

(2015) 05 AHC CK 0199

In the Allahabad High Court

Case No : Misc. Bench Nos. 3146 and 1779 of 2015

Lok Prahri

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Companies Act, 1956 — Section 267
Constitution of India, 1950 — Article 101(3)(a), 102(1)(e), 190(1), 190(3), 190(3)(a)
Criminal Procedure Code, 1973 (CrPC) — Section 374, 389, 389(1), 482
Penal Code, 1860 (IPC) — Section 120-B, 353, 409, 504, 506
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2)
Representation of the People Act, 1951 — Section 8, 8(3), 8(4)

Citation : (2015) 6 ADJ 258

Hon'ble Judges : D.Y. Chandrachud, C.J.; Narayan Shukla, J

Bench : Division Bench

Advocate : Asok Pande, for the Appellant; Abhinav N. Trivedi, V.K. Dubey and Manish Mathur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The third respondent was elected as a Member of the State Legislative Assembly on 8 March 2012 from the Mirzapur Sadar - 396 seat. Presently, he holds the office of a Minister of State in the State Government. On 28 February 2015, he was convicted by the Chief Judicial Magistrate of offences under Sections 353, 504 and 506 of the Penal Code. The third respondent was sentenced to imprisonment of two years under Section 353 and to a fine of rupees two thousand (or in default to imprisonment of three months); to imprisonment for two years in respect of the offence under Section 504 and to a fine of rupees two thousand (or in default to imprisonment of three months); and in respect of the offence under Section 506 to imprisonment for three years and to a fine of rupees five thousand (or in default to imprisonment of six months). On 10 March 2015, while admitting the appeal filed by the third respondent, the District and Sessions Judge, Mirzapur directed his release on bail and that the

execution of the sentence would remain suspended. The third respondent had also sought a suspension of the conviction during the pendency of the criminal appeal specifically stating that he was a Member of the Legislative Assembly from the Mirzapur Assembly Constituency and that if the judgment and conviction were not stayed, he would incur a disqualification under Section 8(4) of the Representation of the People Act, 1951 (the Act). The application for stay of the conviction was heard on 10 March 2015 and was deferred to 13 March 2015. The relevant part of the order of the District and Sessions Judge dated 10 March 2015 reads as follows:

2. On 13 March 2015, the Sessions Judge referred to the submission of the third respondent that if the judgment of conviction was not stayed, he would incur a disqualification. The Sessions Judge also noted that the third respondent had already been released on bail on 10 March 2015. After referring to the judgment of the Supreme Court in Navjot Singh Sidhu Vs. State of Punjab and Another, AIR 2007 SC 1003 : (2007) CriLJ 1427 : (2007) 2 JT 382 : (2007) 2 SCALE 196 : (2007) 2 SCC 574 : (2007) 1 SCR 1143 : (2007) AIRSCW 787 : (2007) 1 Supreme 557 ; Lily Thomas Vs. Union of India (UOI) and Others, (2013) 6 ABR 236 : (2013) 10 AD 655 : AIR 2013 SC 2662 : (2014) 117 CLT 284 : (2013) 9 JT 419 : (2013) 3 RCR(Civil) 713 : (2013) 8 SCALE 469 : (2013) 7 SCC 653 : (2013) 7 SCC(L&S) 811 : (2013) AIRSCW 4204 ; and Basant Kumar Chaudhary v. Union of India and others, (2013) 7 SCC 653; the Sessions Judge passed the following order.

3. A writ petition was filed before this Court at Allahabad, inter alia, seeking a declaration that the third respondent stood disqualified as a Member of the Legislative Assembly; for the withdrawal of all facilities provided as a State Minister; for a declaration of the seat as vacant to facilitate a bye-election; and a restraint against the third respondent from functioning either as a Member of the Legislative Assembly or as a State Minister.

4. The effect of the order of the District and Sessions Judge was considered in a judgment of a Division Bench of this Court dated 21 April 2015, where it was held as follows:

"In the present case, as the record before the Court indicates, initially by an order dated 10 March, 2015 the fifth respondent was enlarged on bail and the execution of the sentence or was suspended. The order of the Sessions Judge dated 10 March, 2015 specifically notes that an application had been filed by the fifth respondent stating that he was a sitting member of the Legislative Assembly and would incur a disqualification if the conviction was not stayed. An application for stay of the conviction and sentence was moved by the fifth respondent on 10 March, 2015 specifically drawing the attention of the Sessions Court to the legal position. Upon hearing the application, the Sessions Judge by a separate order dated 13 March, 2015 directed that the implementation of the judgment under challenge would stand suspended pending the disposal of the appeal. There was no occasion for the Sessions Judge, Mirzapur to pass this order if the conviction,

as prayed, was not being stayed. The execution of the sentence had already been suspended by the previous order dated 10 March, 2015 and if the application for stay of the order of the conviction was to be rejected, the Sessions Judge would have proceeded to pass an order of rejection of the application. On the contrary, the order of the Sessions Judge would indicate that the implementation of the entire judgment under appeal was suspended pending the disposal of the appeal and the application was accordingly disposed of. Having regard to this background and the plain terms of the order dated 13 March, 2015 we are unable to accept the submission of the petitioner that what was stayed, was only the implementation of the order, resulting only in a suspension of the sentence. The record and the plain terminology of the order would indicate to the contrary."

Consequently, the Division Bench held that the disqualification under Section 8(3) of the Act would not be attracted once the Sessions Judge had stayed the conviction on 13 March 2015. The writ petition was accordingly dismissed.

5. Two writ petitions are before the Court in these proceedings. The first writ petition by Lok Prahri seeks (i) a mandamus to the Principal Secretary in the Vidhan Sabha to issue a notification that the third respondent stands disqualified as a Member of the Legislative Assembly with effect from the date of his conviction; (ii) a writ of quo warranto to the third respondent; (iii) a declaration that the continuance of the third respondent after his conviction is illegal; and (iv) a direction to the Election Commission of India to take further action for filling up the seat. Similar relief has been sought in the companion writ petition in which a writ of quo warranto has been sought.

6. The submission which has been urged on behalf of the petitioners is that in the judgment of the Division Bench at Allahabad, this Court construed the order of the Sessions Judge, Mirzapur dated 13 March 2015 as having stayed the conviction. This aspect has not been reagitated. However, it has been sought to be urged that notwithstanding the stay of conviction, the disqualification of the third respondent would not stand obviated since (i) the consequence of the seat falling vacant under Article 190(3)(a) of the Constitution stands attracted upon the disqualification under Article 191(1)(e) and the seat shall thereupon automatically become vacant; and (ii) the subsequent order of stay granted by the Sessions Judge, by which the conviction was stayed would not obliterate the disqualification which was attracted the moment the third respondent was convicted of an offence punishable with imprisonment of a term of not less than two years under Section 8(3) of the Act.

7. At the outset, we must note that though strictly as a matter of form, no writ of quo warranto was sought in the proceedings which took place before this Court at Allahabad, the basis and foundation of these proceedings as in those which were filed at Allahabad, is the same. The submission is that the third respondent incurred a disqualification under Section 8(3) of the Act upon his conviction and sentence for an offence carrying a term of imprisonment of not less than two

years and that the order of the Sessions Judge dated 13 March 2015 did not obliterate the disqualification. We must of course note the distinction in the submissions which were urged before the Court at Allahabad and in the present proceedings. In the proceedings at Allahabad, what was sought to be urged was that the Sessions Judge by his order dated 13 March 2015 had not stayed the conviction. This submission was inquired into and specifically rejected by the Division Bench at Allahabad. Those proceedings were in the nature of a petition filed in the public interest as are the two writ petitions which form the subject-matter of these proceedings at Lucknow. All the issues which could and ought to have been raised at Allahabad must be treated as having been governed by and adjudicated upon by the Division Bench in its judgment dated 21 April 2015. The remedy of a party which is aggrieved by the judgment delivered by the Division Bench at Allahabad on 21 April 2015 would be to espouse the remedies available in law against that judgment.

8. Be that as it may, and since the submission which has been urged before this Court has been canvassed on merits as well, for the completeness of the record, we deem it appropriate to deal with the submission. The submission proceeds on the basis that under Section 8(3) of the Act, a person who is convicted of an offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of the conviction and shall continue to be disqualified for a further period of six years since his release. Article 190(1) of the Constitution provides for disqualifications for membership. Sub-clause (e) of clause (1) of Article 191 of the Constitution provides that a person shall be disqualified for being chosen as and for being a Member of the Legislative Assembly or a Legislative Council of a State if he is so disqualified by or under any law made by Parliament. Article 190(3) of the Constitution provides that in such a situation, if a Member of a House of the Legislature of a State becomes subject to any of the disqualifications mentioned, inter alia, in clause 1 of Article 191, his seat shall thereupon become vacant. The submission which is urged is that the disqualification stands attracted the moment an order of conviction is passed with the result that the seat would fall vacant and a subsequent stay which is granted of the conviction would not obliterate this effect.

9. In *Lily Thomas (supra)*, the Supreme Court held the provisions of Section 8(4) of the Representation of the People Act to be ultra vires. Section 8(4) of the Act stipulated that notwithstanding anything contained in sub-sections (1), (2) or (3) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a Member of Parliament or the Legislature of a State take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the Court. In paragraph 30 of the judgment in *Lily Thomas (supra)*, the Supreme Court noted that once a person who was a Member of either House of Parliament or the House of the State Legislature becomes disqualified by or under any law made by Parliament under Article 102(1)(e) and Article 191(1)(e) of the Constitution, his

seat would automatically fall vacant by virtue of Article 101(3)(a) and Article 190(3)(a) of the Constitution and it was not open to Parliament to make a provision under Section 8(4) of the Act to defer the date on which the disqualification of a sitting Member would have effect. Having held this, the Supreme Court also dealt with the submission that if this interpretation would be adopted, a sitting Member of Parliament or of the State Legislature who suffers from a frivolous conviction by the trial Court of an offence under sub-sections (1), (2) or (3) of Section 8 of the Act, would be remediless and would suffer immense hardship as he would stand disqualified on account of the conviction in the absence of sub-section (4) of Section 8 of the Act. This submission in regard to the severe consequences of the declaration of Section 8(4) of the Act as ultra vires was dealt with in the judgment of the Supreme Court by adverting to the power conferred under Section 389(1) of the Code of Criminal Procedure, 1973 (the Code) upon the appellate Court. The Supreme Court adverted to the decision in *Rama Narang Vs. Ramesh Narang and Others*, (1995) 83 CompCas 194 : (1995) 1 JT 515 : (1995) 1 SCALE 276 : (1995) 2 SCC 513 : (1995) 1 SCR 456 , as having laid down the principle of law that the appellate Court under Section 389(1) of the Code has the jurisdiction to stay the execution not only of the order of sentence but of the conviction itself. In fact, for convenience of reference, we extract hereinbelow from the decision in *Rama Narang*'s case:

"19. That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the Court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code."

10. This power of the appellate Court under Section 389(1) of the Code was specifically adverted to in the decision of the Supreme Court in *Lily Thomas* (supra) while holding provisions of Section 8(4) of the Representation of the People Act as ultra vires. In fact, after referring to the judgment in *Ravikant S. Patil Vs. Sarvabhoma S. Bagali*, (2007) 2 CTC 349 : (2006) 10 JT 578 : (2006) 12 SCALE 295 : (2007) 1 SCC 673 : (2006) 8 SCR 1156 Supp , the Supreme Court held as follows:

"...Therefore, the disqualification under sub-sections (1), (2) or (3) of Section 8 of the Act will not operate from the date of order of stay of conviction passed by the appellate Court under Section 389 of the Code or the High Court under Section 482 of the Code."

(emphasis supplied)

11. Thus, it is clear that notwithstanding the declaration of Section 8(4) of the Act as ultra vires, the Supreme Court has protected the consequence of the exercise of the power contained in Section 389(1) of the Code so that where the appellate Court in the exercise of the power stays the conviction, the disqualification which would otherwise stand attracted will not operate from the date on which the conviction has been stayed.

12. The reliance which has been placed on behalf of the petitioners upon the judgment of the Supreme Court in B.R. Kapur Vs. State of Tamil Nadu and Another, (2001) 6 SCALE 309 , would not advance the case any further. In that case before the Constitution Bench, there was a conviction under Section 120-B of the Penal Code read with Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and of offences under Section 409 of the Penal Code. The Madras High Court while suspending the sentence of imprisonment, dismissed the petition seeking a stay of the conviction. The Supreme Court held that the suspension of the execution of the sentence consequently did not remove the disqualification. B.R. Kapur's case was therefore one where there was no stay of the conviction but only a suspension of the sentence of imprisonment. For these reasons and upon careful consideration of the submissions which have been urged on behalf of the petitioners, we find no merit in the writ petition. We hence also see no reason to accede to the prayer of the petitioner in person to refer the case to a larger bench. The petition is, accordingly, dismissed. There shall be no order as to costs.