

CIVIL MISCELLANEOUS

A

SURAJ PRAKASH PETITIONER

VERSUS

B

UNION OF INDIA & OTHERS RESPONDENTS

(ARUN B. SAHARYA, J.)

C. W. P. No. 1797/89

Decided on : 15-11-1990

C

1. Press Council Act, 1978—Section 5—who is the nominating authority of members referred to in clauses (a) to (c) of sub-section 3 of S. 5 discussed—Role of Central Government in respect of nomination of members in clause (d) and (e) of sub-section (3) of S. 5 discussed—effect of two persons from same establishment being nominated discussed.

D

2. Press Council (Procedure for Nomination of Members) Rules, 1978—Rules 3 and 4—Method and procedure for nomination of members referred to in clauses (a) to (c) of sub-section (3) of section 5 discussed.

E

In this petition under Article 226 of the Constitution the challenge was to the nomination of Respondent No. 3 as a member of the Press Council of India. The contention of the petitioners was mainly that respondent No. 3 was an employee of one of the petitioners and to avoid the rigours of sub-section (3) of section 5, the respondent No. 3 had suppressed this fact and mis-represented that he was an employee of another newspaper. The legal issues which came up for consideration of the Court were mainly; (1) who is the nominating authority of members referred to in clauses (a) to (c) of sub-clause (3) of S. 5 of the Press Council Act and; (2) the method and procedure to be followed for nomination of members.

G

Dismissing the petition, the Court

H

HELD :

1. It cannot be said, on the basis of section 5 of the Act that the Nomination Authority is the Central Government. The provision made in sub-section (4), in the context of the scheme of S. 5, clearly shows that nominations under clause (a), clause

- A (b) or clause (c) of sub-section (3) have to be made by "the retiring Chairman of the previous Council". It is really to enable him to discharge this function that the proviso to sub-section (1) of S. 6 permits the Chairman to continue to hold such office, even after completion of the fixed term of three years, until the Council is reconstituted or for a period of six months whichever is earlier. Before making any such nomination, however, this sub-section postulates that the Chairman shall, in the prescribed manner, invite panels of names from the Associations of persons of the said categories. Thus, it indicates the nominating authority as well as the sequence and the manner in which the Chairman must perform the function to initiate and to complete the process for making nominations under the said clauses. Instead of separately designating the retiring Chairman as the nominating authority, the same intention has been expressed by the Legislature in this composite provision. (Paras 17 & 18)
- B
- C
- D 2. The names of persons of the other categories referred to in clause (d) and clause (e) of sub-section (3) of S. 5 have to be nominated by the authorities specified therein. The nominations so made are final. Even their names have to be notified in the Official Gazette and every such nomination also shall take effect from the date on which it is notified. The Central Government, under sub-section (5) of S. 5 is bound to notify the names of persons so nominated. Same is the position with regard to nomination of members from the other categories. Thus, it appears that the Central Government is charged with a duty to publish the names of persons nominated by the other authorities; and that it is not itself the nominating authority. (Para 19)
- E
- F
- G 3. The Legislature has consciously devised and prescribed a complete machinery for nominating the other members from among the categories referred to in clause (a), clause (b) and Clause (c) of sub-section (3) of S. 5 of the Act; and that the retiring Chairman is the nominating authority in respect of these categories of members. (Para 20)
- H 4. In the ordinary course, one association may not be aware of the names recommended by the other(s). This may result in the recommendation of common names, or names of more than one person under clause (a) and clause (b) interested in any newspaper or group of newspapers under the same control of management. In the very nature of things, this function would have to be performed by the Chairman after he receives panels of names recommended by the various associations. The Rules

A do not specifically prescribe the manner in which this duty coupled with power has to be performed. In the affidavit filed on behalf of the Council, it has been stated that in such cases also, names are picked up by draw of lots from among the concerned persons. This practice, apart from being fair, is also consistent with the procedure for elimination of names laid down in Rule 4. (Para 23)

B
C 5. A recommendation for nomination of one person cannot be said to be vitiated merely because a recommendation may also have been made of the name of another person interested in the same establishment. It cannot be anticipated in such a case as to who would be nominated or excluded by the operation of the second proviso. (Para 31)

D
E 6. The Council as a body, has not been assigned any role to play in the process of making nominations of members under S. 5. The appointing authority, in respect of the category referred to in clause (a), clause (b) or clause (c) is the retiring Chairman, who alone is the nominating authority. There is no machinery provided in the statute for investigation into any objection with regard to the nomination of any person. As such, the retiring Chairman must proceed with the task of making nominations on the basis of the information available on record. Except in the case of errors apparent on the record, the retiring Chairman has no means to otherwise investigate into any objection or even correctness of information in respect of names recommended for nomination of members. (Para 34)

F For the Petitioner : Mr. Jitender Sharma, Advocate with B. K. Pal, Advocate.

G For the Respondents : Mr. P. H. Parekh, Advocate with Mr. Sanjay Bhartari, Advocate for respondent No. 2. Mr. Rajiv Sharma, Advocate with Ms. Asha Sharma, Advocate for respondent No. 3.

CASES REFERRED TO :

H (1) *Bearmans Ltd. and Another v. Metropolitan Police District Receiver*, (1961) 1 W.L.R. 634. (2) *The Management of Express Newspapers Ltd. v. B. Somayajulu and others*, AIR 1984 SC 279. (3) *Parry and Co. Ltd., Dare House, Madras v. Commercial Employees Association, Madras and another*, A.I.R. 1952 S.C. 179. (4) *G. Veerapa Pillai, Proprietor, Sathi Vilas*

A Bus Service, Porayar, Tanjore District Madras v. Raman and Raman Ltd., Kumbakonam, Tanjore District and others, A.I.R. 1952 S.C. 192. (5) Charanjitlal v. Financial Commissioner, Haryana, AIR 1978 Punjab & Haryana 326.

B ARUN B. SAHARYA, J.—By this petition under Article 226 of the Constitution of India, the petitioners have challenged the nomination of respondent No. 3 as a member of the Press Council of India, constituted and established under the Press Council Act No. 37 of 1978, hereinafter referred to as the Act.

C 2. Petitioner No. 1 is a working journalist. He is a member of petitioner No. 2, the Delhi Union of Journalists (for short DUJ), which is represented by its General Secretary Shri S. K. Pandey. Petitioner No. 3 is the Indian Federation of Working Journalists (for short IFWJ). It is represented by Shri Santosh Kumar, who claims to be the convenor of the Steering Committee of the said Federation.

D 3. The names of the persons nominated as members of the Press Council of India (hereinafter referred to as the Council) take effect from the date on which the Central Government notifies the same. The Central Government has been arrayed in the name of the Union of India as respondent No. 1 Respondent No. 2 is the council. Respondent No. 3 is Shri K. Vikram Rao whose nomination as a member of the council has been challenged.

E 4. According to the petitioners they came to know only in April 1989 from the October 1988 issue of the Quarterly Journal of the Council that Respondent No. 3 had been nominated in the capacity of a person employed by and representing a newspaper known as Life and Times published from Lucknow. In fact, respondent No. 3 was a regular employee of the newspaper Times of India published by Bennet, Coleman and Co. Ltd. Despite orders of transfer since the last five years he had not resumed his duty at the place of transfer but he continued to draw full salary from the said company. To avoid the rigours of the second proviso to sub-sec. (3) of Section 5 of the Act (hereinafter referred to as the second proviso) respondent No. 3 had chosen to use the name of the newspaper Life and Times and to suppress the fact that he was employed by the Times of India. He did so because Dr. N. K. Trikha an editor of the Nav Bharat Times, another newspaper under the same control of management as the Times of India had been nomi-

A. nated as a member. Thus, it is alleged that respondent No. 3 fraudulently procured his nomination as a member, and that his nomination had been made in violation of Rule 3(1)(v)(b) of the Press Council (Procedure for Nomination of Members) Rules, 1978 and is hit by the second proviso.

B. 5. On coming to know this, in May 1989, petitioner Nos. 2 and 3 served notices on the Chairman of the Council, pointing out that respondent No. 3 had managed his nomination by suppression of the true and correct identity of the newspaper in which he was employed, and called upon him to initiate suitable action in this regard. Having failed to get any relief, the
C. petitioners have prayed that this Court should issue a writ of certiorari quashing the nomination of respondent No. 3; a Writ of quo-warranto declaring his nomination as a member of the Council as null and void; a writ of prohibition against respondents 1 and 2 so as not to allow respondent No. 3 to attend the meetings of the Council; and a writ of mandamus against respondents 1 and 2 to act in accordance with law so as to disqualify the nomination of respondent No. 3 as a member of the
D. Council.

E. 6. In the counter-affidavit filed on behalf of respondent No. 2, it has been asserted that the Council is not really interested in whether a particular person becomes a member or not. It has been explained, however, that the counter-affidavit has been filed to bring to the notice of this Court the correct facts and the practice and procedure which is followed by the Council and which has been followed in the present case. It has been averred that the Council had issued a notification dated 16th of
F. October 1987 inviting recommendations for nominations to the different categories of members. On or about 30th of March 1988, the Council issued a notification, published in the Gazette of India dated 4th of April 1988, whereby it notified names of the associations recognised for the purpose of Section 5 of the
G. Act. On or about 27th of May 1988, the NUJ, which is one of the recognised associations, forwarded to the Council a panel of names in the order of preference for their nomination as members. At serial No. 5, the name of respondent No. 3 was mentioned. The said Association, while giving the particulars of respondent No. 3, referred to him as a working journalist, and
H. while giving the particulars of the newspaper, the name of Life and Times was mentioned. Likewise, on or about 27th of May 1988, the IFWJ, which also is a recognised association, forwarded to the Council its panel. The name of respondent No.

- A** 3 was at item No. 4. Thus, the name of respondent No. 3 was recommended by two of the recognised associations and he became eligible, in accordance with the procedure laid down in Rule 4, to be nominated as a member of the Council. After applying the provisions of the Act and the Rules, the Council forwarded to the Central Government a list of nominated persons to be notified as members of the Council to be reconstituted on expiry of the term of the previous Council. The provisions of the Act and the practice and procedure prescribed by the Rules, to which a reference has been made in the counter-affidavit, would be referred to and discussed hereinafter.
- B**
- C** 7. By way of an additional counter-affidavit filed on behalf of the Council, an objection has been raised to the maintainability of the writ petition on the ground that nomination of respondent No. 3 was notified in the Official Gazette on 28th of September 1988 but the petition had been filed about the end of July 1989, after a huge unexplained delay of more than 10 months; that during this period, respondent No. 3 had been attending the meetings of the Council and its various committees, and that almost 1/3rd of the term of the Council had already run out. Further, it has been stated that on the face of the recommendations made by the two Associations in the prescribed proforma, it was not shown that respondent No. 3 was, at that time, an employee of Times of India Group, that there was nothing else on the record to show that he was so employed, and in the absence of any error or mistake on the face of the record, the Chairman was entitled to presume that the particulars given in the recommendations sent by the said two Associations were correct. Copy of an order made by the retiring Chairman on an objection raised by the Secretary of the Press Association to the nomination of respondent No. 3 has been annexed to this affidavit.
- D**
- E**
- F**
- G** 8. Respondent No. 3 has alleged that the writ petition is a gross abuse of the process of the Court; that it has been filed by the petitioners to convert this Court into a battle ground for settlement of intra-trade union rivalries; and that the petition is liable to be dismissed on the ground of non-joinder of Dr. N. K. Trikha who is a necessary party, as also on the ground of laches on the part of the petitioner. On merits, it has been stressed that respondent No. 3 could not be said to be a person interested in the Times of India Group as he had not been making any contribution as a journalist to that newspaper, and that
- H**

- A professionally, he is working for the Life and Times and he has interest only in that newspaper. His interest in the group of newspapers under the control of management of Bennete, Coleman & Co. Ltd. ceased with effect from September 1985 when he was arbitrarily transferred from Hyderabad to Goa. He has also stated that his name was recommended by IFWJ
- B and NUJ as a person interested in the newspaper Life and Times. The issue regarding his interest in the said newspaper was raised by some persons at the time of nomination of members in July 1988. The said objections were heard and were dismissed by the retiring Chairman by his order produced by the Council.
- C Respondent No. 3 has denied that he is a regular employee of Times of India and that any facts were suppressed by the concerned associations who recommended his name for nomination as a working journalist. He has asserted that for all practical purposes, he is "employed" by the Life and Times and not by the Times of India, and that the petitioners were fully aware
- D of the correct facts at the relevant point of time.

9. Now, counsel for the petitioners has contended that nomination of respondent No. 3 could not be made as a member from among working journalists, because Dr. N. K. Trikha of Nav Bharat Times had been nominated from that category:
- E that his nomination violates the prohibition imposed by the second proviso; and that his name had been fraudulently recommended by representing that he is from Life and Times and by suppressing the fact of his employment and interest in the Times of India, with a view to circumvent the bar of the
- F second proviso.

10. Counsel for respondent No. 3 has argued: that as a working journalist, respondent No. 3 is "interested" only in the Life and Times; that the recommendation of his name by two out of the three concerned associates was bona fide; that
- G he does not suffer from the lack of any inherent qualifications required for nomination as a member; and that his nomination made as such is valid. Besides, counsel for respondent No. 2 as well as counsel for respondent No. 3 have contended that the Chairman of the Council had duly carried out
- H scrutiny of the recommendations made by concerned associations; that he had also examined the legitimacy of the nomination of respondent No. 3 when it was challenged and in the proper exercise of his discretion, he had found the same to be valid. Therefore, this

A court ought not interfere with the decision of the Chairman in this regard. Further, that the relief sought by the Petitioners cannot be granted because the conduct of the petitioners is such as should disentitle them from the grant of any discretionary relief; and that the petition must fail because of non-joinder of Dr. N.K. Trikha as a party, and delay and laches. For these various reasons, it has been urged that the writ petition should be dismissed.

11. The Council has been established under the Act for the purpose of preserving the freedom of the Press and for maintaining and improving the standards of newspapers and news agencies in India. Section 5 provides for composition of the Council to consist of a Chairman and 28 other members. The Chairman as well as the other members are nominated in accordance with the manner and method stipulated in the said Section. For the achievement of the objects of the Act, provision has been made for a broad-based membership of the Council to represent various categories of the interested sections of society directly concerned therewith. The categories, the number of persons to be nominated from each category, and the manner and method of nomination of various members have also been prescribed in Section 5 of the Act. In order to avoid nomination of more than one person interested in any newspaper or group of newspapers under the same control of management, the second proviso restricts nomination of only one such person from among the working journalists. The procedure for making nomination of members from some of the categories has been prescribed by the Rules framed under Section 25 of the Act.

12. Section 13 of the Act sets out the objects for which the Council has been established. In furtherance of those objects, the Council has been authorised to perform various functions which include, among others, to help newspapers and news agencies to maintain their independence; to build up a code of conduct for newspapers, news agencies and journalists in accordance with high-professional standards; to ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship; to encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism; to promote a proper functional relationship among all classes of persons engaged in the production or publication of newspapers or news

- A** agencies. Section 14 of the Act lays down the procedure to be followed by the Council on receipt of a complaint made to it or otherwise that a newspaper or news agency has offended against the standards of journalistic ethics or public taste, or that an editor or a working journalist has committed any professional misconduct. It empowers the Council to warn, admonish or censure the newspaper, news agency, editor or the
- B** journalist or disapprove the conduct of the editor or the journalist, as the case may be. By virtue of Section 15, for the purposes of performing its functions or holding any enquiry under the Act, the Council has been given the same powers
- C** as are vested in a civil court in respect of specified matters.

13. For the purposes of further discussion, it would be necessary to refer to the provisions made in Section 5, Section 6(1) and Section 15(1) of the Act; and in Rule 3(1)(i), (ii)(a) to (d), iii. (v)(a) and (b); and Rule 4. For ready

D reference, those provisions are set out below —

A. Act :

- “5. (1) The Council shall consist of a Chairman and twenty-eight other members.
- E** (2) The Chairman shall be a person nominated by a Committee consisting of the Chairman of the Council of States (Rajya Sabha), the Speaker of the House of the People (Lok Sabha) and a person elected by the members of the Council under sub-section (6) and the nomination so made shall take
- F** effect from the date on which it is notified by the Central Government in the Official Gazette.
- (3) of the other members —
- G** (a) thirteen shall be nominated in accordance with such procedure as may be prescribed from among the working journalists, of whom six shall be editors of newspapers and the remaining seven shall be working journalists, other than editors, so however, that the number of such editors and working
- H** journalists other than editors in relation to newspapers published in Indian languages shall not be less than three and four respectively;
- (b) six shall be nominated in accordance with such

- A** procedure as may be prescribed from among persons who own or carry on the business of management of newspapers, so, however, that there shall be two representatives from each of the categories of big newspapers, medium newspapers and small newspapers;
- B**
- (c) one shall be nominated in accordance with such procedure as may be prescribed from among persons who manage news agencies;
- C**
- (d) there shall be persons having special knowledge or practical experience in respect of education and science, law and literature and culture of whom respectively one shall be nominated by the University Grants Commission, one by the Bar Council of India and one by the Sahitya Academy;
- D**
- (e) five shall be members of Parliament of whom there shall be nominated by the Speaker from among the members of the House of the People (Lok Sabha) and two shall be nominated by the Chairman of the Council of States (Rajya Sabha) from among its members;
- E**

Provided that no working journalist who owns, or carries on the business of management of, any newspaper shall be eligible for nomination under clause (a);

- F** Provided further that the nominations under clause (a) and clause (b) shall be so made that among the persons nominated there is not more than one person interested in any newspaper or group of newspapers under the same control of management.

G Explanation : For the purposes of clause (b), a "Newspaper" shall be deemed to be—

- H**
- (i) "big newspapers" if the total circulation of all its editions exceeds fifty thousand copies for each issue;
- (ii) "medium newspaper" if the total circulation of all its editions exceeds fifteen thousand copies but does not exceed fifty thousand copies for each issue;

A (iii) "small newspaper" if the total circulation of all its editions does not exceed fifteen thousand copies for each issue.

B (4) Before making any nomination under clause (a), clause (b) or clause (c) of sub-section (3), the Central Government in the case of the first Council and the retiring Chairman of the previous Council in the case of any subsequent Council shall, in the prescribed manner, invite panels of names comprising twice the number of members to be nominated from such associations of persons of the categories referred to in the said clause (a), clause (b) or clause (c) as may be notified in this behalf by the Central Government in the case of the first Council and by the Council itself in the case of subsequent Councils :

D Provided that where there is no association of persons of category referred to in the said clause (c), the panels of names shall be invited from such news agencies as may be notified as aforesaid.

E (5) The Central Government shall notify the names of persons nominated as members under sub-section (3) in the Official Gazette and every such nomination shall take effect from the date on which it is notified.

F (6) The members of the Council notified under sub-section (5) shall elect from among themselves in accordance with such procedure as may be prescribed a person to be a member of the Committee referred to in sub-section (2) and a meeting of the members of the Council for the purpose of such election shall be presided over by a person chosen from among themselves.

G (6)(1) Save as otherwise provided in this section, the Chairman and other members shall hold office for a period of three years :

H Provided that the Chairman shall continue to hold such office until the Council is reconstituted in accordance with the provisions of section 5 or for a period of six months whichever is earlier :

(2) to (7)

15. (1) For the purpose of performing its functions or holding any inquiry under this Act, the Council shall have the same

A powers throughout India as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

- B**
- (a) summoning and enforcing the attendance of persons and examining them on oath;
 - (b) requiring the discovery and inspection of documents;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copies thereof from any court or office;
 - (e) issuing commissions, for the examination of witnesses or document; and
 - (f) any other matter, which may be prescribed.
- C**
- D**
- | | | | | |
|-----|---|---|---|---|
| (2) | x | x | x | x |
| (3) | x | x | x | x |
| (4) | x | x | x | x |

B. Rules:

E 3. Invitation of panels of names for membership of the Council :

F (1) The Central Government in the case of the first Council, and the retiring Chairman of the previous Council in the case of any subsequent Council, shall invite panels of names under sub-section (4) of section 5 by sending a notice in writing in that behalf by registered post to the association, or associations and news agencies, as the case may be, referred to in that sub-section, and the notice shall require them to furnish in relation to the name included in the panel, the particulars specified below :

- G**
- (i) The name of the person;
 - (ii) the category he represents;
- H**
- (a) editor;
 - (b) working journalist other than editor;
 - (c) owner or manager of a newspaper; or

- A** (d) news agency;
- (iii) the title and language of the newspaper, or the news agency, in which he is employed or, which he represents, as the case may be, and whether such newspaper is big, medium or small (figures relating to total circulation of all editions of the past one year to be furnished);
- B**
- (iv) x x x x x
- (v) if he is a working journalist;
- C**
- (a) whether he owns or carries on the business of management of any newspaper;
- (b) name of the newspaper or group of newspapers under the same control or management, if any, to which he belongs or in which he has interest;
- D**
- (vi) & (vii) x x x x x
- (2) x x x x x
- (3) x x x x x

E 4. Procedure for nomination of members :

- From out of the panels of names recommended by the associations or, as the case may be, the associations and news agencies, under rule 3, the nomination of the members referred to in clauses (a), (b) and (c) of sub-section (3) of section 5 shall, subject to the provisions of that sub-section, be made in accordance with the following procedure, namely :
- F**
- (1) Such person or persons as have been recommended by all the respective associations or, as the case may be, news agencies shall first be nominated under clause (a), clause (b) or clause (c) of that sub-section :
- G**
- Provided that if the number of persons so recommended exceeds the requisite number of members to be nominated in each of the categories, the requisite number shall be nominated by draw of lots from the persons so recommended;
- H**
- (2) where, after following the procedure specified in clause (1), the requisite number of members to be nominated under clause (a), clause (b) or clause

A (c) of sub-section (3) of section 5 could not be
nominated, such person or persons as have been
recommended by more than one association or news
agency, but not by all the association, or news
B agencies, shall be nominated in respect of the
remaining membership in the order of the number
of association or news agencies recommending
them :

Provided that if the number of persons so recommended
exceeds the requisite number of members to be no-
C minated in each of the categories, the requisite
number shall be nominated by draw of lots from the
persons so recommended ;

(3) Where after following the procedure specified in
D clauses (1) and (2), the requisite number of mem-
bers to be nominated under clause (a) or clause
(b) of sub-section (3) of section 5 could not be
nominated, the remaining members shall be nomi-
nated in the following manner, namely :

(a) the order in which the association of persons of the
E respective categories should be arranged for consi-
dering their recommendations shall be first decid-
ed by draw of lots; and

(b) the required number of members shall then be
F nominated from persons who have been recom-
mended by such associations arranged in the order
decided under sub-clause (a) and according to
the preference indicated by such associations, but
not exceeding one from each such association; and
if the required number could not still be nominated,
G the nomination shall be from persons who have
been given the next preference by such associations
arranged in the said order and so on until the
required number of members are nominated;

(4) Where after following the procedure specified in
H clauses (1) and (2), the member to be nominated
under clause (c) of sub-section (3) of section 5
could not be nominated, lots shall first be drawn
to choose the association of news agencies, or, as
the case may be, the news agency, whose recom-
mendation should be considered for the nomination

A of the member, and the person who has been
 given the first preference by the said association or
 news agency, as the case may be, shall then be
 nominated as the member."

B 14. In order to deal with the rival contentions, it would be
 appropriate first to determine the question : who is the
 nominating authority in respect of members of the category re-
 ferred to in clause (a) of sub-section (3) of Section 5 of the
 Act. For this purpose, it would be helpful to trace the history
 of the relevant statutory provisions. The Press Council Act,
 C 1965 (hereinafter referred to as the 1965 Act), envisaged com-
 position of the Council similar to that provided at present.
 Under that Act, the Chairman was nominated by the Chief
 Justice of India. The other members were chosen and nomi-
 D nated by a committee consisting of the Chief Justice of India,
 the Chairman of the Council and a person to be appointed by
 the President of India. By the Press Council (Amendment)
 Act, 1970 (hereinafter referred to as the 1970 Amendment),
 this arrangement was altered. Instead of nomination of the
 Chairman by the Chief Justice of India, provision was made for
 a Nominating Committee consisting of the Chairman of the
 Council of States, the Chief Justice of India and the Speaker
 E of the House of the People. The other members also were to
 be nominated by the same Committee. Whereas, now, the
 Chairman has to be nominated by a Committee consisting
 of the Chairman of the Rajya Sabha, the Speaker of the Lok
 Sabha and a person elected by the members of the Council
 F under sub-section (6) of Section 5 of the Act. But, the system
 of the Nominating Committee choosing the other members has
 been done away with.

G 15. According to counsel for the petitioners, for the purpose
 of nominating the other members, the Chairman used to be
 one of the members of the Nominating Committee under the
 1965 Act; he was dropped from the Committee by the 1970
 Amendment; and now the whole system has been changed. In-
 H stead, Section 5 of the Act stipulates that nomina-
 tion of persons of the categories referred to in clause (a), clause
 (b) and clause (c) shall be made in accordance with such pro-
 cedure as may be prescribed; and that the procedure prescribed
 under rule 3 and rule 4 works out automatically, leaving no
 room for the Chairman to play any role in this regard. In
 this background, he has urged, on the basis of sub-section (5)

A of Section 5 of the Act, that the nomination of other members takes effect from the date on which a notification is ultimately issued in the Official Gazette, and, therefore, the Central Government is the nominating authority.

B 16. Counsel for respondent No. 3 has argued that the statutory changes and a proper reading of sub-section (4) and sub-section (5) of Section 5 of the Act show that the retiring Chairman of the previous Council is now the nominating authority in respect of members from category 'a', category 'b' and category 'c'.

C 17. It is pertinent to point out that even earlier, under the 1965 Act, it was envisaged : "the names of persons nominated under this section shall be forwarded to the Central Government and shall be notified by that Government in the Official Gazette and every appointment so made under this section shall take effect from the date on which it is so notified".
D By the 1970 Amendment, the expression "appointment so made under this section" was substituted by the words "such nomination". That requirement, obviously, was similar to the present provision made in sub-section (5) of Section 5 of the Act.
E Therefore, it cannot be said, on the basis of this provision, that the Nominating Authority is the Central Government.

18. As against this, the provision made in sub-section (4) in the context of the scheme of Section 5, clearly shows that nominations under clause (a), clause (b) or clause (c) of sub-section (3) have to be made by "the retiring Chairman of the previous Council". It is really to enable him to discharge this function that the proviso to sub-section (1) of Section 6 permits the Chairman to continue to hold such office, even after completion of the fixed term of three years, until the Council is reconstituted or for a period of six months whichever is earlier.
G Before making any such nomination, however, this sub-section postulates that the Chairman shall, in the prescribed manner, invite panels of names from the Associations of persons of the said categories. Thus, it indicates the nominating authority as well as the sequence and the manner in which the Chairman must perform the function to initiate and to complete the process
H for making nominations under the said clauses. Instead of separately designating the retiring Chairman as the nominating authority, the same intention has been expressed by the Legislature in this composite provision.

A 19. Here, it may also be noted that the names of persons of the other categories referred to in clause (d) and clause (e) of sub-section (3) of Section 5 have to be nominated by the authorities specified therein. The nominations so made are final. Even their names have to be notified in the Official Gazette and every such nomination also shall take effect from the date on which it is notified. The Central Government, under sub-section (5) of Section 5, is bound to notify the names of persons so nominated. Same is the position with regard to nomination of members from the other categories. Thus, it appears that the Central Government is charged with a duty to publish the names of persons nominated by the other authorities; and that it is not itself the nominating authority.

D 20. It is apparent from the above discussion that the Legislature has consciously devised and prescribed a complete machinery for nominating the 'other members' from among the categories referred to in clause (a), clause (b) and clause (c) of sub-section (3) of Section 5 of the Act; and that the retiring chairman is the nominating authority in respect of these categories of members.

E 21. With a view to get the most eminent persons, to secure wide representation of all sections of society interested in the proper and effective exercise of significant powers and functions of the Council, provision has been made for the other members to be taken from various categories referred to in clause (a) to (e) of sub-section 3 of Section 5 of the Act.

F 22. Then, to get the most desirable persons from the categories referred to in clause (a), clause (b) and clause (c) of sub-section 3, provision has been made in sub-section 4 for inviting panels of names from the associations of persons of each of those categories. For this purpose, associations representing each category are recognised and notified by the Council. The method and the procedure for nomination of members from among these categories has been prescribed by rule 3 and rule 4. The concerned associations are left free to recommend, in accordance with rule 3, the names of such persons as they consider fit and desirable to be members of the Council. Then, the procedure prescribed in rule 4 comes into play. It envisages a very limited role to be played by the Chairman, i.e., to eliminate surplus names of persons from each category, from stage to stage,

A and that too by draw of lots. No discretion has been left with the Chairman to pick and choose any name even at that stage.

23. In the ordinary course, one association may not be aware of the names recommended by the other(s). This may result in the recommendation of common names, or names of more than one person under clause (a) and clause (b) interested in any newspaper or group of newspapers under the same control or management. When some name or names are common, the same are taken first. Then, if the latter contingency arises, to avoid making such nominations, the retiring Chairman must ensure proper implementation of the second proviso. In the very nature of things, this function would have to be performed by the Chairman after he receives panels of names recommended by the various associations. The Rules do not specifically prescribe the manner in which this duty coupled with power has to be performed. In the affidavit filed on behalf of the Council, it has been stated that in such cases also, names are picked up by draw of lots from among the concerned persons. It is so done to exclude the possibility of any one person being preferred over the other on the choice of the Chairman. This practice, apart from being fair, is also consistent with the procedure for elimination of names laid down in rule 4.

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24. In fine, for nominating members from the categories referred to in clause (a) and clause (b) of sub-section 3 of Section 5, a prerogative has been conferred upon the concerned associations to recommend names of such persons as each of them may consider fit for this purpose. Then, on the basis of those recommendations, nominations have to be made from each of these categories in accordance with the procedure prescribed in the Rules, of course, subject to the restriction imposed by the second proviso, with which we are concerned.

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25. While Section 5 of the Act envisages that all interested sections of society are adequately represented as members, the second proviso ensures that under clause (a) and clause (b) not more than one person interested in any newspaper or group of newspapers under the same control of management is nominated. The intention could well be to prevent undue weight or influence of any particular body in the exercise of powers and functions of the Council.

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- A 26. The expression 'person interested' has not been defined in the Act. It is an expression having a wide connotation. It was opined by the Court of Appeal in *Bearmans Ltd. and Another v. Metropolitan Police District Receiver*, (1961) 1 W.L.R. 634(1), that the word interested has to be construed in the context in which it has been used and in order to do so, it is
- B necessary to look at the scope and purpose of the Act. In the second proviso, it has been used in relation to working journalists. In the Act, by virtue of Section 2(e), 'working journalist' has the meaning assigned to it in the Working Journalists and other Newspaper Employees (Conditions of Service) and Misc. Provisions Act, 1955 (hereinafter referred to as the W.J. Act).
- C In that Act, Section 2(f) defines working journalist thus :

D "Working Journalist" means a person whose principal avocation is that of a journalist and (who is employed as such, either whole time or part-time, in, or in relation to one or more newspaper establishments) and includes an editor, a leader writer, news editor, sub-editor, feature-writer, copytester, reporter, correspondent, cartoonist, news-photographer and proof reader, but does not include any such persons who...."

- E 27. Two conditions must be fulfilled to qualify a person to be a working journalist. First, that he must be a journalist whose principal avocation is that of a journalist. Secondly, that he must be employed as such in, or in relation to, any newspaper establishment (See *The Management of Express Newspapers Ltd. v. B. Somayajulu and others*, A.I.R. 1984 S.C. 279) (7). There is no controversy about the principal avocation of respondent No. 3 as a journalist. The second condition has two components. The two components are : first, that the concerned person should be 'employed' ; and the
- F second, that he should be employed as a 'working journalist' in, or in relation to, any establishment. Both these factors must co-exist so as to bring a person within the definition of a working journalist in relation to any particular establishment(s).

- H 28. So far as the Bennett, Coleman & Co. Ltd. is concerned, there is no doubt that at the relevant time, respondent No. 3 drew his salary from that establishment for the month of September 1988 (Annexure 'P-4' to the writ petition). Then, a letter dated 11th of February 1989 (Annexure 'P-3')

- A to the writ petition), shows that he was directed by the Personnel Director of that company to report for duty as Times of India correspondent in Shillong by 15th of March, 1989. It is specifically stated therein that by a letter dated 27th of August 1986, he was posted as Times of India correspondent in Goa but he did not report there. This reveals the fact
- B that respondent No. 3 had really not worked as a journalist in, or in relation to that establishment since August 1986. Side by side, it must be kept in mind that respondent No. 3 has categorically asserted that he had not been making any contribution as a journalist to the Times of India but was working as such for Life and Times. This fact has not been controverted. The averment made by respondent No. 3 that he is 'employed' by Life and Times, however, has been denied by the petitioners in their rejoinder-affidavit. There is no material on record to determine the question whether respondent No. 3 was in fact 'employed' by Life and Times or not.
- D That matter is really not even in issue. The main question is whether he was, at the relevant time, a person interested in Bennett, Coleman & Co. Ltd. so as to attract the second proviso. The answer, for the present purpose, has to be in the negative, because he was not actually working as a journalist for that establishment. For this reason, it appears
- E that the conditions necessary to portray him as a working journalist qua Bennett, Coleman & Co., Ltd. are not fulfilled.

29. Assuming, nevertheless, that respondent No. 3 was a person interested in the Times of India also, the question is : what is the effect of non-disclosure of his interest in that newspaper on his nomination as a member. The case set up by the petitioners is that this fact was suppressed to avoid the rigour of the second proviso, because Dr. N. K. Trikha had been nominated as a member from the common category 'a' as an editor.

- G 30. As noticed earlier, for the purposes of making recommendations from the category referred to in clause (a), recommendations are first invited from the several associations for each of the two classes of working journalists. After recommendations are made by them, the second proviso comes into play. In view of the sequence and stages of the procedure prescribed by sub-section (4) of Section 5 and Rule 4, in the present case, the associations who recommended the name of respondent No. 3 may not have even known that the name of Dr. N. K. Trikha had been recommended by any
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A other association(s) from among the class of editors. It is not the case of the petitioners that the said associations knew anything about it. Hence, it is too far-fetched to suggest that the IFWJ and the NUJ suppressed the fact that respondent No. 3 was employed by the Times of India, or represented that he belonged to Life and Times, with a view to fraudulently get over the bar of second proviso because the name of Dr. Trikha had been recommended by some other association(s).

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C 31. Further, a recommendation for nomination of one person cannot be said to be vitiated merely because a recommendation may also have been made of the name of another person interested in the same establishment. It cannot be anticipated in such a case as to who would be nominated or excluded by the operation of the second proviso. In these circumstances, no motive can be attributed to any one for the omission, to give information even if it was necessary, regarding the disputed status of respondent No. 3 in relation to the Times of India.

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E 32. In the instant case, after the receipt of recommendations made by two of the associations, at the instance of one of the then members of the Council, who was also the President of yet another recognised association namely the Press association, the Chairman did consider the objection to the nomination of respondent No. 3, on the ground that the name of Dr. Trikha, was also there. This plea, was rejected by the retiring Chairman by a speaking order (Annexure 'A' to the additional affidavit of respondent No. 2).

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G 33. In this order, the Chairman has referred to the usual practice followed in making nominations as also to the action taken, on that very occasion, in respect of two names from a common group having been recommended for nomination. He has observed that the associations recognised and notified in respect of each category recommended names for nomination as members to the Council. If those bodies agree to and recommend common names, the persons so named are selected and become members by virtue of the provisions contained in Rule 4. There is no question of draw of lots in such a case. If there is any divergence of opinion in the recommendation made, draw of lots in accordance with the provisions of that Rule may become necessary for the selection of the members in that category. Common names recommended by the recognised bodies are picked up first. Thereafter, the

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- A names recommended by the majority of concerned bodies are taken up. Then, comes the question of draw of lots, if necessary, in respect of any vacancy that may exist. For very good reasons, it has been the settled practice to leave the test of qualification of names of persons recommended to the concerned associations; as otherwise, the finalisation of nominations might create various problems and might become impossible. The Chairman has also pointed out that it will be an extremely difficult task, if not an impossible job, without a proper investigative agency, to decide the correctness or otherwise of any objection with regard to any name forwarded by the recognised bodies. It has been stated, however, that the Chairman and the Secretariat may interfere and indeed do interfere, when there is an error apparent on the face of the record in the matter of recommendation of any name in any particular category. The Council intervenes and must intervene when it finds that the name of any person has been proposed for the third term. The Statute enjoins that nobody can be a member for more than two terms. It also intervenes "when it becomes apparent on the face of the record that there are going to be two members of the Council representing the same group of newspapers". It has been pointed out, in fact, "even at the time of the present selection, the Chairman and the Secretariat had intervened in the recommendation of Mr. Nigam and Shukla who, as it appeared clearly from the record, belong to the same group of newspapers and lots had therefore to be drawn". In other words, it has been explained: "whenever there is an error apparent on the face of the record in the matter of any recommendation in any category resulting in violation of any statutory provisions regarding the selection of the members of the Council and does not necessitate any detailed investigation or enquiry into the facts or otherwise, the Chairman and the Secretariat had intervened and taken steps to correct the errors. The errors to be so corrected must indeed be apparent from the record and must not require any detailed investigation". On this basis, the Chairman held: "The objection with regard to Mr. Vikram Rao has also to be overruled as the records do not go to show that he belongs to Times of India or has been recommended as representing Times of India. His name has been sponsored by NUJD and
- H IFWJ as representing the paper Life and Times".

34. Section 15 of the Act lays down general powers in the Council. A perusal of this provision shows that the powers specified therein have been conferred upon the Council for the purpose

- A** poses of performing its functions or holding any enquiry under the Act, But the Council as a body, has not been assigned any role to play in the process of making nominations of members under Section 5. The appointing authority, in respect of the category referred to in clause (a), clause (b) or clause (c) as earlier discussed, is the retiring Chairman. No such powers are vested in the Chairman, who alone is the nominating authority. There is no machinery provided in the statute for investigation into any objection with regard to the nomination of any person. As such, the retiring Chairman must proceed with the task of making nominations on the basis of the information available on record.
- C** Except in the case of errors apparent on the record, the retiring Chairman has no means to otherwise investigate into any objection or even correctness of information in respect of names recommended for nomination as members.

35. The Chairman did go into the objection, but he could
- D** find no material on record to suspect the correctness of the information or particulars of respondent No. 3 furnished by the concerned associations. It is not even the case of the petitioners that this finding is erroneous. In view of the limited scope of the enquiry and the powers vested in him, the Chairman has over-ruled the objection by a speaking order. The view taken by him is
- E** quite reasonable. It is also consistent with the statutory provisions. Thus, it is found that the retiring Chairman has duly performed the obligations cast upon him for the purposes of making nominations of members in accordance with the provisions made in the Act. In the absence of any error apparent on
- F** the face of the record, or any illegality in the procedure followed by the Chairman it is not open to this Court to sit in appeal over that order or to substitute its own opinion on this matter (See *Parry and Co. Ltd., Dare House Madras V. Commercial Employees association, Madras* and another, A.I.R. 1952 SC 179(3) and *G. Veerappa Pillai, Proprietor, Sathi Vilas Bus Service, Porayar, Tanjore District, Madras V. Raman and Raman Ltd., Kumbakonam, Tanjore District and others.* A.I.R. 1952 SC 192) (4).

36. Membership of the Council, no doubt, is a public office. No qualifications are prescribed for holding this office. Any one
- H** falling within the various categories specified in sub-section (3) of Section 5 can be nominated as a member. Admittedly, respondent No. 3 is a working journalist and he falls in category 'a'. He does not suffer from lack of any inherent qualification for

- A nomination as a member of the Council. The grievance of the petitioners, at it is best, is that the procedure prescribed for nomination has not been properly followed resulting in breach of the second proviso. Even assuming it to be so, such a breach would not disqualify nomination of respondent No. 3. If at all, the Chairman could be directed to reconsider nomination of one out of the two persons, namely, respondent No. 3 and Dr. N. K. Trikha. In that event, according to the established practice, one of the two would be picked up by draw of lots. The possibility of nomination again of respondent No. 3 cannot be ruled out. In such a case, especially in the absence of any inherent disqualification, it cannot be said that the nomination of respondent No. 3 is null and void. A writ of quo-warranto in respect of his nomination cannot be issued.

37. A part from all this there is considerable force in the objections raised on behalf of respondent No. 3 that the petitioners are not entitled to any relief in the present case in view of their own conduct, and because of the non-joinder of Dr. N. K. Trikha and delay and laches.

38. It appears, from a copy of the minutes of the National Council meeting of IFWJ (petitioner No. 3) held on 15th of March, 1986, that the petitioners were, all the time, fully aware of the relevant facts. The said meeting was attended by Shri S.K. Pandey, through whom petitioner No. 2 is represented, as well as by Shri Santosh Kumar, who has been shown as the Convenor of petitioner No. 3 in the memorandum of parties. Each of them actively participated in that meeting. The minutes record, "On a resolution of victimisation of Journalists, for their union activities, several members criticised the Times of India management for repeatedly transferring Com. Vikram Rao; and also denying him his due promotions". After a discussion of this matter, it was noticed that the U.P. Working Journalists Union had offered respondent No. 3 a place in the Journal 'Life and Times'. Further, it records "Com. Rao has since stopped working for the Times of India and has been assisting editorially the journal 'Life and Times'. Thus, these facts were within the knowledge of the petitioners at least since 15th of March 1986. In this background, on initiation of the process of nomination in March, 1988, the IFWJ, as well as NUJ, made their recommendations stating that respondent No. 3 was a person interested only in Life and Times. It is interesting to note that petitioner No. 1 is a member, and petitioner No. 2 is an affiliate of petitioner

- A No. 3, namely, IFWJ. It was this association, as well as NUJ, who had recommended nomination of respondent No. 3 as a working journalist belonging only to Life and Times. Now they have turned about to challenge his nomination on the ground that he was employed by the Times of India. Obviously the petitioners had full knowledge of all the relevant facts. They are the ones who
- B have suppressed and misrepresented the same. A Full Bench of Punjab and Haryana High Court in Charanjilal V. Financial Commissioner, Haryana, A.I.R. 1978 Punjab & Haryana 326, (5) has emphasised upon the requirement that a person obtaining a Rule Nisi by means of a petition for exercise of an extraordinary power under Article 226 of the Constitution of India
- C must come with clean hands, must not suppress any relevant fact from the Court must refrain from making misleading statements and from giving incorrect information to the Court; and further that if there is any suppression of any material facts on the basis of which a writ is sought to be claimed, the Court would
- D refuse to grant the same without going to the merits.

39. Further there is sufficient material on record to show that the present proceedings have been initiated by the petitioners out of personal vendetta against respondent No. 3. In para 2
- E of the petition, it has been alleged "Respondent No. 3 illegally purports to have disaffiliated the petitioners in December, 1988". In the next para it is alleged "... undemocratic functioning of Shri K. Vikram Rao, President of the Indian Federation of Working Journalists (IFWJ), respondent No. 3, whose ways and manners of running the organisation has jeopardised and
- F destroyed the premier organisation of Journalists, with which the petitioners No. 1—3 are associated since its inception". In a circular dated 24th of April 1989 (Annexure 'P-5' to the writ petition), purporting to have been issued by Santosh Kumar as Convenor of the IFWJ Steering Committee, to all members of the National Council, State Units and important activities, it is
- G stated "Vikram Rao & Co. is bent upon destroying and dismembering this biggest organisation of the working journalists in the country". his circular describes respondent No. 3 as "BERSERK VIKRAM". From this, it is apparent that the petitioners have chosen to initiate the present proceedings for settlement of
- H intra trade-union rivalries against respondent No. 3 and not in genuine public interest.

40. Next with regard to non-joinder of Dr. N.K. Tripathi as earlier discussed, even if it were to be held, in view of the second

A proviso, that only one of the two, namely, Dr. N. K. Trikha or respondent No. 3 could be nominated from the category referred to in clause (a) of sub-section (3) of Section 5, the name of either of them would have to be picked up on the basis of draw of lots. In that event, it cannot be said for certain who out of the two would be taken or dropped. This process, if now B resorted to, would certainly expose Dr. N. K. Trikha to peril. This cannot be done as he is not a party to this petition. At the initial stage itself, respondent No. 3 had raised this objection. The petitioners controverted it rather than joining Dr. Trikha as a party. For this reason also, the question of nomination of C respondent No. 3 or Dr. N. K. Trikha cannot be re-opened.

41. Last, but not the least, is the objection on the ground of delay and laches. The petitioners have tried to avoid this objection on the plea that they came to know only in April 1989 from the October 1988 Issue of the Quarterly Journal of the D Council that nomination of respondent No. 3 has been made on the basis of information that he was associated with Life and Times. Soon thereafter, in June 1989, the writ petition was filed. According to respondent No. 3, it is unbelievable that the Journal of October 1988 was read by the petitioners only in April 1989. Petitioner No. 3, namely, IFWJ was itself a part of the E nomination process and had recommended the nomination of respondent No. 3 on the basis of his employment by Life and Times. Further, it is apparent from newspaper cuttings on record that the news about the reconstitution of the Council as also the names of the new members were published in September 1988. F The petitioners are actively involved in trade-union activities. It is too much for them to feign inability to get timely information of this important event. The term of the Council is three years out of which two years have already run out. This is a case similar in nature to that of an election petition under the Representation of People's Act for which limitation of 45 days G is prescribed. Apart from that period being taken as reasonable time, in view of the facts and circumstances of the present case, I am of the opinion that the relief sought by the petitioners cannot be granted in view of delay and laches on the part of the petitioners.

H 42. Consequently, it is found that the retiring Chairman of the previous council is the appropriate authority for making nominations of persons, inter alia, from the category referred to in clause (a) of sub-section 3 of Section 5 of the Act, that the

- A** name of respondent No. 3 as a working journalist belonging to the Life and Times was duly recommended by the concerned associations for nomination as a member; that there was nothing on the record to show that respondent No. 3 was a person interested in the Times of India; that the order of the Chairman rejecting objections raised to the nomination of respondent No. 3 is reasonable, and that there is no error apparent on the face of that order; that respondent No. 3 suffers from no inherent disqualification to hold the office of a member of the Council; and that his nomination as such has been made in accordance with law. Even otherwise, it is found that the petitioners are not entitled to the grant of any relief under Article 226 of the Constitution of India because of their own conduct, non-joinder of Dr. N. K. Trikha as a party, and delay and laches.

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43. As such, the petitioners are not entitled to the grant of a writ of quo-warranto or certiorari to quash the nomination of respondent No. 3 as a member of the Council.

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44. The writ petition is, therefore, dismissed. No costs.

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D. V.

Petition dismissed.

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