

Topic: Composition Of Election Commission

Name of the Case: S.S. Dhanoa v. UOI, AIR 1991 SC 1745

Bench: Justice P.B. Sawant and Justice M.H. Kania

Background: Until 1989, the Election Commission consisted of only the Chief Election Commissioner. In 1989, the Central Government changed track and sought to appoint Election Commissioners. The underlying purpose of this move seems to be to grab the powers of the Chief Election Commissioner who was single handily exercising the power of the Election Commission. In 1989, by notification issued under Article 324 (2), was fixed at two. By another notification, the President appointed the petitioner and one other person as Election Commissioners as such. The rules made by the President under Article 324 (5) fixed the tenure of these commissioners at five years, or until reaching the age of 65 years, whichever was earlier.

Hitherto, the election commission had consisted of only one member, viz, The Chief Election Commissioner. With the addition of two more members, the smooth working of commission was adversely affected. Accordingly, on 1 January 1990, the President issued two notifications under Article 324(2) rescinding the 1989 notifications creating the two post of Election Commissioners and appointing two persons to these posts. In this way, from 1990, the election commission again reverted to a one-man body. The question arose whether the notification was constitutionally valid?

Judgment: The Supreme Court observed that when an institution like the election commission is entrusted with the vital functions, and is armed with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the power not exercised by one individual. However, as wise as he maybe, "it will-conforms to the tenant of democratic rule." When most powers are exercised by an institution which is accountable to none, it is politic to entrust it's a fair or more hands then one. It helps to assure judiciousness and want of arbitrariness.

After release of the provisions of Article 324, and review of the debates held in constitute assembly on the matter at issue, the court laid down the proposition that under Article 324 (1), The status of election commissioner is not pari passu (side by side) with that of the Chief Election Commissioner.

The Chief Election Commissioner has been given protection in that his conditions of service cannot be varied to his disadvantage after his appointment, and he cannot be removed from his office except in like manner and only grounds as a judge of Supreme Court. These protections are not available to the election commissioners. Their conditions of service can be varied even to their disadvantage after their appointment and they can be removed on the recommendation of chief election Commissioner. These provisions indicate that the Chief Election Commissioner is not primus inter pares, i.e, first among the equals, but is intended to be placed in a drastically higher position than the Election Commissioners.

In this context, the court held both the 1990 notifications as valid. Article 324 (2) leaves it to the President to fix and appoint such member of Election Commissioner as he may from time to time determined. The power to create the post is unfettered. So, also is the power to reduce or abolish them. If the President decide to abolish both the post of Election Commissioner either because there was no work for them, or that the election commission could not function, there could be nothing wrong with it.