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RAGHBIR SINGH

v.

SURJIT SINGH AND ORS. ETC. ETC.

AUGUST 22, 1994

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[J.S. VERMA AND K.S. PARIPOORNAN, JJ.]

*Representation of the People Act, 1951 :*

C *Sections 5, 8(3)—Membership of Legislative Assembly—Election to—Disqualification—Prescription of period of disqualification based on classification of offences according to their nature and period of conviction—Held, not arbitrary—Nor open to judicial scrutiny—Legislature has wide discretion in matter of classification.*

D The respondent filed an election petition before the High Court challenging appellant's election to Punjab Vidhan Sabha held in Feb. 1992, on the ground that he was disqualified to be a candidate at the time of the election. The appellant had been convicted and sentenced to 3 years rigorous imprisonment under s.326 read with s.149 I.P.C. by the trial court on 15.11.1984, and having failed in the High Court and in this Court, he served out his sentence and was released on 14.11.1988. The High Court declared appellant's election to be void holding that in view of the provisions of s.8(3) of the Representation of the People Act, 1951, he was disqualified to be a candidate in the said election. Aggrieved, the appellant filed the appeal under s.116A of the Act. He also filed the writ petition under Article 32 of the Constitution challenging constitutional validity of s.8(3) of the Act.

G It was contended on behalf of the appellant that the period of disqualification in sub-sections (1), (2) and (3) of s.8 of the Act should be identical and, like in sub-s.(1), period of disqualification in sub-s. (3) should also be read as six years from the date of conviction and not from the date of release as there is no rational basis for providing different period of disqualification in different sub-sections of s.8 of the Act.

H Dismissing the appeal as also the writ petition, this Court

HELD : 1.1. Prescription of period of disqualification in sub-sections

(1), (2) and (3) of section 8 of the Representation of the People Act, 1951 A for different classes of persons convicted of different offences is based on the well recognised mode of classification of offences having regard to their nature and period of sentence, and is within the domain of legislative discretion and wisdom, which is not open to judicial scrutiny. The legislature has wide discretion in the matter of classification and there is no B arbitrariness reflected in the classification. [770-E, F, G]

1.2. The categories of persons covered by sub-sections (1), (2) and (3) of section 8 of the Act being different and distinct, comparison *inter se* between any two of these three distinct classes is not permissible. While sub-section (1) enumerates the offences which are considered to be of one category and the period of six years disqualification from the date of conviction is provided for them irrespective of the sentence awarded on such conviction, in sub-section (2) are specified some other offences, conviction for which is considered significant for disqualification only if the sentence is of imprisonment for not less than six months and in that case a longer period of six years disqualification since release has been considered appropriate. Sub-section (3), which is the residuary provision, governs all persons convicted of any offence [other than any offence referred to in sub-section (1) or sub-section (2)] and sentenced to imprisonment for not less than two years, and it has been considered appropriate to prescribe the same six years period of disqualification since release for all of them as they constitute one class. The provisions, therefore, cannot be said to be discriminatory. [770-D; 769-F-G-H; 770-B, C, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 933 of 1994 etc. F

From the Judgment and Order dated 23.12.93 of the Punjab & Haryana High Court in E.P. No. 6 of 1992.

R.K. Jain and S.B. Upadhyay for the Appellant/Petitioner. G

K. Madhava Reddy, M.L. Verma, B.S. Jain, Mahesh Srivastava and V.D. Khanna for the Respondents.

The following Judgment of the Court was delivered by

VERMA, J. Pursuant to the notification to elect a Member for the H

A Punjab Vidhan Sabha to represent the Giddarbha Assembly Constituency, the appellant Reghbir Singh filed his nomination on 1.2.1992 which was found valid in the scrutiny on 2.2.1992, and he contested the election held on 19.2.1992 wherein he was declared only elected on 20.2.1992. Thereafter, the respondent Surjit Singh, a voter from that constituency filed an

B Election Petition for a declaration that the appellant's election was void on the ground that he was disqualified to be a candidate at the time of election. The facts on which this ground is based are admitted.

The appellant was convicted for an offence punishable under Section 326 read with Section 149, I.P.C. and sentenced to three years rigorous imprisonment and a fine of Rs. 100 in addition to his conviction and sentence also under some other sections of the Indian Penal Code, by the Trial Court on 15.11.1984. The appellant's appeal against his conviction and sentence was dismissed by the High Court on 10.4.1987 and the special leave petition against the same was rejected by this Court on 30.11.1987.

D The appellant was in jail to serve out his sentence from 8.9.1987 to 21.10.89 and again from 8.2.1988 to 14.11.1989. There is no dispute that in accordance with the plain language of sub-section (3) of Section 8 of the Representation of the People Act, 1951 (hereinafter referred to as the "RPA Act") the appellant was disqualified to be a candidate at the said election held in February 1992 on this ground alone. The high Court has upheld

E this contention of the respondent-election petitioner and allowed the election petition declaring the appellant's said election to be void. Hence this appeal under Section 116A of the R.P. Act.

There being no controversy that according to the plain language of sub-section (3) of Section 8 of the R.P. Act, the appellant was disqualified to be a candidate at the said election held in February 1992, the appellant has also filed Writ Petition (Civil) No. 243 of 1994 along with this appeal challenging the constitutional, it is obvious that the appeal also must fail. Thus, the only question for consideration by us is the constitutional validity of sub-section (3) of Section 8 of the R.P. Act.

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The submission of Shri R.K. Jain, learned counsel for the appellant is that the period of disqualification in sub-section (1) of Section 8 being only six years from the date of such conviction, the longer period of disqualification prescribed in sub-section (3) thereof extending to six years since his release is discriminatory. The submission is that the period of

disqualification in sub-section (3) should also be read as six years from the date of such conviction and not the longer period extending to six years from the date of release. In short, the submission is that the period of disqualification in sub-sections (1), (2) and (3) of Section 8 should be identical and there is no rational basis for providing a different period of disqualification in the different sub-sections of Section 8. We are unable to accept this argument.

Section 8 prescribes disqualification on conviction for certain offences. Sub-section (1) provides the disqualification for a period of six years from the date of conviction for the offences specified in clauses (a) to (i) thereof. In sub-section (1), the only reference is to conviction for the specified offences irrespective of the sentence awarded on such conviction. Sub-section (2) then prescribes that on conviction for the offences specified therein and sentence to imprisonment for not less than six months, that person shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. Thus, in case of conviction for the offences specified in sub-section (2), the disqualification is attracted only if the sentence is of imprisonment for not less than six months and in that event the disqualification is for a period of not merely six years from the date of such conviction but commencing from the date of such conviction it shall continue for a further period of six years since his release. Sub-section (3) then prescribes a similar longer period of disqualification from the date of such conviction to continue for a further period of six years since his release where a person is convicted of any offence and sentenced to imprisonment for not less than two years, other than any offence referred to in sub-section (1) or sub-section (2). The classification is clear. This classification is made with reference to the offences and the sentences awarded on conviction. In sub-section (1) are specified the offences which are considered to be of one category and the period of six years disqualification from the date of conviction is provided for them irrespective of the sentence awarded on such conviction. In sub-section (2) are specified some other offences, the conviction for which is considered significant for disqualification only if the sentence is of imprisonment for not less than six months and in that case a longer period of disqualification has been considered appropriate. Then comes sub-section (3) which is the

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- A residuary provision of this kind wherein the disqualification is prescribed only with reference to the period of sentence of imprisonment of not less than two years for which the longer period of disqualification is considered appropriate. The legislature itself has classified the offences on the basis of their nature and in the residuary provision contained in sub-section (3),
- B the classification is made only with reference to the period of sentence being not less than two years.

In sub-section (3) of Section 8, all persons convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub- section (2)] are classified

- C together and the period of disqualification prescribed for all of them is the same. All persons convicted of offences other than any offence referred to in sub-section (1) or sub-section (2) and sentenced to imprisonment of not less than two years constitute one class and are governed by sub-section (3) prescribing the same period of disqualification for all of them. The
- D category of persons covered by sub-sections (1), (2) and (3) being different and distinct, the question of comparison *inter se* between any two of these three distinct classes does not arise, without such a comparison between persons governed by these different sub- sections being permissible, the very basis of attack on the ground of discrimination is not available.
- E Prescription of period of disqualification for different classes of persons convicted of different offences is within the domain of legislative discretion and wisdom, which is not open to judicial scrutiny.

Classification of offence for certain purposes on the basis of the period of sentence is a well known method of classification. The First

- F Schedule to the Code of Criminal Procedure relates to Classification of Offences for purposes of cognizance, bail and trial, and therein the classification of offences against laws other than the Indian Penal Code is made on the basis of the sentence prescribed for the offence. It is, therefore, clear that the mode of classification adopted in the different sub-sections
- G of Section 8 of R.P. Act is a well recognised mode of classification of offences. The legislature having wide discretion in the matter of classification and there being no arbitrariness reflected in the classification, the matter must end there.

- H There is thus no merit in the challenge to the constitutional validity

of sub-section (3) of Section 8 of the R.P. Act. Consequently, the writ petition is dismissed which results in dismissal of the civil appeal also. The appellant/petitioner will pay the costs to the respondents. Costs quantified at Rs. 10,000 (Rupees ten thousand) only. A

R.P.

Appeal and petition dismissed.