

K. PRABHAKARAN

A

v.

P. JAYARAJAN

OCTOBER 1, 2002

[R.C. LAHOTI, BRIJESH KUMAR AND H.K. SEMA, JJ.]

B

Representation of the People Act, 1951

Ss.8 and 100(1)(a)—Disqualification of a returned candidate on ground of conviction and sentence—Relevant date—Whether date of election of the returned candidate—Held, the view taken in Manni Lal's case and affirmed in Vidya Charan Shukla's case** that setting aside of the conviction and sentence in appeal has the effect of wiping out retrospectively the disqualification requires reconsideration—The proposition that candidate though disqualified on the date of his being chosen, would become qualified by reference to subsequent event which may happen during pendency of an election petition is open to question—Matter referred to Constitution Bench.*

C

D

**Manni Lal v. Parmai Lal, [1970] 2 SCC 162 and **Vidya Charan Shukla v. Purshottam Lal Kaushik, [1981] 2 SCC 84, referred to.*

E

S. 8(3)—Disqualification of a candidate on ground of conviction and sentence—Term of imprisonment—Candidate found guilty of various offences and sentenced to imprisonment—Sentences directed by trial court to run consecutively, thus term of imprisonment running into more than 2 years—Appellate court affirming the conviction but directing the sentences to run concurrently with the result that term of imprisonment was reduced to less than two years—Whether total term of imprisonment under each offences or term of imprisonment for each individual offence is relevant—Held, there being no decided case available and the issue being of far reaching implications, an authoritative pronouncement by a Constitution Bench would be conducive to justice and would settle the law—Matter referred to Constitution Bench.

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G

Bashir Ahmed v. Aphtar Hussain Khan, (1937) 2 Indian Election Cases 341, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8213 of 2001.

H

A From the Judgment and Order dated 5.10.2001 of the Kerala High Court in E.P.No.1/2001.

L. Nageswara Rao, Roy Abraham, K.C. Sudarshan, Jayant Muthraj and Himinder Lal for the Appellant.

B K.K. Venugopal and G. Prakash for the Respondent.

The following Order of the Court was delivered

C This appeal under Section 116A of the Representation of the People Act, 1951 (RPA, 1951 - for short) deserves to be placed for hearing before a Constitution Bench for the reasons stated hereunder.

No. 14 Kuthuparamba Legislative Assembly Constituency went to polls on 10th May, 2001. The respondent was declared elected. The appellant lost in the election.

D The undisputed facts are that vide judgment dated 9th April, 1997 passed by Judicial Magistrate First Class, Kuthuparamba (Annexure P1), the respondent was held guilty of offences punishable under Sections 143, 148, 447, 353, 427, all read with 149 IPC and also under Section 3(2)(e) of the Prevention of Damage to Property Act, 1984 read with 149 IPC and sentenced to several terms of imprisonment. All the sentences were directed to run consecutively. The total term of imprisonment which the accused was required to undergo was of 29 months though individually the term of imprisonment awarded for each of the several offences was less than two years. The respondent preferred an appeal laying challenge to the conviction and the sentences passed on him. Vide the judgment dated 25th July, 2001, the Court of Sessions upheld the conviction and the sentences passed on the respondent but subject to the modification that the substantive sentences of imprisonment passed by the Trial Court were made to run concurrently (instead of consecutively). Thus, undisputedly, on the date of his election, the respondent was a convict sentenced to the term of 29 months' imprisonment passed by the Trial Court.

G The appellant filed an election petition putting in issue the respondent's election, under Section 100(1)(a) of RPA, 1951. The election petition came to be decided on 5.10.2001 before which date the criminal appeal preferred by the respondent had stood decided. The learned designated Election Judge of the High Court, by the impugned judgment, directed the election petition

to be dismissed forming an opinion that the verdict of guilt and the sentence passed in the criminal appeal had wiped out the verdict of guilt and the sentences of imprisonment passed by the Trial Court and as the total term of imprisonment awarded by the Appellate Court was for less than two years, in view of the sentences having been made to run concurrently, the disqualification too had stood wiped out. The learned designated Election Judge has placed reliance on the decisions of this Court in *Vidya Charan Shukla v. Purshottam Lal Kaushik*, [1981] 2 SCC 84 and *Manni Lal v. Parmai Lal*, [1970] 2 SCC 162.

In *Manni Lal's* case (supra), a two-Judges Bench of this Court took the view that setting aside of the conviction and sentence in appeal has the effect of wiping out retrospectively the disqualification. *Manni Lal's* case was followed by three-Judges Bench in *Vidya Charan Shukla's* case on the principle of *stare decisis*. The learned Judges noted that correctness of the decision in *Manni Lal's* case was not disputed before them. Thus the view of the law taken by two-Judges Bench in *Manni Lal's* case was affirmed by three-Judges Bench in *Vidya Charan Shukla's* case.

We have some reservations about the correctness of the view taken in *Manni Lal's* case and *Vidya Charan Shukla's* case. As per Article 191 of the Constitution, a person shall be *disqualified for being chosen* as, and for being, a member of the Legislative Assembly if he is so disqualified by or under any law made by the Parliament. The relevant part of Section 8 of RPA, 1951 provides that a person convicted of any offence and sentenced to imprisonment for not less than two years shall be *disqualified from the date of such conviction* and shall continue to be disqualified for a further period of six years since his release. The disqualification or want of qualification to be chosen to fill the seat is to be fixed *by reference to the date of election of the returned candidate* within the meaning of Clause (a) of sub-Section (1) of Section 100 of the RPA. The proposition that the candidate, though disqualified on the date of his being chosen, would become qualified by reference to subsequent event which may happen during the pendency of an election petition is, in our humble opinion, open to question.

The other controversy centres around the interpretation of sub-Section (3) of Section 8 of the RPA, 1951. According to the appellant, the several sentences passed on a person on his being convicted may be individually less than two years each but in view of the Court having directed the sentences of imprisonment to run consecutively, the convict would come out of the

- A prison only after serving out the total term of imprisonment which being two years or more, the disqualification would be attracted. It was also submitted that even if the sentences are made to run concurrently yet it is the total term of imprisonment which should be taken into account for fulfilling the object sought to be achieved by the disqualification provision. On the other hand,
- B it was submitted on behalf of the respondent, that whether consecutive or concurrent, it is the term of imprisonment for each individual offence which is relevant and must govern the applicability of the disqualification provision. Whatever be the total term of imprisonment, if the individual term of substantive imprisonment in respect of any one out of the several offences found proved is not two years or more, sub-Section (3) of Section 8 of RPA
- C is not attracted, is the submission on behalf of respondent. Reliance has been placed on a decision by the Election Petitions Commission, UP in *Bashir Ahmed v. Aphtar Hussain Khan* decided on 26.8.1937 and reported as 2 Indian Election Cases 341 wherein, interpreting Section 69(1)(e) of Government of India Act, 1935 the Commission has taken the view that the word "offence" used in singular cannot be read in plural as "offences".
- D

As to the first question, as already said, we have some reservation about the correctness of the view taken in *Vidya Charan Shukla and Manni Lal's* cases and the former being a three-Judges Bench decision, the issue deserves to be dealt with by Constitution Bench. As to the second question,

E there is no decided case of this Court available and the issue being of far reaching implications, an authoritative pronouncement by a Constitution Bench would be conducive to justice and would settle the law.

Let the matter be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench for hearing the appeal.

F R.P.

Referred to Larger Bench.