

(1997) 01 SC CK 0138

In the Supreme Court Of India

Case No : Writ Petition (C) No. 872 of 1996

Madhukar Jetly

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-01-1997

Acts Referred:

Constitution of India, 1950 — Article 188
Representation of the People Act, 1951 — Section 73

Citation : (1998) 9 JT 498 : (1997) 11 SCC 111

Hon'ble Judges : A. M. Ahmadii, C.J; Sujata V. Manohar, J; K. Venkataswami, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. We have heard the learned Counsel for the petitioner as well as learned Attorney General, who drew our attention to the decision of this Court in Pashupati Nath Sukul and Others Vs. Nem Chandra Jain and Others, . In that case two questions were raised for consideration and one of them was whether a person elected as a member of a legislative assembly but who has not made and subscribed the prescribed oath or affirmation as required by Article 188 of the Constitution can validly propose a person as a candidate at an election held for filling a seat in the Rajya Sabha. Dealing with this contention the Court examined the provisions of the Constitution and then came to the conclusion recorded in para 20 to the effect that an elected member who had not taken oath but whose name appears in the notification published u/s 73 of the Act (Representation of the People Act, 1951) can take part in all non-legislative activities of an elected member. Their Lordships further pointed out that the right of voting at an election to the Rajya Sabha can also be exercised by him. This conclusion is based on the premise that the election to the Rajya Sabha does not form part of the legislative proceedings of the House carried on at its meeting. Nor is the vote cast at such an election a vote given in the House on any issue arising before the House. This view has held the field. We are, therefore, satisfied that this is a matter duly answered by this Court by the aforesaid judgment and, therefore, we

see no merit in the petition and dismiss the same.