



APEX COURT'S VERDICT APROPOS OF ARTICLE 324 - AN APPRAISAL

I Introduction

THE CONSTITUTION is the *supreme lex* in India. The validity of laws are tested on the touchstone of the Constitution by the judiciary which is endowed with a duty to guard the paramount law of the land. Doctrine of judicial review, a basic feature of the Constitution, enjoins the courts, to interpret the provisions of the Constitution. The Supreme Court's recent verdict in *Y.N. Seshan's Case*¹ is historic.

The pith and substance of the court's decision has, set at rest, the obnoxious controversy *vis-a-vis* article 324 of the Constitution. The court has sent right signals by curbing the autocratic functioning of the Chief Election Commissioner (CEC) with a crisp ruling, which is pregnant with far-reaching consequences. Judging a judge is not a cake walk. Similarly, judging a judgment is not a bed of roses. Notwithstanding this, the present paper is an attempt aimed at appreciating the assertive and apposite attitude adopted by the apex court apropos of *T.N. Seshan's case*.² The unprecedented, unwarranted and uncalled for ugly events that took place in the election commission have brought article 324 into limelight. Parliament, while exercising its powers under article 324(2), amended and re-named the earlier Act into "The Election Commission (Conditions of Service of Election Commissioners and transaction of business) Act, 1994" ('The Act') which was upheld by the Supreme Court with one voice. The Bench also upheld the two notifications issued by the President on 1 October 1993 in this regard. The unanimous conclusions arrived at by the Five-Member Constitution Bench took cognisance of the mind boggling situation arising out of the pinpricks and contra-constitutional conduct of CEC Seshan and directed him to mind his P's and Q's keeping the dignity and decorum of the august office he was holding. The impugned Act provides, *inter alia*, for the setting up of a multi-member election commission and laying down the procedure for transaction of business of the Election Commission. The Act has equated the Chief Election Commissioner (CEC) on par with other Election Commissioners (ECs).

Part XV of the Constitution embodies the provisions *vis-a-vis* elections which are dealt with from articles 324^{2a} to 329. Out of these, of late, article 324 proved to be the bone of contention amongst the CEC and ECs. The amended Act also added fuel to fire thanks to which battle lines were drawn. Ultimately, the ball was thrown into the Supreme Court. The court's decision has drawn the curtain over this one man show.

1. *T.N. Seshan, Chief Election commissioner of India v. Union of India*, (1995) 4 S.C.C. 611.

2. *Ibid.*

2a. See, art. 324 of Constitution.



II An insight into T.N. Seshan's case

A look at the facts and constitutional niceties involved in this case, brings forth the following questions to the forefront which the court was called upon to adjudicate. The petitioners contention, chiefly, contained the following arguments. In the *first* place, that the multi-member Election Commission was unworkable. *Second*, equating CEC at par with ECs by the amended Act was unconstitutional thanks to the superior status conferred on CEC over ECs and RCs. *Third*, the status of CEC was at par with a judge of the Supreme Court. The first argument could not cut any ice with the Supreme Court. The court rightly maintained, while quoting the observations made by a two judge Bench of the same court in *Dhanoo's case*,³ then "there is no doubt that two heads are better than one and particularly when an institution like the Election Commission is entrusted with vital functions and is armed with exclusive uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however, all wise he may be".⁴

Pertaining to the status of CEC apropos of ECs and RCs, the court emphatically declared that the Act treating CEC at par with ECs is not unconstitutional. On this score, the court overruled its earlier decision in *Dhanoo case*.⁵ The court further held :

That by clause (1) of Article 324 the constitution-makers entrusted the task of conducting all elections in the country to a commissison referred to as the Election Commission and not to an individual. *Nobody can be above the Institution which he is supposed to serve. He is merely the creature of this Institution, he can exist only if the Institution exists.*⁶

According to the Court, the CEC is to act as the chairman, if it is a multi-member body. His functions are to preside over meetings, preserve order, conduct the business of the day, ensure that precise decisions are taken and correctly recorded and do all that is necessary for the smooth transaction of business. He must so conduct himself at the meetings chaired by him that he is able to win the confidence of his colleagues on the Commission and carry them with him.⁷ The net result is, now, the CEC is the *primus inter partes*, i.e., first among the equals in the multimember body. It proceeded further to declare that Regional Election Commissioners (RCs) under Article 324(4) does not form part of the Election Commission. RCs may be appointed only to assist the Commission. As such, they do not have a say in decision making.

However, article 324(5), in effect, places the CEC on a higher pedestal *vis-a-vis* ECs by according constitutional safeguards to CEC as far as removal and service conditions are concerned. The import of the provision is that CEC shall not be removed from his office except in like manner and on the like grounds as

3. *S S. Dhanoo v. Union of India*, (1991) 3 S.C.C. 584.

4 *Ibid*.

5 *Supra* note 3.

6. *Supra* note 1

7 *Ibid*.



a judge of the Supreme Court and the conditions of service of the CEC shall not be varied to his disadvantage after his appointment. Under article 124(4) a ticklish constitutional procedure has been provided for the removal of a Supreme Court judge, that too, on the grounds of *proved misbehaviour or incapacity*. The same is made applicable to the removal of CEC. Thus the makers of the constitution left no stone unturned to keep the CEC at bay from the clutches of the political executive.

Strangely and unconvincingly, the above stated protection was not extended to other ECs. Instead, article 324(5) directs that ECs and RCs shall not be removed from office except on the recommendation of the CEC. The court, in the instant case, while throwing light in this area of law, interpreted that, the required recommendation by CEC for the removal of ECs by President shall be based on *intelligible and cogent considerations which would have relation to the efficient functioning of the Election Commission*. The author's mind is at sixes and sevens as to the import of this *Recommendation Clause*. It would not sound good to keep the ECs and RCs at the sweet will of the CEC. Thanks to this, ECs and RCs may be taken for granted by CEC. It would not certainly augur well for the efficient functioning of the Commission. In the author's considered view, the protection available to CEC against removal and service conditions should be accorded to ECs too, as the court upheld the Act equating CEC at par with ECs. However, this protection requires no application in case of RCs as they do not form part of the Commission. However, at least, to some extent, a ray of hope could be found in the court's interpretation that the recommendation by CEC must satisfy the test, *viz., intelligible and cogent considerations having nexus with the functioning of the Commission*.

The Constitution did not and could not provide the procedure apropos of transaction of business in case of a multi-member body as framers of the Constitution had reposed faith in the sagacity and wisdom of the holders of the constitutional offices. Incidentally, actuated by the exigencies of the times, the Act laid down the procedure for transaction of business among CEC and ECs. The purpose of section 10(1), (2) of the Act seems that the Commission will be able to take decisions with one voice. When that hope is observed more in breach than in observance, then the rule of majority shall be the lodestar. The court upheld section 10 of the Act on the ground that the rule of majority is the bed-rock of the Indian democratic system. Other constitutional bodies, *viz.*, UPSC (articles 315, 316) National Commission for SCs and STs (article 338) are also multi-member bodies. Moreover, no one shall have unbridled, unguided and unfettered powers vested in him devoid of checks and balances. The Bench also impressed on the government that it should not confer equivalence of interference with "Warrant of Precedence", if it was likely to affect the position of the High Court and Supreme Court judges, without first seeking the views of the Chief Justice of India.

III Conclusion

Free and fair election is the *sine qua non* of democracy. Election process will be pure only in the presence of an independent and impartial Commission in



whose hands the very survival of democracy rests. In its absence, the country would witness chaos and be pushed into doldrums. The election scenario in India is not free from the dirty influence of money and muscle powers. Rigging has become the order of the day which is capable of suppressing and oppressing the will of the downtrodden, exploited and disadvantageous little men who constitute the majority. These issues need to be addressed forthwith. A comprehensive Electoral Reforms Legislation is the need of the hour to contain these deadly syndromes plaguing the nation. Otherwise it would sound the death knell of the democracy. It may be noted that, *albeit*, the petitioner's contention met its waterloo in the hands of judiciary, the silver lining was that his acts kept the political parties and big-wigs on their toes. The present incumbent CEC, Seshan, has sent shock waves into the camps of political parties. Thanks to his iron-hand approach, the CEC, over and again, overstepped his constitutional limits thus inviting the Supreme Court to ask him to mend his ways. The yeoman service done by the petitioner was eclipsed by his contra-constitutional conduct. The court's strictures against the CEC, Seshan, should be seen in this context.

However, as pointed out by the court, the holders of constitutional offices are expected to discharge their duties cautiously and harmoniously keeping the letter and spirit of the Constitution in mind. To conclude the conclusive observations made by the apex court, certainly, come in handy and fit the bill.

We hope they (CEC & ECs) will forget and forgive and start on a clean slate of mutual respect and confidence and get going with the task entrusted to them in a sporting spirit always bearing in mind the fact that the people of this great country are watching them with expectation. For the sake of the people and the country we do hope they will eschew their egos and work in a spirit of camaraderie.⁸

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⁸ *Supra* note 1 at 640

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