penalty.

Held. that effect of amendments in section 18 of the Finance Act, 1968 would be that for amounts in dispute which is more than 25 per cent of the wealth already disclosed, there would be presumption in favour of the revenue regarding concealment thereof and in case of such wealth not tendered for assessment being less than 20 per cent of the wealth tendered earlier, the old provision will be attracted, that is, the onus would be on the Revenue to prove that there was conscious concealment of the wealth and in such a case the mere fact that the assessing authority had imposed tax on such wealth *per se* would not be sufficient to impose penalty.

(Para 16)