

The Commis-
sioner of
Income-tax,
Delhi
v.
The Delhi Cloth
and General
Milk Co., Ltd.

Mahajan. J.

shades of meaning and that meaning is to be assigned to it which fits in with the context in which this word is used. We are clearly of the opinion that in the context of sections 9 and 10 of the Act, it would be wrong to give a limited and restricted meaning to the word "occupy".

For the reasons given above, we answer the first question against the Department and hold that the income of the assessee from the buildings or lands appurtenant thereto rented out to its employees is income from business and falls for assessment under section 10 and not under section 9 of the Income-tax Act, 1922. In view of the answer to the first question, the second question must necessarily be answered against the Department. However, we leave the parties to bear their own costs of this reference.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

DHIAN SINGH,—*Petitioner*

versus

DEPUTY COMMISSIONER, KANGRA, AND OTHERS,—*Respondents.*

Civil Writ No. 2680 of 1964

1965

February. 8th.

*Punjab Gram Panchayat Election Rules (1960)—Rule 9(1)—
joint withdrawal by several candidates—Whether valid.*

Held, that a plain reading of Rule 9(1) of the Punjab Gram Panchayat Election Rules, 1960, shows that the withdrawal notice by a candidate must be in writing and subscribed by him. There is no bar if a number of candidates put in a joint written application duly subscribed by them. A joint withdrawal by several candidates is, therefore, valid provided it is duly subscribed by all of them.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus, or any other appropriate writ, order or direction be issued quashing the order of the Prescribed Authority (Ilaqa Magistrate, First Class, Hamirpur) dated the 17th October, 1964, by which the election of the petitioner has been set aside.

RAJINDER SACHAR, ADVOCATE, for the Petitioner.

NEMO, for the Respondents.

ORDER

PANDIT, J.—This writ petition under Articles 226 and 227 of the Constitution has been filed by Dhian Singh challenging the legality of the order, dated 17th October, 1964, passed by the Prescribed Authority under the Punjab Gram Panchayat Act, respondent No. 2.

Pandit, J.

It appears that the election to Gram Panchayat, Kharwar, district Kangra, took place in December, 1963. Three persons, namely, the petitioner, Gian Singh, respondent No. 5, and Chaudhry Ram, respondent No. 6, filed their nomination papers for the office of Sarpanch. As a result of the election, the petitioner was declared elected. This election was challenged by an election petition, which was filed by Ranu Ram, respondent No. 3, and Rulia Ram, respondent No. 4, under section 13-C of the Punjab Gram Panchayat Act, 1952. A number of allegations were made for setting aside this election, but in the present petition we are only concerned with two of them—(1) that the nomination paper of Gian Singh had been improperly rejected by the Returning Officer, as he was alleged to have been in arrears of some tax imposed by the Gram Panchayat, and (2) that the withdrawal application filed by Gian Singh along with several others was not valid in law. The Prescribed Authority, who tried this election petition, came to the conclusion that it had not been proved that Gian Singh was in arrears of any tax imposed by the Gram Panchayat. He further found that the withdrawal application had been filed jointly by 10 persons, including Gian Singh. There was no provision for collective withdrawal by the candidates and each one of them had to give a separate notice of withdrawal in writing to the Returning Officer. That being so, there was no valid withdrawal by Gian Singh. Since his nomination paper had been improperly rejected by the Returning Officer, the election of the petitioner as Sarpanch was not proper and was, therefore, set aside. This led to the filing of the present writ petition by Dhian Singh.

Learned counsel, for the petitioner raised two contentions before me—(1) that the Prescribed Authority was in error in holding that Gian Singh was not proved to be a defaulter. His name was shown in the defaulters' list, Exhibit P.F., and that was enough for the Returning Officer, who had, therefore, validly rejected his nomination paper

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on that ground and (2) that the Prescribed Authority erred in law in holding that under the Rules every candidate had to file a separate withdrawal application. No such provision was made in the Rules for this purpose. A number of candidates could, under the law, file a joint withdrawal application.

Taking the second contention first, I am of the opinion that the view of law taken by the Prescribed Authority was incorrect. Rule 9(1) of the Gram Panchayat Election Rules, 1960, under which a candidate can withdraw his nomination runs thus—

“Rule 9 (1). Any candidate may withdraw his nomination by a notice in writing, which shall be subscribed by him and delivered to the Returning Officer before the expiry of the time allowed for the withdrawal of the nomination papers.”

A plain reading of this Rule would show that the withdrawal notice by a candidate must be in writing and subscribed by him. There is no bar if a number of candidates put in a joint written application duly subscribed by them. If it was intended that each candidate should make a separate application in this respect, then provision to that effect would have been made in this Rule. As for instance, Rule 6 (2), which deals with the filing of nomination papers, clearly states that the nomination of each candidate shall be made on a separate nomination paper in Form I and must be subscribed by the candidate himself as assenting to the nomination. It means that several candidates cannot put in a joint nomination paper under this Rule. Similarly, in section 55-A of the Representation of the People Act, 1951, it is provided that a contesting candidate may retire from the contest by a notice in the prescribed form. Rule 9 of the Representation of the People (conduct of Elections and Election Petitions) Rules, 1956, has prescribed the form in which such a notice has to be given. This notice is in Form 5. This form clearly shows that each candidate has to make a separate application in that form. This again indicates that wherever it was desired that a separate application had to be filed by the candidate for withdrawal, suitable provision was made in the Act and the Rules made thereunder. That being so, the joint withdrawal application, Exhibit P.D., filed in the present case was a valid one

and the withdrawal by Gian Singh was in accordance with law. In view of this finding of mine, it is not necessary to decide the first contention raised by the learned counsel for the petitioner. Under these circumstances, the Prescribed Authority was in error in setting aside the election of the petitioner.

The result is that this writ petition succeeds and the impugned order dated 17th October, 1964, passed by respondent No. 2 is, hereby, quashed. Since there is no appearance on behalf of the respondents, there will be no order as to costs.

B.R.T.

INCOME-TAX REFERENCE

Before Daya Krishan Mahajan and S. K. Kapur, JJ.

MANOHAR SINGH,—*Applicant*

versus

THE COMMISSIONER OF INCOME-TAX, DELHI—*Respondent.*

Income-tax Reference 25-D of 1962

Income-tax Act (XI of 1922)—Ss. 9 and 10—Owner of building running paying-guest establishment—Whether liable to be assessed under S. 9 or S. 10.

1965

February, 9th.

Held, that where the assessee, the owner of a building, carries on the business of a paying-guest establishment therein, he is liable to be assessed in respect of the income therefrom under section 10 of the Indian Income-tax Act, 1922 as "profits and gains of business" and not under section 9 as "income from property".

Reference under Section 66(1) of the Indian Income-tax Act (Act XI of 1922) made by the Income-tax Appellate Tribunal, Delhi (Bench 'C'), wherein the following law points arise:—

- (1) *Whether on the facts and circumstances of the case, the assessee was carrying on business in providing paying guest accommodation?*
- (2) *If the answer to the first question is in the affirmative, whether the income from letting out of the rooms to customers was to be separately computed and assessed under Section 9?*

A. N. KIRPAL, ADVOCATE, for the Appellant.

H. HARDY AND S. P. AGGARWAL, ADVOCATES, for the Respondent.

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others
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