

and Sessions Judge and the two Magistrates and impose upon him a sentence of two months' simple imprisonment.

Court on behalf
of the State
v.

Radha Krishna
Khanna and
others

B. R. T.

CIVIL MISCELLANEOUS

Tek Chand, J.

Before Bishan Narain, J.
BISHAN DASS,—Petitioner.

versus

WALAITI LAL BHAMBRI AND ANOTHER,—Respondents.

Civil Writ No. 1010 of 1959

Life Insurance Corporation Act (XXXI of 1956)—Section 3—Life Insurance Corporation—Whether a part of the Government department or an agent or servant of the Government.

Held, that the Life Insurance Corporation constituted under section 3 of The Life Insurance Corporation Act is an independent juristic entity to carry on life insurance business in public interest. The Government cannot interfere in its day to day working. It can give directions in public interest involving matters of policy. It has no power to employ or dismiss the employees of the Corporation nor can it alter their terms of service. Hence the Corporation is neither a part of a Government department nor is an agent or servant of the Government.

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Application under Article 226 of the Constitution of India praying that a writ in the nature of quo-warranto or mandamum be issued removing respondent No. 1 from the membership of the Committee and for declaring his seat in Municipal Committee, Pathankot as vacant.

K. N. TEWARI, ADVOCATE, for the Petitioner.

H. L. SIBAL AND L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

BISHAN NARAIN, J.—In 1953-54, elections were held to elect members of the Municipal Committee, Pathankot. Amongst others Madan Lal Mohindru

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Bishan Dass and Walaiti Lal Bhambri, were elected members.
v.
Walaiti Lal At the time of elections these two persons were in
Bhambri and the employment of the same or different Life Insu-
another rance Companies. On 1st July, 1956, Life Insurance
Bishan Narain, J. Corporation Act (Act 31 of 1956) came into force
and both these members continued in the same
service. Bishan Dass, a resident and voter of the
Pathankot Municipal area, has filed these two peti-
tions (Civil Writ No. 1009 of 1959 and Civil Writ
No. 1010 of 1959) under Article 226 of the Consti-
tution for issue of a writ of *quo warranto* to these
members to show the authority by which they are
continuing to be functioning as members of this
Municipal Committee and for issue of a writ of
mandamus directing the State Government to re-
move them from this membership. The peti-
tioner's case is that these members since 1st July,
1956, are holding office of profit under the Govern-
ment of India and have thus become disqualified
to continue to function as members of the Municipal
Committee and further that they are liable to be
removed under section 16(1)(f) of the Punjab Muni-
cipal Act, 1911.

These petitions are contested by the members
interested and the Punjab State. The respondents'
case is that these members are employees of the
Life Insurance Corporation which is an independ-
ent legal entity distinct from the Government of
India, and, therefore, are not disqualified to conti-
nue as members of the Municipal Committee. It
is not disputed by the respondents that if these
members are held to be employed by the Govern-
ment of India, then they are disqualified and are
liable to be removed.

The only point, therefore, that requires deci-
sion is whether or not Madan Lal and Walaiti Lal
are now employees of Government of India. It

will be convenient to decide both these petitions by this judgment as the point involved is common to them.

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To succeed in his contention the petitioner must show that the respondent-employees are directly in service of the Government of India and failing in that he must show that they must be deemed to be so because the Life Insurance Corporation is merely an agent or a department of the Government of India. It was not contended before me that the respondent-employees had been employed by the Government of India by any agreement. It was also not contended, and very properly, that the respondents were employed by the Government of India by virtue of any provision of the Life Insurance Corporation Act. Section 11 of the Life Insurance Corporation Act specifically lays down that persons in the position of the respondents would be employees of the Life Insurance Corporation.

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The main contention raised on behalf of the petitioner is that the Life Insurance Corporation under the Life Insurance Corporation Act is in reality and in substance only a department of the Government of India or at least is its servant or agent. In support of his contention the learned counsel has drawn my attention to various provisions contained in the Life Insurance Act.

Now before adverting to these various provisions I may clear the ground by stating that the mere fact that this Corporation is to carry on commercial activity is no ground *per se* for holding that it is not a Government department or is not an agent of the Central Government. The Post Office carries on commercial activity and yet is a Government department and its employees are

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civil servants. The mere fact that the Life Insurance Corporation Act sets up a statutory Corporation does not lead to the necessary inference that it is not a Government department. A Government department for some purposes may have separate legal juristic existence and yet continue to be a department of the Government. It is open to the Parliament to incorporate a Government department for certain purposes without affecting its status as a department (*vide Krajjina v. The Tass Agency and another* (1)).

It really depends on the facts and circumstances of each case whether a statutory Corporation is a body independent of the Government or is merely its department or agent or servant.

In the present case the management of all Companies carrying on Life Insurance business was taken over by the Central Government by virtue of the Life Insurance (Emergency Provisions) Ordinance (Ordinance No. 1 of 1956) which was subsequently replaced by the Life Insurance (Emergency Provisions) Act (Act No. 9 of 1956). The business, however, remained vested in the Companies and their employees continued to remain employees of these Companies. The only effect of this legislation was that the Government got the power to control their business. It was conceded before me that under the Life Insurance (Emergency Provisions) Ordinance the employees of the Companies continued under them and did not become civil servants. This has also been held by *Mehrotra J.* in *Madan Mohan Lal v. Om Parkash and another* (2).

The Life Insurance Corporation Act, 1956 (Act No. 31 of 1956) came into force on 1st July, 1956, and the Corporation under section 3 was

(1) (1949) 2 All. E.R. 274.

(2) A.I.R. 1957 All, 384.

constituted on 1st September, 1956. The function of the Corporation is to carry on life insurance business. This Corporation has been constituted into a body corporate having perpetual succession and a common seal and it can acquire, hold and dispose of property subject to the provisions of the Life Insurance Corporation Act. It can sue and be sued by its name (section 3). The Central Government, however, has been given certain powers to control the activities of the Corporation and the question arises whether these powers are such as to reduce the Corporation into a Government department or its agent or servant. It will be convenient to discuss at this stage the powers of the Corporation and the extent of the power given to the Central Government to control its activities. The Corporation is constituted under the Life Insurance Corporation Act. The Central Government appoints persons not exceeding 15 to constitute this Corporation (section 4).

The functions and powers of the Corporation are defined in the Life Insurance Corporation Act and it cannot exceed them. It can acquire, hold and dispose of property (section 3). It can borrow and advance monies (section 6). It can carry on certain specified allied businesses and may directly or through agents carry on business outside India (section 6). The Central Government fixes the location of central office (section 18) but the Corporation is empowered to locate zonal offices at places specified in section 18 and the additional zonal offices may be established by it with the previous approval of the Central Government (section 18). The initial capital of Rs. 5 crores is supplied by the Government (section 5) but the Corporation has its own funds and the receipts are to be credited and expenses debited in that fund, (section 24). It is for

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the Corporation to appoint Executive Committee from its members and to constitute an Investment Committee (section 19), although its members are appointed by the Central Government under section 4. The Corporation appoints Managing Directors and Directors (section 20), Zonal Managers (section 22), and employs staff (section 23). The Corporation is given the power to appoint auditors with the previous consent of the Central Government (section 25). The Corporation under sections 26 and 27 is under an obligation to report to the Central Government regarding its financial condition (after due investigation) and its activities and these reports under section 29 are laid before the Parliament. The Central Government guarantees payments of the amounts due under policies and for bonus, etc., (section 37). The Corporation can utilize 95 per cent of its surplus for the benefit of the policy-holders and the remaining amount is to be utilized as directed by the Government (section 28). The Central Government is empowered to make rules and the Corporation can make regulations (sections 48 and 49). Finally it is laid down in section 21 that the Corporation is to be guided by the directions of the Central Government in matters of policy involving public interest. The Corporation cannot be wound up without previous approval of the Central Government (section 38). It is not necessary to refer to other provisions of the Life Insurance Corporation Act for the present purposes.

There can be no doubt that the purpose of the Life Insurance Act is to nationalise the Life Insurance business. The Corporation is a public body and has been constituted to carry on life insurance business in public interest. It has been given Rs. 5 crores out of public funds. The payment to

policy-holders, etc., has been guaranteed by the Government. In these circumstances it is not surprising that the Parliament has given powers to the Central Government to control to a certain extent the activities of the Corporation. The Government cannot, however, interfere in the day-to-day working of the Corporation. It can only give directions in public interest involving matters of policy. As for employees the Central Government has no power to employ or dismiss them. The Corporation can even alter the terms of service of these employees who were previously in employment of the insurance companies. In my view these powers given to the Central Government are not sufficient to take away the effect of section 3 whereby the Corporation has been made an independent juristic entity and does not constitute it into a Government department or a Government agent or servant. In this context it should not be forgotten that previously the Government of India was not carrying on the life insurance business and the Corporation was constituted to carry on this new commercial activity. I have, therefore, no hesitation in holding that the Life Insurance Corporation is neither part of a Government department nor is an agent or servant of the Government.

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It is not useful to draw analogies from other bodies which are differently constituted and differently controlled and exist for different purposes [*vide Tamlin v. Hannaford* (1)]. In this English case the Minister of Transport had been given wider control over the British Transport Commission than given to the Central Government in the present case and yet the Commission was held to be an independent juristic body. In India, the Life Insurance Corporation has been held to be

(1) (1950) I.K.B. 18.

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an independent body by Mehrotra, J., in *Madan Mohan Lal v. Om Parkash and another* (1). The Sindri Fertilizers and Chemicals Ltd. Company has been held to be an independent body in *Subodh Ranjan Ghosh v. Sindri Fertilizers and Chemicals Ltd. and another* (2). The State Bank of India was also held to be an independent body in *Baleshwar Prasad v. Agent State Bank of India* (3). The Calcutta High Court in *Bibhuti Bhushan Ghosh v. Damodar Valley Corporation and others* (4), and *Ranjit Ghosh v. Damodar Valley Corporation and others* (5), has held Damodar Valley Corporation to be an independent statutory Corporation. It is not necessary to multiply these illustrations.

For these reasons I hold that Madan Lal and Walaiti Lal do not hold office of profit under the Government of India as employees of the Corporation and, therefore, are not disqualified from continuing to hold the office of membership of the Municipal Committee, Pathankot. These petitions, therefore, fail and are dismissed with costs. Counsel's fee Rs. 100 in each case.

K. S. K.

REVISIONAL CIVIL

Before Tek Chand and J. S. Bedi, JJ.

KHEM CHAND,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Revision No. 224-D of 1959

Constitution of India (1950)—Article 309—Rules of employment for government servants—Whether can be made retrospectively—Central Civil Service (Classification, Control and Appeal) Rules, 1957—Rule 12(4)—Whether valid—Suspension of civil servant—Effect of—Suspended civil servant—Whether entitled to wages for the period of suspension as of right.

- (1) A.I.R. 1957 All. 384.
- (2) A.I.R. 1957 Patna 10.
- (3) A.I.R. 1958 Patna 418.
- (4) A.I.R. 1953 Cal 581.
- (5) A.I.R. 1960 Cal. 549.

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