

## RAMBABU SINGH THAKUR V. SUNIL ARORA

**COURT:** The Supreme Court of India

**DELIVERED ON:** 13 February 2020

**BENCH:** Rohinton Fali Nariman, S. Ravindra Bhat, V. Ramasubramanian

### FACTS

This is a contempt petition which elevates significant issues concerning the criminalisation of Politics in India. This also calls for attention towards the disregard of the directions laid down by a constitutional bench of the Supreme Court in Public interest foundation & Ors v. Union of India & Anr.<sup>1</sup>

In Public interest foundation & Ors v. Union of India & Anr, the petition was filed by a BJP leader Ashwini Upadhyay and an NGO named “Public interest foundation” for seeking directions of SC of India concerning the criminalisation of politics and curtailment of criminals from contesting elections. The main contention of the petitioner was that the people against whom the charges have been framed in any court of law shall be precluded from contesting elections and this is for the benefit of the public at large. They were with the opinion that the lawbreakers should be debarred from becoming lawmakers as such people have lowered down the values and ethics of politics in India. The right to contest in elections is not a fundamental right, rather is a statutory right that has to be exerted following the constitutional principles to establish proper governance and fair politics. Considering the above points, the SC provided for several directions that have to be followed for a healthy political society.

### ISSUES

The issue raised over here is that whether the court can exert the disqualification of members of parliament by making new laws on it which would be beyond Article 102(a) to (e).

### RULES

The following rules and principles have to be taken into account while dealing with the above issue :

1) Separation of power – Separation of power is one of the basic features of the Indian Constitution and making laws regarding such disqualification by the court would be a violation of the above principle. The provision for disqualification of members of parliament has already been provided under Representation of the People Act, 1951.

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<sup>1</sup> Public Interest Foundation & Ors v Union of India & Anr. (2019) 3 SCC 224.

- 2) Principle of presumption of innocence- This principle states that a person is considered innocent until and unless he is proven guilty. So, disqualifying a candidate on the ground that there are pending criminal cases against him would be unjust.
- 3) The doctrine of Colourable legislation- This principle states that what cannot be done directly can't also be done indirectly.
- 4) Article 129- This article states that SC is the court of record and has the power to punish for the contempt of itself.
- 5) Article 142- This article states that the SC in the exercise of its jurisdiction can pass decrees and orders which are necessary for ensuring complete justice and such orders and decrees are enforceable throughout the territory of India.

### **APPLICATION AND ANALYSIS**

The SC after taking into consideration the principle of separation of power, the doctrine of Colourable legislation and the observation as to the incapability of the court to issue the writ of mandamus to Election Commission regarding extension of laws on disqualification on ground of criminal proceedings against the candidate, the court came into the conclusion that it has no power to make laws in this regard. The court rather has the power to provide for various directions to curtail such issues by exercising its power under Article 129 and 142 of the Indian Constitution.

Keeping in mind the increasing criminalisation of politics and the deficiency of information about such criminalisation, SC provided various directions to fill up the information gap. These directions were as follows-

1. Each candidate who is contesting in the election has to fill up a form provided by the election Commission containing all the necessary particulars.
2. The criminal cases pending against the candidate has to be stated clearly in the form in bold letters.
3. The candidate if contesting on the ticket of a particular party, then he or she has to inform about the pending criminal cases to the party he belongs to.
4. The political party must put every such detail and information about the pending criminal cases of its members on its official website.
5. The candidate and the particular political party which the candidate belongs to shall issue a declaration in the most widely circulated newspaper in the locality about such antecedents of the candidate. They shall also give publicity in the electronic media i.e. the same shall be done at least thrice after filing the nomination paper.

After going through the documents placed on record and submissions of counsel, it was being observed that over the last 4 general elections there has been a distressing rise in the criminal incidence in politics. It has also been noted that the political party fails to offer any explanation when they are questioned as to why the candidates with such criminal incidence have even been selected, leaving behind many qualified candidates who don't have any criminal cases

against them. For the above reasons the court provided several directions which are as follows

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1. It shall be mandatory for both central and state-level political parties to provide detailed information about the selected candidates including the pending criminal cases. The information about pending criminal cases should contain – the nature of the offence, whether charges have been framed or not, the concerned court, the case number, etc. The political party shall also provide reasons for such selection along with the reasons as to why the other candidates with no criminal antecedence could not be selected.
2. The reasons for selection have to be based upon the qualification, achievements, and merits of the candidate and not just their winnability at the polls.
3. The detailed information about the candidate shall be published in one local vernacular newspaper and one national newspaper along with the social media platforms of the political party concerned including Facebook and Twitter.
4. This information shall be published in either of the two-time frames, whichever is earlier –
  - Within 48 hours of the selection of the candidate.
  - Within not less than 2 weeks before the first date of filing for nomination.
5. The political party concerned shall submit a report of compliance with the Election Commission by following all the aforesaid directions and such submission has to be done within 72 hours of the selection of the concerned candidate.
6. In case of failure of submission of such compliance, the Election Commission shall put forward non-compliance by the political party to the SC of India by way of contempt of this court orders/directions.

## **CONCLUSION**

Politics plays a vital role in everyone's life and thus its fairness and efficiency are of utmost importance. The very basic thing required for ensuring fairness in politics is to have a well qualified set of political leaders who would take our country to great heights.

The impact, applicability, and effect of law are way more than that of a direction by any court. The SC should have powers to make laws and even add words to an already existing law made by parliament in matters which are of high importance and are for the advantage of the public at large. This power has to be given to the courts by way of an exception to the rule of separation of powers. The importance of judicial scrutiny and judicial review on such significant issues has to be brought forth for the development of our country.