

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 23rd OF JUNE, 2022**

WRIT PETITION No. 12574 of 2022

Between:-

**NATIONAL ORGANIZATION OF
INSURANCE OFFICER THROUGH
PRESIDENT VIVEK KUMAR VERMA S/O
HARISINGH VERMA , AGED ABOUT 53
YEARS, OCCUPATION: SERVICE AND
SECRETARY 19, M.G. ROAD. LIC
DIVISIONAL OFFICER, INDORE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI SAMEER ATHAWALE, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH CHIEF SECRETARY
MANTRALAYA, VALLABH BHAWAN,
BHOPAL. (MADHYA PRADESH)**
- 2. MADHYA PRADESH STATE ELECTION
COMMISSION NIRVACHAN BHAWAN 58
ARERA HILLS BHOPAL (MADHYA
PRADESH)**
- 3. COLLECTOR AND DISTRICT ELECTION
OFFICER INDORE (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI MANISH NAIR, DY.A.G. FOR THE STATE AND SHRI
KAMAL AIREN, FOR THE RESPONDENTS)***

*This petition coming on for admission/orders this day, the court
passed the following:*

ORDER

1] Heard finally with the consent of the parties.

2] This writ petition has been filed by the petitioner under Article 226 of the Constitution of India assailing the order dated 26/05/2022 passed by Madhya Pradesh State Election Commission and District Election Officer, Indore whereby the members of the petitioner association have been directed to perform the election duties in the forthcoming Panchayat and Corporation elections. The petitioner has sought the following reliefs:-

- i. Quash impugned circular dated 10/12/2021 passed by Madhya Pradesh State Election Commission Annexure P/4 herein and order Annexure P/8 dt. 26/05/2022.
- ii. It may be held that respondent no.2 and 3 have no power / authority to fix election duties of employees of LIC of India against their wish and appropriate writ, order or direction may be issued to the respondent to revoke the order/circular mentioned hereinabove.
- iii. Cost of the petition be allowed to petitioner.”

3] In brief, the facts of the case are that the petitioner is a registered trade union under the provisions of Trade Unions Act, 1926 having a sizable membership of LIC (Life Insurance Corporation) employees as its members. The registration certificate of the petitioner union is also placed on record with averment that every member of the union is bound by every order passed by this Court.

4] Further, the case of the petitioner is that LIC is a Government of India undertaking and is governed by the Life Insurance Corporation Act, 1956 which is a central act and the State Government has no control over the affairs of the LIC and its employees, however, the District Election Officer/respondent No.3 has issued a letter to the Divisional Office of LIC, M.G. Road, Indore with the names of as many as 76 of its employees for their participation in the forthcoming Panchayat/municipal election and it has been directed that for training purposes, the presence of such employees be ensured on the given date and time.

5] Shri Sameer Athawale, learned counsel for the petitioner has submitted that under Section 159 of Representation of the People Act, 1950, the Election Commission is empowered to authorize officers for taking services of employees of certain entities described in Section 159(2) of the Act, however, the aforesaid act is in respect of election to the House of people, the legislature of State only and not to the local or Panchayat bodies and the petitioner's case would be governed by Rule 17 of the Madhya Pradesh Panchayat Nirvachan Niyam, 1996 (hereinafter referred to as "Niyam, 1996) which provides that services of such officers and staff as is necessary for the conduct of election shall be made available by the State Government to the Election Commission. It is submitted that such officers and members of the staff cannot be of any other entity other than the State Government as per Rule 17 itself and thus, the impugned order is liable to be quashed.

6] It is further submitted that this issue of requisitioning the LIC employees in the election duty has already been settled by the coordinate Bench of this Court in Writ Petition No.336/2010, wherein vide order dated 20/04/2010, in a petition filed by a registered trade union of the LIC only under the similar circumstances where they were called by the District Returning Officer for the purposes of Panchayat election, the order of the District Returning Officer was quashed by this Court specifically directing that those employees of LIC who are not willing to be appointed for conducting elections to Panchayat will not be compelled to render their services for conducting elections to Panchayat.

7] Counsel for the petitioner has also relied upon a circular dated 29/12/2004 wherein it is specifically directed to the Returning Officer that services of employees of Central Government undertaking and LIC employees shall not be availed in the election.

8] On the other hand, the relief sought in the petition has been vehemently opposed by Shri Kamal Airen, learned counsel for the

respondent State Election Commission and it is submitted that no case for interference is made out as firstly; the petition is not maintainable being filed by the trade union only not arraying its other affected members as the petitioner's and secondly; the order passed by the coordinate bench of this court in Writ Petition No.336/2010 on 20/04/2010 is not binding as it does not set any precedence. It is also submitted that if the petition is allowed, it would hamper the forthcoming Panchayat election and thus, on this ground also, the petition is liable to be dismissed.

9] In support of his contentions, Shri Kamal Airen, learned counsel for the respondents has also relied upon a decision rendered by the Gwalior Bench of this Court in the case of **Gramin Krishi Vistar Adhikari Sanch Vs. State of M.P. reported as 2020 (II) MPWN 41** and another decision rendered by the Hon'ble Supreme Court in the case of **Election Commission of India through Secretary Vs. Ashok Kumar and others reported as 2000 SC 2977**.

10] He has also referred to various statistics to support his contention regarding the shortage of manpoer which is also averred in their reply.

11] Shri Airen has also relied upon a circular issued by the State Election Commission for the Panchayat election of 2020 and it is submitted that the District Election Officer is well within his right to enlist the employees of LIC for the purposes of election duty. Shri Airen has also emphasised on the circular dated 07/06/2022 issued by the State Election Commission in Clause 7 of the same, it is specifically directed that if the adequate staff cannot be arranged from the employees of the State Government, in such circumstances, as an exception, employees of the Central Government, Banks and LIC can also be included in the election process and it is submitted that the Election Commission is already running short of employees and in such circumstances, 76 employees who are asked to perform their

duties only for 3 hours on holiday, it cannot be said that any prejudice would be caused to them.

12] In rebuttal, Shri Sameer Athawale, learned counsel for the petitioner has submitted that merely a circular issued by the State Election Commission cannot give the Returning Officer/District Election Officer sweeping powers to call for the employees of the other entities also other than from the State Government.

13] Heard learned counsel for the parties and perused the record.

14] From the record, it is found that so far as the earlier order dated 24/04/2010 passed by this Court in WP No.336/2010 is concerned, there is no reference of any provision of law on the basis of which it is decided or that it can be said that there was infraction of any law leading to passing of the aforesaid order under Art.226. In such circumstances, it cannot be said that order dated 24/04/2010 has any binding effect.

15] So far as the locus of the petitioner to file the petition is concerned, looking to the fact that the petitioner is a National Organization of Insurance Officers and it is averred in the petition that any order passed by this Court would be binding on the members of the petitioner union, this Court is also of the opinion that the petition would be maintainable when the petitioner is also a registered trade union under the provisions of Trade Unions Act, 1926. Thus, the decision rendered by the Gwalior bench in the case of **Gramin Krishi Vistar Adhikari Sanch (supra)** is distinguishable.

16] So far as the impugned circular dated 10/12/2021 is concerned, sub-clause 5 of Clause 4 of which is relied upon by the respondents to issue the impugned order dated 26/05/2022, the same reads as under:-

“5. यदि जिले में राज्य शासन के कर्मचारियों से मतदान दलों की पूर्ति नहीं हो पा रही हो तो अपवाद स्वरूप केन्द्र शासन, बैंक, भारतीय जीवन बीमा निगम के कर्मचारियों/अधिकारियों को मतदान दलों में सम्मिलित किया जा सकता है।”

17] Counsel for the petitioner has relied upon Rule 17 of Niyam, 1996, however, Rules 17-A, 17-D and 18 would also be relevant for the purposes of this petition. Rules 17, 17-A, 17-D and 18 of Niyam, 1996 read as under:-

“17. Officers and staff for conducting elections. - (1) The State Government shall, when so requested by the Commission make available to the Commission such officers and staff as may be necessary for the discharge of functions conferred on the Commission under the Act and these Rules.

(2) All the officers and members of the staff appointed or deployed for preparation of voters' list and conduct of election to Panchayats under the Act or these Rules shall function under the superintendence, direction and control of the Commission.

[(3) The Commission may assign such duties and functions to the officers and members of staff appointed or deployed under sub-rule (1) and invest them with such powers, in relation to such areas as it may deem necessary or consider fit, in relation to conduct of elections and matters connected therewith or incidental thereto.]

17-A. Requisition of vehicles etc. for panchayat election purposes -

(1) The District Election Officer may, if it appears to him necessary in connection with election under the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 that any vehicle, vessel or animal is needed or is likely to be needed for the purpose of transport of ballot boxes to or from any polling station or transport of members of the police force for maintaining law and order during the conduct of such election, or transport of any officer or other person for performance of any duties in connection with such election, he may by order in writing requisite such vehicle, vessel or animal and may make such further orders as may appear to him to be necessary and expedient in connection with such requisition.

(2) Such requisition shall be effected by an order in writing addressed to the person deemed by the District Election Officer to be the owner or person in possession of the property and such order shall be served on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-rule (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in sub-rule (1).

Explanation. - For the purposes of this rule "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise.

XXXXX
XXXXX

17-D. Penalty for contravention of any order regarding. - If any person contravenes any order made under Rule 17-A he shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to rupees five

hundred or with both.

18. Commission's power to issue General or Special orders or directions. Notwithstanding anything contained in these rules, the Commission may issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections."

(emphasis supplied)

18] It is apparent from the aforesaid provisions that it is a primary duty of the State Government to provide such officers and staff as may be necessary for the discharge of functions conferred on Commission under the Act and these rules, however, it is also apparent that Rule 17-A provides for requisition of vehicles, namely the private vehicles which makes it clear that it is not the sole responsibility of the Government to provide the government vehicles also for the conduct of elections and as such vehicles from private citizen can also be requisitioned, and as provided under Rule 18, the Commission may also issue such special or general orders or directions which may not be inconsistent with the provisions of the Act for fair and free elections. Adopting the similar analogy, in the considered opinion of this court, if the Returning Officer has directed the presence of the officers of LIC which is a Government of India undertaking, to make themselves available for the election duty, it cannot be said to be without jurisdiction or inconsistent with the provisions of the Act and the Rules of 1995 for fair and free election. This court is also of the opinion that it is the primary duty of the State Government to provide the manpower, however, it cannot be said that if the manpower cannot be so procured from the State Government, election should not be held and that is why Rule 18 gives additional power to the Commission specifically observing "notwithstanding anything contained in these rules".

The respondent Election Commission by way of pleading has placed on record various statistics to demonstrate that they are already running short of manpower. In such circumstances, in the considered opinion of this Court, the State/District Election Commission are well

empowered under Article 223K of the Constitution of India to requisition the employees of LIC for conduct of fair and free election which is of course subject to the provisions of the law laid down by the legislature of State and as provided under Rule 18, Commission shall have the power to pass such order as may be necessary for conduct of fair and free elections.

19] Although counsel for the petitioner has relied upon a circular issued by the State Election Commission dated 29/12/2004, placed on record by the petitioner by way of rejoinder dated 20/06/2022, and thereafter this petition has also been heard on 23/06/2022, there is nothing on record that the aforesaid circular which is around 15 years old is still in vogue especially in the light of the Circular dated 10.12.2021.

20] In such circumstances, in the considered opinion of this Court, the impugned order needs no interference and the petition being devoid of merits is hereby **dismissed**. The interim relief granted earlier by this Court vide orders dated 09/06/2022 and 15/06/2022 shall stand vacated.

(Subodh Abhyankar)
Judge

krjoshi