

PUBLIC INTEREST FOUNDATION & ORS. V. UNION OF INDIA & ANR.

(Verdict on Ban of Charge-sheeted Politician)

[Case Number- WP(C) 536/2011]

Judges: Rohinton Nariman, Indu Malhotra, D.Y. Chandrachud, Ajay Manikrao Khanwilkar, Dipak Misra.

Background of the Case:

Public Interest Foundation & Ors. V. Union of India & Anr. (Verdict on Ban of Charge-sheeted Politician) is the landmark case in which the honorable Supreme Court has issued several strict guidelines and rules and regulations to minimize the criminalization of politics in India. In this case, the petition was filed by BJP leader Ashwini Upadhyay along with the NGO public interest foundation. The main purpose of filing this petition is to seek guidance from the Apex Court of India and it was about the criminalization of politics and limitation on the criminalization of contesting elections. The reason for filling this petition were-

- The analysis of the past three Lok Sabha elections has seen an increasing number of legislators with a criminal background that is 128 in 2004, 162 in 2009, and 184 in 2014.
- The attempt has been made by the election commission of India to obtain help from the government politician parties and the apex court in ending and corrupt influencing on the legislature.
- The election commission of India has moved to the Supreme Court of India in an appeal against the decision of the Delhi High Court to set aside the disqualification of a member of parliament in Madhya Pradesh.
- The election commission to the bar candidates accused of an offense punishable with at least five years from imprisonment from the contesting elections after the charges again frame by the court and that also has been opposed by several parties.
- The court's recent verdict passed on the responsibility of the election commission itself.

Facts of the Case:

There have been writ petition that has been filed in this case but the among them the most important petition was filed in the court in the year 2011 to seek the direction from the Apex Court of India regarding the matter of criminalization of politics and restriction on the criminalization of the contesting elections. In its landmark judgment of 25th September 2018, the five-judge bench of the Supreme Court held that candidates who are contesting the elections cannot be disqualified simply because they were charged in the criminal case.

Issues that were raised in this case:

The issue that is raised in this landmark case is-

- Whether the court can lay down any disqualification for the member of the parliament beyond Article 102(a) to (d) and parliament legislation under Article 102(e).

Laws Applicable To This Case:

The laws that are applied to this landmark case are-

- Article 102 (1) of the Indian Constitution states that parliament is obliged to make the decision on serious matters the Supreme Court of India has rejected the inclination to disqualify the candidates facing serious criminal charges from contesting elections. The Supreme Court ruled out that mere framing of charges cannot be based on the disqualification of the candidate.
- (a) if he holds the office of profit under the government of India or under the government of any state other than the office declared by the parliament of law not to disqualify its holder.
- (b) if he is of unsound mind and stands so declared by the competent court.
- (c) if he is an undischarged insolvent.
- (d) if he is not the citizen of India or has voluntarily acquired the citizenship of a foreign state or under any acknowledgment of allegiance or adherence to the foreign state.
- (e) if he is so disqualified under the law made by the parliament.
- Article 102(2)- states that if a person shall be disqualified for being a member of either house of the parliament if he is so disqualified under the tenth schedule of the Constitution of India.

Analysis of the Case:

The Supreme Court of India limited itself to mediate all candidates contesting election to be accountable to their respective parties and the general public for any criminal cases that were pending against them. The court analyze the case and came to the point that this issue was raised due to the gap or lack of information that is with the voter. While the Supreme Court of India already ordered that there should be a release of the criminal record in the year 2003. The problem of the criminalize record of the candidate is not a new issue but the problem is the same for several years and is increasing in the coming years that is 24% and 12% in 2004 to 30% and 15% in 2009 and 34% and 21% in the year 2014. Indeed a candidate facing the criminal cases was three-time as likely to win the election as one without them.

Conclusion:

The Supreme Court of India came out with the very important and appropriate judgment that has ruled that it is the responsibility of the parliament to frame the law to prevent the criminalization of politics. The main purpose of filing this petition is to seek guidance from the Apex Court of India and it was about the criminalization of politics and limitation on the criminalization of contesting elections.

References:

- <https://indiankanoon.org/doc/146283621/>
- https://www.constitutionofindia.net/constitution_of_india/the_union/articles/Article%20102