

ITEM NO.109

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4076/2013

PARASMAL SAKLECHA

Appellant(s)

VERSUS

HIMMAT KOTHARI & ANR.

Respondent(s)

(with appln. (s) for stay and stay and permission to file additional documents and exemption from filing O.T. and office report)

Date : 05/11/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. Sushil Kumar Jain, Sr. Adv.
 Mr. Puneet Jain, Adv.
 Mr. Abhinav Gupta, Adv.
 Ms. Khushbu Jain, Adv.
 Ms. Ankita Gupta, Adv.
 Ms. Pratibha Jain, Adv.

For Respondent(s) Mr. B. S. Banthia, Adv.
 Mr. Sachin Dagar, Adv.

 Mr. Mishra Saurabh, Adv.
 Ms. Vanshaja Shukla, Adv.
 Mr. Ankit Kr. Lal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This is an appeal under Section 116A of the Representation of People Act, 1951 by the respondent in Election Petition No. 6 of 2009 before the High Court of Madhya Pradesh, Indore Bench aggrieved by judgment dated 12.4.2013.

The appellant herein is the returned candidate from 220 Ratlam City General Assembly

Constituency from the Madhya Pradesh State Legislative Assembly. The Election was held in the year 2008 the results were declared on 8.12.2008.

Challenging the election of the appellant herein, the first respondent herein filed the above-mentioned Election Petition alleging a corrupt practice falling under Section 123(4).

By the judgment under appeal, the High Court found the appellant to be guilty of such a corrupt practice. As a consequence, the High Court declared the Election of the appellant to the Legislative Assembly to be void.

Hence this appeal.

When the matter is taken up, we are confronted with the question whether this appeal is required to be heard at this stage for the following reasons: Subsequent to the amendment of the Representation of People Act, 1951, by the amendment 40 of 1975 which came into force on 6.8.1975, the finding of guilt of a corrupt practice recorded by the High Court at the conclusion of the trial of the Election Petition leads only to one definite consequence, i.e. a declaration that the election of returned candidate to be void. Prior to the above-mentioned amendment, on the recording of

such a finding, a disqualification for a definite period of 6 years for contesting any election conducted under the Representation of People Act, 1951 (hereinafter being referred to as 'the Act') followed automatically against such a candidate, found guilty of a corrupt practice. Subsequent to the above-mentioned amendment of 1975, such a disqualification for future candidates is not an automatic consequence of the declaration of guilt of corrupt practice by the High Court.

Section 8A which was inserted by the Amendment Act 40 of 1975 insofar as it relates reads as follows:-

8A. Disqualification on ground of corrupt practices. (1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be within a period of three months from the date such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect.

(2) Any person who stands disqualified under Section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition

submitted under sub-section (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion.

It can be seen from the language of Section 8A(1) that the case of any person found guilty of corrupt practice by an order under Section 99 of the Act, such order of the High Court is required to be submitted to the President for determination of two questions. The first question being whether such a person shall be disqualified at all and second question is, if such a person is to be disqualified, what is the period for which such person is required to be disqualified. The provision thereof fixes the ceiling of 6 years of disqualification.

On a specific query from Bench, neither of the learned counsel for the parties is in a position to give an information whether the President has taken any decision in the case of the appellant in exercise of powers under Section 8A of the Act. On the other hand, both the learned counsel are of the opinion that in view of the interim order passed on 24.6.2013, the President could not have taken any decision under Section 8A. The interim order reads as follows:-

"Issue notice.

Mr. B.S. Banthia accepts notice on behalf of respondent no. 1.

In the meanwhile, there shall be stay of the operation of the impugned judgment and

order of the High Court subject to the condition that the appellant will neither participate in the proceedings in the Vidhan Sabha nor draw remuneration in the capacity as a member of the Vidhan Sabha but he shall be entitled to participate in the deliberations of the Vidhan Sabha.

Reply, if any, be filed within a week's time.

List the application after the on going summer vacation."

We find it difficult to accept the correctness of the understanding of the parties that the authority of the President to examine the question of disqualification under Section 8A of the Act is kept in abeyance because of the above-mentioned interim order. In our opinion, the interim order only stayed the operation of the impugned judgment of the High Court subject to the conditions specified therein. It was only an interim arrangement pending a final decision as to the correctness of the judgment of the High Court, vis-a-vis, the question of continuance of the appellant herein as a member of the Legislative Assembly. Irrespective of the correctness of the conclusions recorded by the High Court, the Assembly to which the appellant was elected stood dissolved by the expiry of the term.

The only question, therefore, would be whether the appellant continues to suffer a disqualification in view of the finding of guilt against him. As of now, there is nothing on record that the appellant is suffering from

disqualification.

In the circumstances, we deem it appropriate to defer the hearing of the appeal until the President takes a decision under Section 8A of the Act. We make it clear that it is open to the authority contemplated under Section 8A of the Act to submit the case of the appellant herein to the President for an appropriate decision under Section 8A of the Act.

This matter be listed before this Court after the President takes a decision.

(DEEPAK MANSUKHANI)
COURT MASTER

(INDU BALA KAPUR)
COURT MASTER