

## **RAMBABU SINGH THAKUR V. SUNIL ARORA**

**Court:** The Supreme Court of India

**Contempt Pet. (C) No.:** 428 of 2019 in W.P(C) No. 536 of 2011 & Contempt Pet. (C) No. 464 of 2019 in W.P(C) No. 536 of 2011

**Petitioner:** Rambabu Singh Thakur

**Respondent:** Sunil Arora & Ors.

**Date of Judgement:** 13th February, 2020

**Bench:** Hon'ble Justice R.F. Nariman, Hon'ble Justice S. Ravindra Bhat & Hon'ble Justice V. Ramasubramanian.

### **Background:**

This case is a contempt petition filed before the Supreme Court of India which highlights the crucial problems associated with “Criminalization of Politics” in India. This case is also known as Criminalisation in Politics case. Before going into the merits of the case, we shall first understand the concept of ‘Criminalization of Politics’. Criminalization of politics refers to an act wherein an individual having criminal background seeks to enter into politics for contesting election and getting elected. This happens due to the connection between criminal and politicians because both are interrelated with each other. The politicians need help of the criminals for muscle power in order to win the elections and criminals need aid and finance from politician in order to continue their criminal activities. The criminals enter into politics by obtaining tickets with the support of politicians & win the election & even using the money and muscle power they lure the voters to vote in their favor by creating fear in their minds. The election of such a member as representative of constituency sabotages the constitutional fundamentals of India.

Through the recent judgment Public Interest Foundation & Ors. v. Union of India and Anr.<sup>1</sup> the constitutional powers under Article 142 and Art 129 of the Constitution was exercised by the Supreme Court of India wherein the Supreme Court issued several directions such as it shall be a mandatory requirement for the political parties to upload on their official websites the information

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

related to the candidates having any criminal charges against them along with the reason explaining why such a candidate having criminal antecedent is selected over the qualified one having no criminal antecedents. The reasons provided by the Court shall be in conformity with the achievement, qualification & merit of a candidate. Further, it is mandatory to publish the information in a newspaper as well as on the social media either within 48 hours of selection of the candidate or within 2 weeks from the date of filing of nomination, whichever is earlier. Furthermore, a compliance report shall be filed with the Election Commission within 72 hours, failing which it shall be brought to the notice of the Supreme Court for being liable for non-compliance of directions.

### **Principles and statutory provisions concerned:**

The following doctrines/principles/articles of the Constitution are considered while adjudicating the matter:-

- Doctrine of Colourable Legislation– It provides that what can't be done directly can't also be done indirectly.
- Principle of Presumption of Innocence- It provides that an individual is considered to be innocent until proven guilty. Therefore, disqualification of a Member of Parliament or State Legislature for the reason that there are pending criminal cases against him would be prejudicial.
- Separation of Powers– Separation of powers forms a part of Basic Structure of the Constitution. Making laws concerning the disqualification of the Member of Parliament or State Legislature amounts to violation of basic structure doctrine. Further the Representation of People Act, 1951 and 10th Schedule to the Constitution provides for such disqualification of members.
- Article 129– The article lays down that Supreme Court being a court of record has the power to punish for its contempt.
- Article 142- The article provides that the decrees or orders passed by the Supreme Court in exercise of its jurisdiction are binding on all courts within the territory of India.

### **Facts:**

This contempt petition outlines the important issues related to criminalisation of politics and further brings to our notice a disregard of the directions issued by the Constitutional Bench in the case of Public Interest Foundation & ors. v. Union of India & anr. This case also known as Electoral Disqualification Case. The instant petition was brought by a BJP leader Ashwini Upadhyay and an NGO named 'Public interest foundation' in order to seek directions of the Supreme Court of India involving the criminalisation of politics and prohibiting the criminals from contesting election and getting elected as Member of Parliament.

**Issues involved:**

The main issue raised in the instant case is that whether the court by making new laws can disqualify the membership of Parliament exceeding Article 102 (a) to Article 102 (e)?

**Arguments Advanced:**

**By the petitioner:**

The arguments put forth by the petitioner was that right to contest elections is not a fundamental right instead it is a statutory right but has to be followed according to the constitutional principles in order to maintain complete governance and unprejudiced politics, therefore a law breaker shall be debarred from being elected as a law maker because such people can degrade the ethics and values of politics. Further, it was argued that in the interest of people at large, a candidate having criminal background shall be disqualified from contesting elections. Furthermore, the petitioner contended that the Election Commissioner on the direction of the court shall prevent the political parties from granting ticket to candidate having criminal antecedents.

**By the respondent:**

The argument put forth by the respondent was that the principle of Separation of Powers being a basic structure as enshrined under the Constitution of India is followed properly in India and the law making power rests with the legislature and the courts' power to make laws is limited to issuing guidelines or directions only. Further it was contended that under Article 142 there is no scope of addition of words by the courts in the already existing laws.

**Judgement:**

The Supreme Court after taking into account the doctrine of Colorable Legislation, the principle of Separation of Powers and scrutinizing the inability of the court to issue writ of Mandamus to the Election Commissioner concerning the extension of law of disqualification for the reason of a candidate having criminal background, the court came to the conclusion that the power of making laws cannot be extended to the judiciary. But the court has power to issue directions or guidelines as guaranteed under Article 129 and Article 142 of the Constitution.

### **Ratio Decidendi**

Taking into consideration the escalating criminalization in politics and insufficient information about the increasing criminalization amongst the public, the Supreme Court in order to cure such information lacunae has issued following 5 directions:-

1. Each candidate contesting in the election shall fill up a form as provided by the Election Commission which shall contain all the necessary particulars.
2. Any criminal cases pending against the candidate shall be clearly stated in bold letters in the form.
3. It shall be the duty of the candidate to inform the political party from which he is contesting election, about the pending criminal cases against him.
4. It shall be the duty of the political party to upload on its official website any information about the candidates having criminal antecedents.
5. It shall be the duty of the candidate and the political party from which he is contesting election, to publish a declaration about the criminal antecedents of the candidate in such newspaper which is most widely circulated in the locality. Further, they are also obliged to widely publicize the same in the electronic media and wide publicity here means that same shall be publicized at least thrice after filing the nomination papers.

After analysing the documents placed on record and arguments put forth by the counsels of petitioner and respondent, it was noted that there has been an alarming rise in the criminalisation in politics over the last 4 general elections. It was also observed that when the political parties were questioned as to why the candidate having criminal antecedents is selected over the qualified candidate having no such criminal antecedents, they failed to explain the reason behind such selection. The Bench, consisting of Justice R. F. Nariman & Justice S. Ravindra Bhatt after perusal

of above reasons issued 6 new directions under Article 129 and Article 142 of the Constitution of India:-

It shall be the duty of the central and state-level political parties to furnish detailed information about the criminal antecedents of the selected candidates. Further, the information about the criminal antecedents must contain- the nature of offence, what charges are framed against them, what is the case number, in which court the case is filed, etc. Furthermore, the political party shall explain the reasons as to why the candidate with criminal antecedents was selected over the qualified candidate with no criminal antecedents.

The reason for such selection shall be based upon the merits, qualification and achievement of the candidate rather than mere “winnability” at the electorate polls. The detailed information about the criminal antecedents of the candidates shall widely be published in the local as well as national newspaper together with the publicity on the social media platforms including Twitter, Facebook, etc. The above information shall be published either within forty-eight hours of the selection of the candidate or within not less than 2 weeks before first day of filing the nomination, whichever is earlier.

It shall be the duty of the concerned political party to submit the compliance report by following all the above-mentioned directions issued by the court, with the Election Commission within seventy-two hours of the selection of the candidate. If the concerned political party fails to submit the compliance report, then in such a case the Election Commissioner is empowered to put forth the non-compliance of report by the political party before the Supreme Court of India as being the contempt of the court’s directions/orders.

### **Conclusion:**

Through this landmark judgment, the court substantiated few procedures in the already existing directions issued by the court. The wide publicity of the contesting candidate in different platforms including newspaper & social media would allow the voters to choose a right representative for them. Also the directions place a duty on the political party to give tickets to such candidates having no criminal antecedents and if any political party violates these directions then it would have to face consequences for such violation.