

(1967) 04 MAD CK 0006
In the Madras High Court

R. Sivasankara Mehta

APPELLANT

Vs

The Election Commission of India and Another

RESPONDENT

Date of Decision : 21-04-1967

Acts Referred:

Constitution of India, 1950 — Article 191(1)(c)

Citation : (1967) 2 MLJ 607

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—The appellant in this writ appeal Sri R. Sivasankara Mehta was a Member of the Madras Legislative Council having

been elected in April, 1962 from the Madras District Local Authorities Constituency. His term would continue till April, 1968. In the meanwhile on

a petition filed by a creditor he was adjudicated as insolvent on 26th April, 1966. He filed an appeal on 29th April, 1966 against the adjudication

and this appeal was numbered as O.S.A. No. 43. of 1966. Pending the disposal of the appeal he applied for interim relief from the appellate Court

and three orders in succession were passed on 29th April, 1966, 8th August, 1966 and finally on 3rd February, 1967. It is not necessary to set

out at length the gist of these orders. We have been taken through these interim orders passed by the Bench of this Court dealing with the O.S.A.

of which one of us was a member. The main conclusion that emerges from these orders is that while certain reliefs were given to Sri Mehta, the

adjudication as such was not suspended or stayed pending disposal of the O.S.A.

2. Article 191(1)(c) of the Constitution says that a person shall be disqualified for being a member of the Legislative Council of a State, if he is an

undischarged insolvent. Article 192(1) of the Constitution states that

If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned

in Clause (1) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

Article 192(2) states that before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission. On

the assumption that the declaration of Mr. Mehta as an insolvent made him subject to the disqualification mentioned above, the ""Chairman" of the

Madras Legislative Council made a reference to the Governor for giving his decision on the point. The Governor in turn addressed the Election

Commission for giving his opinion as provided in Article 192(a) of the Constitution.

3. The opinion of the Election Commissioner on the reference thus made to him by the Government is embodied in the Madras Government

Gazette notification dated 14th December, 1966, publishing the decision of the Governor under Article 192(1) of the Constitution. The Election

Commission gave an opportunity to Sri Mehta to present his view of the matter. In fact the appellant himself in paragraph 6 of his affidavit in

C.M.P. No. 11701 of 1966 has categorically admitted that

the Election Commission, India, has issued a memorandum, dated 13th October, 1966 to me giving me an opportunity to present my views on the

question raised either in writing or in person or by an authorised Counsel and also to put in a written representation so as to reach the Commission

on or before 1st November, 1966 and also inter alia advising me that if I wanted a personal hearing I will be heard in the Commission's office at

New Delhi on 2nd November, 1966.

After considering his objections, the Election Commission tendered the opinion that Sri Sivasankara Mehta had become subject to the

disqualification in Article 191(1)(c) of the Constitution on and from 24th April, 1966. Thereafter his seat was declared to be vacant as provided in

Article 190(3) of the Constitution and the Election Commissioner took up proceedings for holding a fresh election and called for nomination papers

for filling up the vacancy. The nomination papers have been also filed, and the election is due to be held on 22nd April, 1967.

4. In the meantime, Sri Mehta filed a Writ Petition No. 910 of 1967 under Article 226 of the Constitution from which this appeal has been filed.

To this petition he impleaded the Election Commission as the first respondent and the Collector of Madras and Returning Officer as the 2nd

respondent. The petitioner alleged that since the adjudication itself is pending appeal, no finality has attached to the adjudication and therefore it is

wrong to hold that he has become disqualified. He relied upon the interim orders passed from time to time in the O.S.A. But Sri Kailasam, J., who

heard the writ petition, concluded that these interim orders did not have the effect of suspending the adjudication and that Sri Mehta did have the

disqualification mentioned in Article 191(1)(c) of the Constitution and he dismissed the writ petition. Sri Mehta has filed this writ appeal before this

Court.

5. At the time of the hearing of the appeal two broad questions emerged on a consideration of the relevant provisions of the Constitution as applied

to the facts of the present case. The first question depends upon the scope of Article 192(1) of the Constitution which states that the decision of

the Governor on the question of disqualification of a sitting member shall be final. The second question deals with the scope of Article 192(2) of the

Constitution which states that in giving his decision, the Governor shall act according to the opinion of the Election Commission. Our attention has

been drawn to the decision of the Supreme Court in *Jyoti Prokash Mitter Vs. Hon'ble Mr. Justice Himansu Kumar Bose*, Chief Justice, High

Court, Calcutta and Another, which dealt with Article 217(3) of the Constitution relating to the age of High Court Judges, which provides that if a

question arises as to the age of a High Court Judge, it shall be decided by the President and the decision of the President shall be final. The

Supreme Court in the above report in paragraph 20 has clearly laid it down:

This provision vests the jurisdiction to determine the question about the Judge's age exclusively in the President, and so it follows that in the

presence of this provision, no Court can claim jurisdiction to deal with the said question.

It would follow on the same analogy, that the jurisdiction conferred under Article 192(1) of the Constitution on the Governor to deal with a

question arising under Article 191(1) is an exclusive one and it is not open to this

Court in writ proceedings to exercise jurisdiction to deal with that question.

6. The second point which arises for our consideration relates to the scope of Article 192(2) of the Constitution. The Supreme Court in a recent

decision reported in *Brundaban Nayak Vs. Election Commission of India and Another*, , has stated at page 1896 that the question of the type

contemplated by Article 192(1) shall be decided by the Governor and the Governor alone. The Supreme Court held in paragraph 16 of the report

that the opinion of the Election Commission under Article 192(2) is in substance decisive, and when the Governor forwards a complaint to the

Election Commission, it is for the Election Commission to proceed to try the complaint before giving its opinion. This view of the Supreme Court

was derived from the terms of Article 192(2) of the Constitution that the Governor ""shall act according to such opinion."" In that case which went

up before the Supreme Court, the Election Commission had given the notice to the sitting member, called upon him to show cause, held the enquiry

and forwarded its opinion to the Governor. The Election Commission in the present case too, has admittedly followed an identical procedure.

Learned Counsel Sri V.P. Raman, appearing for the appellant concedes that an opportunity had been given by the Election Commission to the

appellant to show, cause against the alleged disqualification. In view of the decision of the Supreme Court just now cited there is no question

therefore of the Governor before giving his decision, giving a further opportunity to the appellant to show cause. The only enquiry that can be held

in such a case is by the Election Commission, That is the only occasion when the appellant can claim an opportunity to show cause. Admittedly that

has been afforded in this case by the Election Commission to the appellant.

7. Summing up, we are of opinion that the jurisdiction to decide the question of disqualification under Article 191(1) vests exclusively in the

Governor and no Court has got jurisdiction to go into it, whether in writ proceedings or otherwise. Next, a sitting member gets the opportunity to

put forward his objection to alleged disqualification at an enquiry which is to be held by the Election Commission before the latter forwards its

opinion under Article 192(2) to the Governor When such an opportunity has been afforded by the Election Commission and the Election

Commission has come to a decision on the disqualification and conveyed its opinion about it to the Governor and the Governor has acted upon

that opinion and disqualified the member there can be no more occasion for the Court to question the decision, either on account of its merits or on

account of the member not having been given proper opportunity to show cause, if in fact, as has happened in this case, the Election Commission

has given the necessary opportunity.

8. For the aforesaid reasons, we are of opinion that this Writ Appeal has to fail. The appeal is dismissed. No order as to costs.