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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 536 OF 2011

PUBLIC INTEREST FOUNDATION & ORS. Petitioner(s)

VERSUS

UNION OF INDIA & ANR Respondent(s)

O R D E R

On 16.12.2013, this Court requested the Law Commission of India (for short, 'Law Commission') to expedite consideration of the two issues, namely, (1) whether disqualification should be triggered upon conviction as it exists today or upon framing of charges by the court or upon the presentation of the report by the Investigating Officer under Section 173 of the Code of Criminal Procedure [Issue No. 3.1(ii) of the Consultation Paper] and (2) whether filing of false affidavits under Section 125A of the Representation of People Act, 1951 should be a ground of disqualification? and, if yes, what mode and mechanism needs to be provided for adjudication on the veracity of the affidavit? [Issue No. 3.5 of the Consultation Paper].

2. In pursuance of the above order, the Law Commission has prepared its recommendation in the form of 244th Report titled 'Electoral Disqualifications'. The report was forwarded by the Chairman, Law Commission to the Minister for Law and Justice. A copy of the same has been placed on record.

3. At the outset, we record our appreciation for the excellent work done by the Law Commission in the short time. The 244th Report shall be of significant use at the time of consideration of the above two questions.

4. Insofar as the first question is concerned, the Law Commission has observed that disqualification upon conviction has proved to be incapable of curbing the growing criminalisation of politics, owing to long delays in trials and rare convictions. The law needs to evolve to pose an effective deterrence, and to prevent subversion of the process of justice. In the opinion of the Law Commission, the filing of the police report under Section 173 of the Code of Criminal Procedure is not an appropriate stage to introduce electoral disqualifications owing to the lack of sufficient application of judicial mind at this stage. The stage of framing of charges is based on adequate levels of judicial scrutiny, and disqualification at the stage of charging, if accompanied by substantial attendant legal safeguards to prevent misuse, has significant potential in curbing the spread of criminalisation of politics. Having regard to all this, the Law Commission has suggested that the following safeguards must be incorporated into the disqualification :

(i) Only offences which have a maximum punishment of five years or above ought to be included within the remit of this provision.

(ii) Charges filed up to one year before the date of scrutiny of nominations for an election will not lead to disqualification.

(iii) The disqualification will operate till an acquittal by the trial court, or for a period of six years, whichever is earlier.

(iv) For charges framed against sitting MPs/MLAs, the trials must be expedited so that they are conducted on a day-to-day

basis and concluded within a 1 year period. If trial not concluded within a one year period then one of the following consequences ought to ensure :

- The MP/MLA may be disqualified at the expiry of the one year period, or
- The MP/MLA's right to vote in the House as a member, remuneration and other perquisites attaching to their office shall be suspended at the expiry of the one year period.

5. It is suggested by the Law Commission that disqualification in the above manner must apply retroactively as well.

6. As regards the second question, the Law Commission has observed that there is large scale violation of the laws on candidate affidavits owing to lack of sufficient legal consequences. The Law Commission has suggested that the following changes should be made in The Representation of the People Act, 1951 (for short, 'RP Act'):-

(i) Introduce enhanced sentence of a minimum of two years under Section 125A of the RP Act on offence of filing false affidavits.

(ii) Include conviction under Section 125A as a ground of disqualification under Section 8(1) of the RP Act, and

(iii) Include the offence of filing false affidavits as a corrupt practice under Section 123 of the RP Act.

7. It is recommended by the Law Commission that since conviction under Section 125A is necessary for disqualification under Section 8 to be triggered, the Supreme Court may order that in all trials under Section 125A, the relevant court conducts the trial on a day-to-day basis. It is further recommended that a gap of one week should be introduced between the last date of filing nomination papers and the date of scrutiny, to give adequate time for the filing of objections to nomination papers.

8. The Law Commission has proposed legislative reforms by amendments in the various provisions of the RP Act as well.

9. The issues raised in the Writ Petition would require detailed and elaborate hearing particularly in light of the constitutional provisions viz., Articles 84 and 102 of the Constitution of India for the Members of Parliament and Articles 173 and 191 for the Members of Legislative Assemblies.

10. One of the questions of constitutional importance that may also require consideration is : Whether disqualification for membership can be laid down by the Court beyond Article 102(a) to (d) and the law made by Parliament under Article 102(e).

11. Presently, we feel that a direction may be issued in respect of MPs/MLAs who have charges framed against them for conclusion of the trial expeditiously to ensure the maintenance of probity of public office.

12. We, accordingly, direct that in relation to sitting MPs and MLAs who have charges framed against them for the offences which are specified in Section 8(1), 8(2) and 8(3) of the RP Act, the trial shall be concluded as speedily and expeditiously as may be possible and in no case later than one year from the date of the framing of charge(s). In such cases, as far as possible, the trial shall be conducted on a day-to-day basis. If for some extraordinary circumstances the concerned court is being not able to conclude the trial within one year from the date of framing of charge(s), such court would submit the report to the Chief Justice of the respective High Court indicating special reasons for not adhering to the above time limit and delay in conclusion of the trial. In such situation, the Chief Justice may issue appropriate directions to the concerned court extending the time for conclusion of the trial.

13. List the matter after six months.

.....J.
(R.M. LODHA)

NEW DELHI; .....J.
MARCH 10, 2014 (KURIAN JOSEPH)

ITEM NO.6 COURT NO.2 SECTION PIL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 536 OF 2011

PUBLIC INTEREST FOUNDATION & ORS. Petitioner(s)

VERSUS

UNION OF INDIA & ANR Respondent(s)

(With appln(s) for intervention and office report))

Date: 10/03/2014 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Dinesh Dwivedi, Sr. Adv.
Mr. Ashish Mohan, Adv.
Mr. K.K. Mohan,Adv.

For Respondent(s) Mr. Paras Kuhad, A.S.G.
Mr. J.S. Attri, Sr. Adv.
Mr. T.A. Khan, Adv.
Mr. Jitin Chaturvedi, Adv.
Mr. Abhinav Mukherji, Adv.
Mr. B.V. Balaram Das ,Adv
Ms. Swati Vijaywargia, Adv.
Ms. Padma Lakshmi Nigam, Adv.

Ms. Meenakshi Arora, Sr. Adv.
Mr. Mohit D. Ram ,Adv.

Mr. Abhay Kumar ,Adv.
Ms. Neetu Jain, Adv.
Mr. Tenzing Tsering, Adv.

UPON hearing counsel the Court made the following
O R D E R

With directions given in the signed order, the matter is ordered to be listed after six months.

(Rajesh Dham) Court Master	(Renu Diwan) Court Master

(signed order is placed on the file)