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**CASE COMMENT ON T.N. SESHAN V. UNION OF INDIA**- Hema Gariya<sup>1</sup>

<b>Case</b>	<b><u>T.N. Seshan vs. Union of India &amp; ; Others 1995 Vol. (4) SCC 611</u></b>
<b>Petitioner</b>	T.N. Seshan, Chief Election Commissioner of India
<b>Respondents</b>	Union of India and others
<b>Citations</b>	1995 Vol. (4) SCC 611
<b>Date of judgment</b>	14/07/1995
<b>Bench</b>	A.M. Ahmadi (CJI), Jagdish Saran Verma, N.P. Singh, S.P. Bharucha & M.K. Mukherjee.

**Abstract**

The case comment on T.N. Seshan v. Union of India will explore the judgment's implications on the independence of the Election Commission of India. In addition, it will mainly focus on the

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autonomy of the Election Commission and its ability to conduct free and fair elections without undue executive interference. The comment will further highlight the recognition of the Commission's pivotal role in Indian democracy and the need to minimize executive interference. It will, however, criticize the ruling grounds of the executive ambiguity and the ambiguous legislative purpose. The Commission's independence confronts challenges because there aren't any explicit laws or procedures in place that safeguard it. The comment emphasizes the importance of amendments to the law to establish unambiguous statutory safeguards, adhering to the judgment's fundamental principles and guaranteeing the Commission's independence to uphold the democratic values embodied in the Indian Constitution.

### **Introduction:**

As the fundamental of the democratic system, elections are of greatest significance in India. They ensure each and every citizen, regardless of their background, to take part in shaping the political future of the country, which helps in ensuring the accountability and inclusivity of the different sects within the country. In order to maintain the spirit of democracy by means of free and fair elections an autonomous and independent body known as the Election Commission of India is there to regulate and control them. It's a constitutional body that is responsible for, contesting, regulating, and administering the entire process of elections in the country.

T.N. Seshan vs. Union of India & Others is important because it dealt with the fundamental principles of democracy, the question of the independence of constitutional bodies, and the relentless commitment to free and fair elections in the largest democracy in the world. In addition, it emphasized the role of the Chief Election Commissioner, highlighting their power and responsibility in safeguarding democratic principles.

### **Facts:**

In the year 1993, the President promulgated an ordinance entitled "The Chief Election Commissioner and Other Election Commissioners (Condition of Service) Amendment Ordinance"<sup>2</sup>, in order to amend "The Chief Election Commissioner and Other Commissioners (Condition of Service) Act, 1991". Through this, by exercising his power under Article 324(2)<sup>3</sup>

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<sup>2</sup>T.N. Seshan vs. Union of India & Others 1995 Vol. (4) SCC 611

<sup>3</sup>The Constitution of India, A.324(2)

he fixed the appointment of election commissioners to two, as before there was only one member committee of the election commission, which was headed by the chief election commissioner himself. So, accordingly, Mr. M.S. Gill and Mr. G.V.G. Krishnamurthy were appointed as the election commissioners<sup>4</sup>.

However, a writ petition was filed by the chief election commissioner T.N Seshan and other defendants, accusing the ruling government, of not allowing him to take action against them for the violation of the code of conduct by them and for misusing the power guaranteed to the president under Article 324(2) of the Indian Constitution. In the year 1994, the ordinance became an Act without making any changes in it with respect to the notification made by it.

**Issues- There were mainly two issues there were raised in the present case:**

- Whether the ordinance promulgated by the president was constitutional?
- Whether the appointment of the other two election commissioners was ultra vires to the constitution of India?

**Rules-** The rules applicable in this case were -

**Article 324 of the Constitution**

**Section 9, 10** of the Election Commission (Condition of Service of Election Commissioners and Transaction of Business) Act, 1991

**Section 9-**

“The Election Commission's operations shall be held in accordance with the provisions of this Act.”<sup>5</sup>

**Section 10-**

(1) “The Election Commission shall, by unanimous decision regulate the procedures in terms of the transaction and allocation of the business amongst the Chief Election Commissioner and other Election Commissioners.

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<sup>4</sup>T.N. Seshan vs. Union of India & Others 1995 Vol. (4) SCC 611

<sup>5</sup>Election Commission (Condition of Service of Election Commissioners and Transaction of Business) Act, 1991, s.9

(2)The business of the Election Commission, except as stated in sub-section (1), shall be conducted as unanimously as possible.

(3)If there is a disagreement on behalf of the Chief election commissioner then in that case, the matter will be decided on the basis of majority.”<sup>6</sup>

### **Analysis-**

#### **Contentions raised by the petitioner-**

- The plaintiff contended that the intention behind the appointment of the election commissioners and fixing the number to two was ultra vires as they were arbitrary in nature and violative of the principle underlined under Article 14. Further, the promulgation of the ordinance was basically to sideline the Chief Election Commissioner and ruin his authority.
- Section 9 and Section 10 of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991)were unconstitutional as they were inconsistent with the constitutional framework under Article 324, as the parliament did not have the authority to frame the rules regarding the transaction of business of EC.

#### **Contentions raised by respondents-**

- Respondents claimed that the promulgation of the ordinance was in accordance with the observations made by the court in S.S Dhanova vs. Union of India<sup>7</sup>. In this, it was held by the honorable court that a large discretionary power can not be held by a single member alone when there is no availability of checks and balances over the power exercised by him.
- Secondly, they contended that the plain reading of section 324(2) in itself expresses the need for a multi-member commission. Therefore, the actions taken by the parliament to meet that objective cannot be held ultra vires to the constitutional framework.
- The addition of section 9 and section 10 were intra vires as they were neither arbitrary nor violative of Article 14 of the constitution, as whenever there would be a conflict of

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<sup>6</sup>Election Commission (Condition of Service of Election Commissioners and Transaction of Business) Act, 1991, s.10

<sup>7</sup>S.S. Dhanoa vs Union Of India And Ors 1991 AIR 1745

opinions between the members of the election commission, majority rule would prevail, this is how it will protect the essence of democratic principles like equality.

- The main reason behind the setting of the “election commission” was not only to ensure free and fair elections rather there was an impression of having an independent body that would ensure the non-interference of the executive and political pressures with respect to the working of it.
- Clause (1) of Article 324 provides the independent body “Election Commission” for direction, superintendence, and control of the elections within India, and Clause (2) of it provides, the constitution of the election commission, consisting of a chief election commission and election commissioners, regardless of the numbers, the authority to decide the number of election commissioners is totally with the president of the country.

The honorable court upheld the appointment of the additional election commissioners and rejected all pleas of the petitioners. The court by emphasizing on S.S. Dhanova<sup>8</sup> case held that the presence of a multi-member commission is important when there is an institution like an election commission to play the vital functions.

Further, the court overturned the previous ruling on this issue in the S.S. Dhanova case and held that treating both the chief election commissioner and election commissioners equally is not unconstitutional. Article 324(9) provides the power to conduct the elections throughout the country to the commission rather than to a particular person.

For the second contention of the petitioners that Article 324 does not provide any rules and procedures for the working of the multi-member committee the court referred to Halsbury's Laws of England, which mentioned the principle that a multi-member body's ruling should take into consideration the majority opinion, and used this principle to fill in the procedural gaps created by Article 324.

According to Chief Justice A.M. Ahmadi the notion that the additional Commissioners should be viewed as the CEC's advisors falls against the spirit of Article 324 and could reduce them to mere "ornamental" officials. In addition, the Honorable Court also held that neither the President

nor the Council of Ministers could be held accused of having mala fide intentions as there had long been considerations about expanding the size of the Commission.

The court observed that CEC serves as the primus inter parties, or first among equals in the multimember body. By appointment of ECs, a system of checks and balances is established, prohibiting the CEC from abusing excessive power. For ECs to perform their duties independently, they should be placed on an equal footing with CECs; otherwise, they are likely to be reduced to the role of non-functional advisors, defeating the purpose of their appointment.

for a better understanding of the connection between the CEC and ECs, the connection of the Chief Justice and judges might be compared. The CEC, like the CJ, lacks the ability to influence how the ECs conduct their responsibilities. Because it is extremely difficult to achieve a unanimous decision each time in a multi-member body, the rule of majority has been adopted for the procedure for making decisions. The removal procedure under Article 324(5) apparently places the CEC on a significantly greater pedestal because the CEC can only be dismissed on the grounds of proven misbehavior or incapacity, as compared to ECs who can be dismissed on the CEC's advice.

After analyzing the case, I found the loophole in this case that, the honorable court here mainly focused on the importance of the autonomy of the election commission however, it remained silent on the fact of how this independence is going to be achieved where there is a lot of executive interference in terms of working of the election commission.

**To what extent there is an Executive interference in terms of independence of the election commission –**

Although the court held that the election commission needs to be an independent body in order to ensure, the superintendence, control, and direction that are mentioned under Article 324, however, it left a degree of uncertainty regarding the involvement of executive authority as it did not mention the explicit boundaries of the involvement in terms of the consultation that is required by the president. With the exception of the CEC, Article 324 provides election commissioners the authority to make decisions, however, they are not immune from government scrutiny or influence.

Articles 74<sup>9</sup>, which deals with the Council of Ministers on whose aid and advice the President shall act, and A.53<sup>10</sup>, which gives the President executive power, create the problem, as the court did not provide any detailed information on the President's discretion, and the limitations, or any criteria for appointments( as there are no provisions which provide the qualification for being the election commissioner) or removals of the election commissioners which points out an issue that how the impartially is going to be insured when this power is exercised by the President on aid and advice of council of ministers. In addition, the other issue at hand is whether discussions between the President and Prime Minister about issues pertaining to the Election Commission should be seen as an appropriate exercise of executive authority or as an attack on the Commission's autonomy. The Commission's independence is a crucial matter that requires thorough scrutiny and clarity within the constitutional framework, yet this constitutional uncertainty leaves room for various interpretations and the possibility of executive involvement. As a result, concerns regarding the independence of the Commission in general are made. So, it is important to fix the ambiguity in executive power, particularly in relation to Articles 324, 53, and 74, to ensure a fair and democratic electoral system.

### **Majority rule-**

The court in this case held that in case of conflict of opinions between the members, the majority rule will prevail, however, it raises a major question<sup>of</sup> whether the "majority rule" approach is compatible with additional safeguards granted to the Chief Election Commission.

The problem with the “majority principle” becomes important when one analyzes who is going to make part of the majority: individuals who were deliberately chosen by the government and can also easily be dismissed by the same. Hence it’s more obvious that they would always work in the favor of the government rather than the EC because the government is the one that is going to determine their tenure. In addition to this, there might be a possibility that the government can appoint more and more ECs as there is no limit to the number of appointments by the president, to ensure the majority in their favor.

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<sup>9</sup>The Constitution of India, 1950 A.74

<sup>10</sup> The Constitution of India, 1950 A.53

The fear of removal would always influence their decision-making power, as the government has no obligation to even go into the procedure of removal when they can simply rescind the act that brought their post into existence<sup>11</sup>.

The third issue that also remained, unaddressed by the court was the qualification of Regional commissioners and procedures of removal of them who were to be appointed by and controlled by the president, even in this the fear of partiality lies on behalf of the executive.

### **Conclusion –**

This present case underscored the important role of the Election Commission's independence in the country to preserve the democratic values enshrined in our constitution. It correctly stressed the need to have an independent body to look into the matter of elections, by reducing executive interference. However, it failed to address the ambiguity that exists with respect to executive authority and clarity in terms of constitutional provisions like Article 324, which remained in during single-member committees as well as multi-member committees apart from the situation where it was presumed in case of the single member where the sole decision-making power was with independent chief election commissioner.

In order to, ensure the commission's independence, and to uphold the values behind the formation of the commission it is essential to have legislative reforms to define this role clearly. Addressing this gap is important to ensure the impartial working of the commission in terms of politics that forms the foundation of Indian democracy.

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<sup>11</sup>S.S. Dhanoa vs Union of India And Ors 1991 AIR 1745