

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

WRIT PETITION (CIVIL) NO(s). 536 OF 2011

PUBLIC INTEREST FOUNDATION & ORS. Petitioner(s)

VERSUS

UNION OF INDIA & ANR Respondent(s)

(With office report)

Date: 19/08/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s) Mr. Dinesh Dwivedi, Sr. Adv.
Mr. Ashish Mohan, Adv.
Mr. K.K. Mohan, Adv.

For Respondent(s)
UOI Mr. Paras Kuhad, ASG
Mr. J.S. Attri, Adv.
Mr. Jitin Chaturvedi, Adv.
Mr. T.A. Khan, Adv.
Mr. Abhinav Mukherji, Adv.
Ms. Padam Laxmi, Adv.
Mr. R.K. Verma, Adv.
Ms. Priyanka Bharihoke, Adv. for
Mr. B.K. Prashad, Adv

Election Commission: Ms. Meenakshi Arora ,Adv

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

In this Public Interest Litigation, following prayers have been made to:

(a) lay down appropriate guidelines/

framework to ensure that those charged with serious criminal offences are unable to enter the political arena by contesting elections;

b) lay down a time frame of six months during which trial of such persons are concluded in a time bound manner;

c) direct the Central Government to implement the directions passed by this Court in Dinesh Trivedi, M.P. and others vs. Union of India (UOI) and others (1997) 4 SCC 306 in letter and spirit;

d) direct the Union of India to consider the feasibility of enacting legislation to deal with the menace of criminalization of politics and debar those charged with serious offences from contesting elections

of any sort;

e) declare the provisions of Section 8(4) of the Representation of People Act as ultra vires.

2. Insofar as prayer (e) is concerned, we are informed that by a decision of this Court dated July 7, 2013 in Writ Petition (C) No. 490 of 2005 - Lilly Thomas vs. Union of India and others and Writ Petition (C) No. 231 of 2005 - Lok Prahari through its General Secretary S.N. Shukla vs. Union of India and others, the said provision has been declared ultra vires.

3. We are also informed that a review petition has been filed by the Union of India seeking review of the judgment dated July 7, 2013.

4. Be that as it may, prayers (a),(b),(c) and (d) remain to be considered by this Court.

5. In its counter-affidavit filed by the respondent No. 2 - Election Commission of India (for short "Election Commission"), it is stated that as early as on 16.09.1997, it had expressed its serious concern and anxiety in the matter of growing criminalization of politics to the then Prime Minister of India. Election Commission says that it has recommended that the law may be simplified by amending Section 8 of the Representation of People Act, 1951 (for short "the Act") that whoever is convicted of any offence by a court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections for a period totaling the sentence imposed plus an additional six years. It is also the view of the Election Commission that where a person has been accused of serious criminal charges and the court is prima facie satisfied about his involvement in the crime and consequently, charges have been framed against such person, then in such cases, keeping such person out of the electoral arena would constitute a reasonable restriction for serving the larger public interest. As a precaution against motivated cases, it is suggested that it may be provided that only those cases which were filed prior to six months before an election, may be considered for the purposes of disqualification as proposed. It is also the suggestion of the Election Commission that persons found guilty by a Commission of Enquiry should also stand disqualified from contesting election.

6. The views of the Election Commission have also been expressed before the Parliamentary Committee in its meeting held on 20.2.2007. The Parliamentary Committee in its 18th report is reported to have disagreed with the views of the Election Commission.

7. The counter-affidavit of Election Commission states that the matter is understood to have been under re-consideration by the Ministry of Law & Justice to consider disqualification of persons in cases where charges concerning heinous offences have been framed by the Court.

8. The views of the Election Commission are, thus, in accord with the recommendations made by the Law Commission of India relating to the above subject in its 170th Report wherein a recommendation has been made that Section 8B of the Act be enacted and the framing of charge (by court) in respect of election offences and certain other serious offences be made a ground of disqualification.

9. Despite repeated opportunities granted to the respondent No. 1 - Union of India, no response has been filed by it so far.

10. Mr. Paras Kuhad, learned Additional Solicitor General submits that one more opportunity may be given to enable Union of India to file appropriate counter-affidavit in response to the important issues raised in this Public Interest Litigation.

11. In our view, response from the Union of India is necessary. Accordingly, we grant six weeks' time to the respondent No. 1 - Union of India to file counter-affidavit.

12. List the matter on October 7, 2013.

