

A LOK PRAHARI,  
THROUGH ITS GENERAL SECRETARY S. N. SHUKLA  
& ANOTHER

v.

B UNION OF INDIA  
THROUGH ITS SECRETARY & OTHERS  
(Civil Appeal No. 3798 of 2018)

APRIL 16, 2018

**[J. CHELAMESWAR AND SANJAY KISHAN KAUL, JJ.]**

C *Salaries, Allowances and Pensions of Members of Parliament*  
Act, 1954 – ss.8A, 8AC, 6B(1), 6B(2) and 8AA – Amendments in the  
1954 Act conferring the benefit of pension and other facilities to  
D *ex-members of Parliament and their Associates (i.e. spouses/  
companions/dependents) and right of free travel etc. to members of  
Parliament and their Associates – Writ petition filed by appellant  
before High Court, challenging the constitutional validity of the  
amendments, dismissed – On appeal, held: The fact that there are  
express references in the Constitution for payment of pension to  
certain constitutional functionaries and not to others, does not lead  
E to the conclusion that the Constitution by its silence prohibits the  
payment of pension to those constitutional functionaries – Framers  
of the Constitution believed that certain offices required a higher  
degree of protection, having regard to the greater degree of  
independence expected of the holders of their offices – Terms and  
F conditions subject to which a person is either appointed or elected  
to occupy the constitutional office is a matter of policy choice –  
Appropriate legislature would be the constitutionally designated  
authority to determine those conditions – Expression “allowances”  
of MPs occurring u/Entry 73 of List-I of the VII<sup>th</sup> Schedule, is wide  
G enough to cover the payment of “pension” and the other benefits  
covered by the impugned provisions to MPs or ex-MPs – Even  
otherwise the authority of Parliament u/Entry 97 of List-I is wide  
enough to cover the impugned legislation– Constitution of India –  
Arts.14, 106 and Arts. 59(3), 158(3), 75(6), 164(5), 97, 18, 125(2),  
221(2), 148(3), 322 and 324(5)– President’s Emoluments and  
Pension Act, 1951– s.2– Vice President’s Pension Act, 1997– The*

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*Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971– Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.* A

**Dismissing the appeal, the Court**

**HELD: 1.1** Section 8A of the Salaries, Allowances and Pensions of Members of Parliament Act, 1954 grants pensions to (i) ex-MPs, and (ii) upon their death, the pension is given to their respective spouses. Section 8AC provides family pension to the spouse of such MPs on the death of the MP. Section 8A as originally enacted provided that an MP, to be eligible for Pension must have completed four years of tenure in Parliament. But this was done away with retrospective effect by the Amendment Act No.9 of 2004. Section 6B(1) confers a right to all the MPs for unlimited travel by train along with spouse/companion from any place in India to any other place in India. Section 6B(2) provides up to 8 air journeys in a year from the MP's usual place of residence to Delhi and back when Parliament is in Session and also provides the spouse of the MP unlimited train travel by First Class AC at any time during the year. Section 8AA confers a right of travel facilities to the ex-MPs and their ASSOCIATES (i.e. spouses/companions/dependents). It provides for free AC-II Tier pass for one person to accompany an ex-MP in all train journeys and unlimited free travel by train along with spouse/companion from any place in India to any other place in India. [Para 17] [1060-D, E; 1061-A-B, C] B C D E

**1.2** The submissions of the Appellants proceed on the wrong assumption that certain provisions of the Constitution mandate the payment of pension to persons who hold constitutional offices like the Judges of this Court. A true and proper construction of the text of the relevant provisions, do not mandate the payment of pension. They only protect the pension if payable under the relevant law applicable on the date of appointment of a person to any one of those offices by declaring that such a condition could not be altered to the detriment of a person subsequent to his appointment. However, the constitutional obligation to pay pension to persons who hold such offices may arise by implication having regard to the overall scheme of the Constitution relevant to those offices. The need to secure the independence of the F G H

A holders of those offices by assuring them that either the  
legislature or the executive will not be able to deprive them of  
the financial resources necessary to keep them away from  
impecuniousness, irrespective of the fact that a decision taken  
by the incumbents of each of those offices in discharge of the  
official responsibilities is acceptable or not either to the legislature  
B or the executive. [Para 20] [1062-C-F]

1.3 The fact that there are express references to the  
payment of pension in the Constitution for certain constitutional  
functionaries and not for others, does not lead to the conclusion  
that the Constitution by its silence prohibits the payment of  
C pension to those constitutional functionaries. Each constitutional  
office holder functions in accordance with the powers and duties  
entrusted to it either by the Constitution or the laws relevant to  
their powers and duties. The framers of the Constitution believed  
that certain offices required a higher degree of protection, having  
D regard to the greater degree of independence expected of the  
holders of their offices. The framers knew history and the  
attempts of the men in power to subjugate the holders of such  
offices. Safeguards, therefore, were provided in respect of the  
various aspects of the tenure and other conditions of service  
relevant for their offices. When it comes to MPs, however, such  
E a higher degree of constitutional protection is not obviously  
required as the authority to make laws rests only with them.  
[Para 21] [1062-H; 1063-A-C]

1.4 The terms and conditions subject to which a person is  
either appointed or elected to occupy the constitutional office is  
F a matter of policy choice. The appropriate legislature would be  
the constitutionally designated authority to determine those  
conditions. It is too well settled in constitutional law that the  
authority of legislature to make a policy choice is only  
circumscribed by the limitations imposed by the Constitution,  
G either by an express provision or by a necessary implication arising  
out of the scheme of the Constitution. Whatever is not prohibited  
by the Constitution is permissible for the legislature. [Para 22]  
[1063-D-E]

1.5 There is a fallacy in the argument advanced by the  
H Appellants that pension is payable to an employee of State after

his superannuation and since MPs are not employees of State, they are not entitled for pension nor the Parliament is competent to provide payment of pension to the ex-MPs. The above submission assures that pension is only payable to former employees of State and nobody else. Such a submission emanates from the fact that certain payments made to the former employees of State are called pensions and the misconception of the Appellants that the expression ‘pension’ can only have one meaning. There are various other categories of payments made by State which are called ‘pensions’, such as, Old Age Pension, Widow Pension, and Disability Pension etc. [Para 24] [1064-A-C]

1.6 The expression “allowances” of MPs occurring under Entry 73 of List-I of the Seventh Schedule, is wide enough to cover the payment of “pension” and the other benefits covered by the impugned provisions to MPs or ex-MPs. Even otherwise the authority of Parliament Entry 97 of List-I is wide enough to cover the impugned legislation. [Para 27] [1064-F-G]

1.7 These questions are in the orbit of the wisdom of the Parliament in choosing/changing the legislative policy whether the various benefits created under the impugned provisions are rational having regard to the affluent financial status of some of the MPs or the poverty of the millions of the population etc. These are not justiciable issues as held by *Common Cause*. [Para 31] [1066-A-B]

*Common Cause, A Registered Society v. Union of India* (2002) 1 SCC 88 : [2001] 5 Suppl. SCR 323 – followed.

*Dr. P. Nalla Thampy Terah v. Union of India & Others* (1985) Suppl. SCC 189 : [1985] Suppl. SCR 622 ; *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310 : [1976] 1 SCR 906 ; *State of Karnataka v. Union of India* (1977) 4 SCC 608 : [1978] 2 SCR 1 – relied on.

*McCulloch v. Maryland*, 4 *Wheat.* 316, 425-437, 4 L.Ed. 579 (1819) ; *Alagaapuram R. Mohanraj & Others v. Tamil Nadu Legislative Assembly*, (2016) 6 SCC 82 : [2016] 6 SCR 611 – referred to.

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Case Law Reference

[2001] 5 Suppl. SCR 323	followed	Para 3
[1976] 1 SCR 906	relied on	Para 22
[1978] 2 SCR 1	relied on	Para 22
[2016] 6 SCR 611	referred to	Para 25
[1985] Suppl. SCR 622	relied on	Para 31

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3798 of 2018.

C

From the Impugned Judgment and Order dated 20.04.2016 of the High Court of Judicature at Allahabad, Lucknow Bench in PIL Civil Misc. Writ Petition No.1620 (MB) No.1620/2004.

S. N. Shukla, Petitioner-in-person.

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Mrs. Kamini Jaiswal, Ms. Shruti Dutt, Jatinder Pal Singh, Suyash Srivastava, Ms. Rani Mishra, Advs. for the Appellants.

K.K. Venugopal, AG, Shiv Mangal Sharma, AAG, Ajit Kumar Sinha, Sr. Adv., Rohit Bhatt, Ms. Alankrita Sinha, Sarad Kumar Singhania, B.V. Balaram Das, B. Krishna Prasad, Ms. Monisha Handa, Mohit D. Ram, Advs. for the Respondents.

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The Judgment of the Court was delivered by

**CHELAMESWAR, J.** 1. Leave granted.

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2. This appeal arises out of a Writ Petition that challenged the Constitutional validity of certain Amendments<sup>1</sup> made to the Salaries, Allowances and Pensions of Members of Parliament Act, 1954 (hereinafter referred to as “the Act”). The provisions challenged relate to the payment of pension and other facilities to members of Parliament (hereinafter referred to as “MPs”) and ex- members of Parliament (hereinafter referred to as “ex-MPs”), and their spouses/companions/dependents (collectively hereafter referred to as “ASSOCIATES”). The 1<sup>st</sup> Appellant sought the following prayers, *inter alia*, in the Writ Petition before the Allahabad High Court:

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<sup>1</sup>By the Amendment Act 2003, Act 9 of 2004, Amending Act No. 40 of 2006 and Amending Act 37 of 2010.

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1. “Declare that the provisions of various amending Acts to Act 30 of 1954, and particularly those of the Amending Act 9 of 2004, and Amending Act No. 40 of 2006 and Amending Act 37 of 2010, providing for pension/family pension to ex-MPs/dependents, travel facilities to spouse and other non-members, (in addition to the companion) and ex-MPs, as well as continuation of facilities, regarding unutilized quotas of telephone calls electricity and water units are ultra vires of the Constitution and the original Act. A B
2. Issue a mandamus to the opposite parties 1 to 4 to stop forthwith payment of pension/family pension to ex-MPs/dependents, and provision of other facilities in 1 above. C
3. Order recovery of illegal pension/family pension from the recipients thereof.”

3. The High Court dismissed the writ petition negating all contentions raised by the 1<sup>st</sup> Appellant herein, holding that the issue is no longer *res integra* in view of the Judgment in ***Common Cause, A Registered Society v. Union of India***<sup>2</sup> (hereafter referred to as “***Common Cause***”) wherein this Court held that Parliament is competent to legislate on pensions for ex-MPs and as a corollary it has the power to prescribe any condition subject to which the pension may be paid. We are in total agreement with the conclusion of the High Court on the question of legislative competence. D E

4. The question which remains to be answered is whether any of the impugned amendments which create various rights in favour of ex-MPs & their ASSOCIATES and certain other facilities to MPs are violative of Article 14 of the Constitution of India, 1950 as being discriminatory. It was the case of the Appellant that the ***Common Cause case*** is silent in this respect. However, the High Court took the view that the attack on Article 14 is foreclosed by ***Common Cause***. F

5. It is argued before us that ***Common Cause*** took note of the Petitioner’s argument therein<sup>3</sup> that the Act is violative of Article 14, however, there was neither any discussion on the issue nor any binding G

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<sup>2</sup> (2002) 1 SCC 88

<sup>3</sup> “5. Reference was made by the Petitioner in WP (C) No. 246 of 1993, appearing in person, to the provisions of Article 14 and it was submitted that there was discrimination in favor of Members of Parliament by giving them pension when, unlike Judges, they were not subject to the process of impeachment.” H

A decision on the question.<sup>4</sup> Therefore, it is submitted that the High Court erred in concluding that the challenge to the impugned provisions is impermissible. We propose to limit our examination in the present case to the question of the constitutionality of various Amendments brought after the *Common Cause* case on grounds other than legislative competence.

B 6. To answer the same, we may start with the analysis of the various provisions of the Constitution creating various constitutional offices because some of these provisions contemplate the possibility of the payment of pension in respect to certain Constitutional offices, while no express reference is made with regard to various other offices created by the Constitution.

C 7. Article 59(3)<sup>5</sup> specifies that the President shall be entitled to such ‘emoluments, allowances and privileges as may be determined by Parliament by law’ while Article 158(3) specifies the same for the Governor. Neither of the Articles make any reference to the payment of pension. However, Section 2 of the President’s Emoluments and Pension Act, 1951 provides for the payment of pension and other facilities to the retiring President.<sup>6</sup>

D <sup>4</sup>“7. The issue before us is **squarely one of competence**, namely, the competence of Parliament to enact the said Section 8-A. We need not go into Entry 73 of List I for we are in no doubt that such competence is conferred upon Parliament by the residuary Entry 97 of List I, and there is no provision in Article 106 or elsewhere that bars the payment of pension to Members of Parliament.”

E <sup>5</sup> **Article 59(3). Conditions of President’s office.-** The President shall be entitled without payment of rent to the use of his official residence and shall be also entitled to such emoluments, allowances, and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

F <sup>6</sup> **Section 2. (1) Pension to retiring Presidents.** There shall be paid to every person who ceases to hold office as President, either by the expiration of his term of office or by resignation of his office, a pension of 6 one lakh twenty thousand rupees per annum for the remainder of his life. [ (2) Subject to any rules that may be made in this behalf, every such person shall, for the remainder of his life, be entitled-

G (a) to the use of a furnished residence (including its maintenance), without payment of rent, a telephone and a motor- car, free of charge or to such car allowance as may be specified in the rules-

(b) to secretarial staff consisting of a Private Secretary, a Personal Assistant and a Peon, and office expenses the total expenditure on which shall not exceed twelve thousand rupees per annum;

(c) to medical attendance and treatment free of charge.

H (d) to travel anywhere in India, accompanied by one person, by 9 highest class by air, rail or steamer. Explanation.— For the purposes of this sub- section” residence” shall have the meaning assigned to it in the Salaries and allowances of Ministers Act, 1952 ]

8. Article 75(6)<sup>7</sup> and Article 164(5) respectively speak of the salaries and allowances of Ministers, which Parliament and the State Legislature may determine by law. A

9. Articles 97<sup>8</sup> and 186<sup>9</sup> provide for the payment of ‘salaries and allowances’ of the Chairman and Deputy Chairman and the Speaker and the Deputy Speaker of Parliament and State Legislatures. The Vice-President’s Pension Act, 1997 has an identical provision with respect to the payment of pension and post retirement facilities as are provided to the President.<sup>10</sup> B

10. Article 106 of the Constitution stipulates that MPs shall be entitled to receive ‘salaries and allowances’ to be determined by C

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<sup>7</sup> **Article 75. Other Provisions as to Ministers- (6)** The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

<sup>8</sup> **Article 97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.-** There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule. D

<sup>9</sup>**Article 186. Salaries and Allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.-** There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule. E

<sup>10</sup> **Section 2. Pension to retiring Vice-Presidents.**—(1) There shall be paid to every person who ceases to hold office as Vice-President, either by the expiration of his term of office or by resignation of his office, a Pension 1 [at the rate of fifty per cent of the salary of the Vice-President] per month, for the remainder of his life F  
Provided that such person shall not be entitled to receive any pension during the period he holds the office of the Prime Minister, a Minister or any other office or becomes a Member of Parliament and is in receipt of salary and allowances which are defrayed out of the Consolidated Fund of India or the Consolidated Fund of a State.

**(1A)** The spouse of a person who dies — G  
(a) while holding the office of Vice-President, or  
(b) after ceasing to hold office as Vice-President either by the expiration of his term of office or by resignation of his office, shall be paid a family pension at the rate of fifty per cent of pension as is admissible to a retiring Vice-President, for the remainder of her life.

A Parliament through legislation.<sup>11</sup> There is no express reference to the payment of pension.

11. On the other hand, the provisos to Article 125(2)<sup>12</sup> and Article 221(2)<sup>13</sup> respectively make an express reference to the payment of pension to judges of the Supreme Court and the High

B Courts.

12. Article 148(3)<sup>14</sup> provides that salary and other conditions of service of the Comptroller and Auditor-General shall be as may be determined by Parliament by law. **The proviso thereto contains a reference to the payment of pension.** The Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 contains

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<sup>11</sup> **Article 106. Salaries and Allowances of Members.**-Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India

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<sup>12</sup> **Article 125. Salaries, etc., of Judges.- (2)** Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

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Provided that neither the privileges or the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

<sup>13</sup> **Article 221. Salaries, etc., of Judges.- (2)** Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule:

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Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

<sup>14</sup> **Article 148. Comptroller and Auditor-General of India.- (3).** The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule:

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Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

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various provisions for the payment of pension on his/her demission of office.<sup>15</sup> A

13. Article 322<sup>16</sup> declares that the expenses of Public Service Commissions shall be charged on the Consolidated Fund of India and such expenses include “salaries, allowances and pensions” payable to or in respect of the members or staff of the Commission. B

14. Article 324(5)<sup>17</sup> stipulates that “conditions of service and tenure of office of the Election Commissioners shall be such as the President may by rule determine.” Though the Constitution is silent in regard to payment of pension to the Election Commissioners, Section 6 in the Election Commission (Conditions of Service of Election Commissioners C

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<sup>15</sup> **Section 6. Pension.**- A person who demits office as the Comptroller and Auditor-General by resignation shall, on such demission, be eligible to a pension at the rate of two thousand rupees per annum for each completed year of his service as the Comptroller and Auditor-General:

Provided that in the case of a person referred to in sub-section (1) or sub-section (3), the aggregate amount of pension admissible under this sub-section together with the amount of pension including the commuted portion, if any, of his pension, and the pension equivalent of the retirement gratuity if any which may have been admissible to him under the rules for the time being applicable to the Service to which he belonged immediately before he assumed office as the Comptroller and Auditor-General, shall not exceed fifteen thousand rupees per annum or the higher pension referred to in proviso to sub-section (2) or sub-section (3), as the case may be. D E

<sup>16</sup> **Article 322. Expenses of Public Service Commissions**

The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

<sup>17</sup> **Article 324. Superintendence, direction and control of elections to be vested in an Election Commission** F

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment: G

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

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A and Transaction of Business) Act, 1991 makes provision for payment of pension to Election Commissioners which is equal to the pension payable to a Supreme Court Judge.<sup>18</sup>

B 15. From the Constitutional scheme it can be seen that no express mandate exists for the payment of pension with respect to any one of the Constitutional offices. However, Articles dealing with the Judges of the Supreme Court and the High Courts and the Comptroller and Auditor-General stipulate that pensions payable may not be varied during their tenure. The implication being that if the law dealing with the service conditions of any of the incumbents of any one of the said offices at the time of their appointment provides for the payment of pension, such a provision of law cannot be varied to the detriment of the incumbent.

C 16. The provisions under challenge fall under two categories (i) provisions which confer the right of free travel etc. to the MPs and their ASSOCIATES; and (ii) provisions which confer the benefit of pension and the right of free travel etc. to the ex-MPs and their ASSOCIATES.

D **THE PROVISIONS UNDER CHALLENGE:**

17. Section 8A<sup>19</sup> of the Act grants pensions to (i) ex-MPs, and (ii) upon their death, the pension is given to their respective spouses. Section 8AC<sup>20</sup> provides family pension to the spouse of such MPs on the death

E <sup>18</sup> **Section 6. Pension payable to Election Commissioners.-**

(2) Where the Chief Election Commissioner [or an Election Commissioner] demits office [whether in any manner specified in [sub-section (3)] or by resignation], he shall, on such demission be entitled to

F (a) a pension which is equal to the pension payable to a Judge of the Supreme Court in accordance with the provisions of Part III of the Schedule to the Supreme Court Judges (Conditions of Service) Act, 1958, as amended from time to time; and

(b) such pension (including commutation of pension), family pension and gratuity as are admissible to a Judge of the Supreme Court under the said Act and the Rules made thereunder, as amended from time to time...”

G <sup>19</sup> **Section 8A. (1)** With effect from the 18<sup>th</sup> day of May, 2009, there shall be paid a pension of twenty thousand rupees *per mensem* to every person who has served for any period as a Member of the Provisional Parliament or either House of Parliament

Provided that where a person has served as a member of the Provisional Parliament or either House of Parliament for a period exceeding five years, there shall be paid to him an additional pension of thousand five hundred rupees *per mensem* for every year served in excess of five years

*Explanation.* – For the purpose of this sub-section “Provisional Parliament” shall include the body which functioned as the Constituent Assembly of the Dominion of Indian immediately before the commencement of the Constitution

H <sup>20</sup> Inserted by Act 40 of 2006 – effective from 15-9-2006

of the MP. It is pertinent to mention here that Section 8A as originally enacted provided that an MP, to be eligible for Pension must have completed four years of tenure in Parliament. But this was done away with retrospective effect by the Amendment Act No.9 of 2004. A

Section 6B(1)<sup>21</sup> of the Act confers a right to all the MPs for unlimited travel by train along with spouse/companion from any place in India to any other place in India. Section 6B(2)<sup>22</sup> provides up to 8 air journeys in a year from the MP's usual place of residence to Delhi and back when Parliament is in Session and also provides the spouse of the MP unlimited train travel by First Class AC at any time during the year. Section 8AA<sup>23</sup> confers a right of travel facilities to the ex-MPs and their ASSOCIATES. It provides for free AC-II Tier pass for one person to accompany an ex-MP in all train journeys and unlimited free travel by train along with spouse/companion from any place in India to any other place in India. B C

18. The provisions are impugned on the following grounds:

- (i) the contrast in the language displayed in the various Articles of the Constitution dealing with the salaries and other allowances payable to the various Constitutional office holders should necessarily lead to the conclusion that the Constitution does not permit the payment of pension and other benefits to MPs and ex-MPs; D E
- (ii) the framers of the Constitution specifically denied pensionary benefits to the MPs and therefore giving of any POST RETIREMENT BENEFITS to ex-MPs and their ASSOCIATES would amount to treating those who were denied this constitutional right to pension at par with those constitutional offices whose pension was expressly protected. And to treat them on the same footing would result in a violation of the right to equality; F
- (iii) the impugned provisions are irrational<sup>24</sup> and arbitrary because the grant of pension to all ex-MPs without taking into consideration their respective tenure and economic conditions goes against public interest<sup>25</sup>; and G

<sup>21</sup> Substituted by Act 16 of 1999

<sup>22</sup> Inserted by Act 37 of 2010 – effective from 1-10-2010

<sup>23</sup> Substituted by Act 9 of 2004 – effective from 15-9-2006

<sup>24</sup> Written Submissions of Petitioner in WP before the Allahabad HC

<sup>25</sup> *Id.*

A (iv) looked at from the point of view of the taxpayers and crores of poor and needy people of the country, the impugned provisions are an unfair and unjust exercise of the legislative authority of the Parliament.<sup>26</sup>

B 19. We shall now examine the core submission - whether the silence in Article 106 operates as a prohibition for payment of pension to the former MPs?

C 20. The submissions of the Appellants proceed on the wrong assumption that certain provisions of the Constitution mandate the payment of pension to persons who hold constitutional offices like the Judges of this Court. We have already examined the language of the relevant provisions of the Constitution. We are of the opinion that, on a true and proper construction of the text of those provisions, they do not mandate the payment of pension. They only protect the pension if payable under the relevant law applicable on the date of appointment of a person to any one of those offices by declaring that such a condition could not be altered to the detriment of a person subsequent to his appointment.

D However, the constitutional obligation to pay pension to persons who hold such offices may arise by implication having regard to the overall scheme of the Constitution relevant to those offices. The need to secure the independence of the holders of those offices by assuring them that either the legislature or the executive will not be able to deprive them of the financial resources necessary to keep them away from impecuniousness, irrespective of the fact that a decision taken by the incumbents of each of those offices in discharge of the official responsibilities is acceptable or not either to the legislature or the executive. We must hasten to add that we must not be understood to be making any final declaration of law in this regard.

E The purpose of this analysis is limited only to demonstrate that the Appellants starts on a wrong premise in assuming that the text of the Constitution contains express provisions mandating the payment of pension in connection with certain constitutional offices.

F 21. The fact that there are express references to the payment of pension in the Constitution for certain Constitutional functionaries and not for others, in our opinion does not lead to the conclusion that the

H <sup>26</sup> Ground D of the Writ Petition

Constitution by its silence prohibits the payment of pension to those constitutional functionaries. Each Constitutional office holder functions in accordance with the powers and duties entrusted to it either by the Constitution or the laws relevant to their powers and duties. The framers of the Constitution believed that certain offices required a higher degree of protection, having regard to the greater degree of independence expected of the holders of their offices. The framers knew history and the attempts of the men in power to subjugate the holders of such offices. Safeguards, therefore, were provided in respect of the various aspects of the tenure and other conditions of service relevant for their offices. When it comes to MPs, however, such a higher degree of constitutional protection is not obviously required as the authority to make laws rests only with them.

22. The terms and conditions subject to which a person is either appointed or elected to occupy the constitutional office is a matter of policy choice. The appropriate legislature would be the constitutionally designated authority to determine those conditions. It is too well settled in constitutional law that the authority of legislature to make a policy choice is only circumscribed by the limitations imposed by the Constitution, either by an express provision or by a necessary implication arising out of the scheme of the Constitution. It is a well established principle commencing from *McCulloch's case*<sup>27</sup> and followed by a long line of judicial pronouncements<sup>28</sup> that whatever is not prohibited by the Constitution is permissible for the legislature.

23. Further if we were to accept the argument that those Constitutional functionaries who are entitled to pension by the text of the Constitution form a distinct class **exclusively** entitled to the payment of pension the result would be that the CAG, the Chairman and Deputy Chairman of the Parliament or State Legislature, and Ministers of the Centre and State would be disentitled to pension.

<sup>27</sup> **McCulloch v. Maryland, 4 Wheat. 316, 425-437, 4 L.Ed. 579 (1819):**

“But we think the sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional.”

<sup>28</sup> See *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310, para 107; see also *State of Karnataka v. Union of India*, (1977) 4 SCC 608, para 69

A 24. Another argument advanced by the Appellants is that pension is payable to an employee of State after his superannuation. Since MPs are not employees of State, they are not entitled for pension nor the Parliament is competent to provide payment of pension to the ex-MPs. In our opinion, there is a fallacy in the above submission, insofar as it assures that pension is only payable to former employees of State and nobody else. Such a submission emanates from the fact that certain payments made to the former employees of State are called pensions and the misconception of the Appellants that the expression ‘pension’ can only have one meaning. There are various other categories of payments made by State which are called ‘pensions’, such as, Old Age Pension, Widow Pension, and Disability Pension etc.

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C 25. The appellants have relied upon the decision in *Alagaapuram R. Mohanraj & Others v. Tamil Nadu Legislative Assembly*,<sup>29</sup> to argue that the activity of MPs is not an “occupation” contemplated by Article 19(1)(g) of the Constitution of India and, therefore, no pension can be paid to ex-MPs or their ASSOCIATES.

D 26. In our opinion, this argument is only to be rejected, because it once again is premised on the belief that the expression ‘pension’ has only one connotation in law. The question before this Court in *Alagaapuram R. Mohanraj* was whether a Member of the Legislative Assembly is carrying on any occupation within the meaning of Article 19(1)(g) of the Constitution of India. The fact that this Court held that this is not an occupation under Article 19(1)(g) need not necessarily mean that the Parliament is prohibited from making payment of such allowances to MPs if it considers it appropriate having regard to various relevant factors.

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F 27. The expression “allowances” of MPs occurring under Entry 73 of List-I of the Seventh Schedule,<sup>30</sup> in our opinion, is wide enough to cover the payment of “pension” and the other benefits covered by the impugned provisions to MPs or ex-MPs. Even otherwise the authority of Parliament under Entry 97 of List-I<sup>31</sup> is wide enough to cover the impugned legislation as held by *Common Cause*.

G <sup>29</sup> (2016) 6 SCC 82.

<sup>30</sup> Entry 73 of List-I of the Constitution of India

“Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.”

<sup>31</sup> Entry 97 of List-I of the Constitution of India

H “Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.”

28. In this context, we may recall the remarks made by two eminent members of the Constituent Assembly, namely Dr. B.R. Ambedkar and Shri K.T. Shah to illustrate the fallacy of the Appellants' understanding. A

29. Dr. Ambedkar, while debating the need to provide pensionary benefit to the President of India, threw some light on the question: whether the Constituent Assembly sought to exclude post retirement benefits to Members of Parliament: B

“Therefore, in the form in which the amendment is moved, I do not think that it is a practical proposition for anyone to accept. But there is no doubt about the general view that he has expressed, that **after a certain period of service in Parliament**, Members, including the President, ought to be entitled to some sort of pension, and I think it is a laudable idea which has been given effect to in the British Parliament, and I have no doubt that our future Parliament will bear this fact in mind.”<sup>32</sup> C

[emphasis supplied] D

30. In debating whether it was necessary to make an express provision for the payment of pension to Governors after they demit office, Shri Shah observed:

“The object of providing such security for the persons who have risen to this high level is the same as that which now secures to every workman in civilized nations an old-age pension, a pension or super-annuation allowance, which would be calculated to suffice to maintain him in the standard of life to which he was accustomed while at work. **A pension is deferred pay, not paid to the worker while at work; and the analogy will hold here also. This also is a type of work-perhaps the highest of its kind-which should not go unprovided for altogether by the State** for the rest of the period on earth of the Parties who have served so eminently the State.”<sup>33</sup> E

[emphasis supplied] F

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<sup>32</sup> Constituent Assembly of India Debates, Vol. VII - Debate on Draft Article 48, 27<sup>th</sup> December 1948

<sup>33</sup> Constituent Assembly of India Debates, Vol. VIII - Debate on Draft Article 135A, 31<sup>st</sup> May, 1949

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A 31. We are of the view that these questions are in the orbit of the wisdom of the Parliament in choosing/changing the legislative policy whether the various benefits created under the impugned provisions are rational having regard to the affluent financial status of some of the MPs or the poverty of the millions of the population etc. These are not justiciable issues. In this context, we may refer to the principle laid down by this Court in *Dr. P. Nalla Thampy Terah v. Union of India & Others*<sup>34</sup>:

B “If the provisions of the law violate the Constitution, they have to be struck down. We cannot, however, negate a law on the ground that we do not approve of the policy which underlies it. Can the Court, for example, strike down Rule 90 on the ground that the limit of rupees one lakh is too high in the Indian context? We may have our own preferences and perceptions but, they cannot be used for invalidating laws.”

C 32. An I.A. was filed in this appeal, which is required to be disposed of. It was from Respondent No. 5, the Election Commission of India, which has sought to be deleted from the array of parties. It is stated that neither is any relief sought from them nor is any directive prayed for from Respondent No.5 in this appeal, as this is a purely constitutional challenge.

D I.A. is allowed. Respondent No. 5 stands deleted from the array of parties.

E 33. In view of the foregoing, the appeal stands dismissed, with no order as to costs.

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Divya Pandey

Appeal dismissed.

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<sup>34</sup> (1985) Supp SCC 189.