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CASE COMMENT: LILY THOMAS VS UNION OF INDIA WITH LOK PRABHARI VS UNION OF INDIA

~Mugdha

INTRODUCTION

Democracy upholds the rule of law, which is upheld by the guardian of society, the Supreme Court of India. The court plays a transformative role in interpreting the Constitution, conducting judicial review, delivering landmark judgments, and serving as the guardian of the Constitution. The Supreme Court of India plays a significant factor in shaping the legal framework and the country's legal landscape. The judgments given mark remarkable changes in the aim to frame the Indian polity and laws. The judgment in this case commentary states the disqualification of Members of the Parliament, the Members of the Legislative Assembly, and the office in charge. The decision strengthened the legal foundation for disqualifying convicted lawmakers, effectively preventing the influence of criminal elements in politics. It reasonably succeeded in avoiding the criminalization of politics and safeguarding the integrity of democracy by upholding public trust and the credibility of the electoral process, especially when Members of Parliament or State Legislatures were found guilty of serious offenses but remained in office. The cases of Lily Thomas v UOI and Lok Prahari v UOI also strengthened the fabric of the country by holding the political parties accountable, detecting candidates with criminal backgrounds, and impacting their selection and representation.

BACKGROUND FACTS

This case clocks back time to the year 2005 when two writ petitions were filed, one by Advocate Lily Thomas¹ and the second by NGO Lok Prahari² through its General Secretary S.N. Shukla, as PIL (Public Interest Litigation) under Article 32³ of the Indian Constitution before the Supreme Court of India. Both of the petitions pertained to the same matter of disqualification of MPs/MLAs and so they were clubbed together as one case and were challenged under Section 8(4) of the Representation of the People Act, 1951⁴. The two-judge bench consisting of Justices A.K. Patnaik and S.J. Mukhopadhaya rendered the decision on the matter where the

¹ Lily Thomas v. Union of India, (2013) 7 S.C.C. 653 (India)

² Lok Prahari v. Union of India, (2018) 1 S.C.C. 768 (India)

³ Const. of India, art. 32

⁴ Representation of the People Act, 1951, § 8(4)

Constitution stated the requirements for disqualification being chosen or for being Members of Parliament as well as the Legislative Assembly or Legislative Council of the State. The provisions granted in Article 102 (1) (e)⁵ and Article 191 (1) (e)⁶ of the Constitution lay grounds for disqualification under any law made by the Parliament, and by the use of this power, the Parliament enacted the Representation of the People Act, 1951. The constitutionality of sub-section 4 of Section 8 of the RPA, 1951 was challenged before a court of law in 1951, declaring it as ultra-vires to the Constitution, where it specified that any sitting member of the house, even after being convicted for an offense punishable for more than two years, if appealed against the order of conviction will be allowed a three-month period during which the disqualification would not take place. The petition filed was rejected and dismissed at the first attempt before the SC. Eventually, after rigorous and constant efforts, she succeeded only in her third attempt, and the verdict was passed on it.

LEGAL ISSUES

- 1) Whether the Parliament was authorized or competent to enact sub-section 4 of Section 8 of the Representation of People Act, 1951?
- 2) Whether Sub-section 4 of Section 8 of the Representation of People Act, 1951, was ultra-vires to the constitution of India?

CONTENTIONS OF THE PARTIES

• PETITIONERS

The petitioner's side was led by Mr. Fali S. Nariman, learned Senior Counsel where it was contended that the opening clause (1) of Articles 102 and 191 of the Constitution were indicative that the disqualifications for a person being chosen as a member of either House, or the Assembly or Council of the State and for a person being a member of either House or the Assembly or Council of a State are same and cannot be different. Mr. Nariman backed his arguments by citing a constitutional bench judgment of the Supreme Court of India in the landmark case of Election Commission of India v Saka Venkat Rao⁷ where the court came up with a judgment that the same set of disqualifications to be applied for election as well as for continuing as a member of either House, Assembly or Council of the State. Mr. Nariman presented this argument that as soon as a person is convicted of any of the offenses mentioned in sub-section (1)⁸, (2)⁹, and (3)¹⁰ of Section 8 of the Act, he stands disqualified from continuing as a member of Parliament or a State Legislature even though he has filed an appeal against the conviction. Based on legal provisions, it was argued that there are no legal grounds for providing in sub-section (4) of Section 8 of the Act that disqualification will not take effect if an appeal is

⁵ Const. of India, art. 102(1)(e)

⁶ Const. of India, art. 191(1)(e)

⁷ Election Commission of India v Saka Venkata Rao, AIR 1953 SC 210

⁸ Representation of the People Act, 1951, § 8(1)

⁹ Representation of the People Act, 1951, § 8(2)

¹⁰ Representation of the People Act, 1951, § 8(3)

filed within three months against the order of conviction. Therefore, it was contended that in light of the Parliament's lack of legislative authority to implement the disputed provision, it should be deemed ultra vires to the Constitution. Furthermore, the petitioners referred to the case of *K. Prabhakaran v. P. Jayarajan* (2005),¹¹ stating that the motive behind such provisions where sitting MPs and MLAs are categorized differently according to Parliament's classification and protecting them from the disqualifications was obiter dicta and not binding ratio on the issue of validity. Mr. Nariman and Mr. Shukla contended that because sub-section (4) of Section 8 of the RPA, 1951 is discriminatory and arbitrary, it infringes Article 14¹² of the Indian Constitution.

• RESPONDENTS

The respondent's side was led by the learned Assistant Solicitor General (ASG) Mr. Siddharth Luthra, representing the state where it was contended that the validity of sub-section (4) of Section 8 of the Act has been already upheld by the Constitutional Bench of this Court in the case of *K. Prabhakaran v. P. Jayarajan* (2013)¹³. Two consequences were said to be followed if an individual was barred from sitting in the House or participating in the proceedings,

- 1) Firstly, owing to the judgment of immediate disqualification of sitting MPs or MLAs would eventually reduce the strength of the house or the assembly as well as the candidates of political parties. Even if one member of the party whose government is in power gets disqualified, provided that "the Government in power may be surviving on a razor-edge thin majority where each member counts significantly," i.e., the ruling party has just exact members to form the government. Disqualification might result in adverse and deleterious effects, especially when taking into consideration the functioning and administering of the government toward its duties.
- 2) Secondly, if a member is convicted by a superior criminal court and barred from the House or the Assembly, a bye-election may be required, leading to complications for the convicted member.

Mr. Luthra further contended that the legislative authority held by Parliament to legislate and enact sub-section (4) of Section 8 of the Act taken from Articles 101(1)(e) and 191(1)(e) of the Constitution, and if not, then from Article 246(1)¹⁴ r/w Schedule VII, List I, Entry 97 and Article 248¹⁵ of the Constitution, which grants powers to the Parliament to make laws on any matter or subject not listed in List II and List III of the

¹¹ *K. Prabhakaran v. P. Jayarajan*, (2005) 1 S.C.C. 754 (India)

¹² Const. of India, art. 14

¹³ *K. Prabhakaran v. P. Jayarajan*, (2013) 7 S.C.C. 201 (India)

¹⁴ Const. of India, art. 246(1)

¹⁵ Const. of India, Sch. VII, List I, entry 97; art. 248

Seventh Schedule of the Constitution. Mr. Kuhad, the other learned ASG respondent, submitted his argument that the act merely states the same disqualification grounds laid down in sub-sections (1), (2), and (3) of Section 8 of the RPA for the chosen member as well as the sitting member. In the case of conviction of sitting MPs and MLAs, the disqualification act shall take the same effect after a certain period. The respondents argued that the petitioners' claim - The statement that disqualified members have the right to appeal to prevent their suspension under Section 389 of the Code of Criminal Procedure, 1973¹⁶, is inaccurate. Such provisions do not grant the court the power to delay the disqualification that is supposed to take effect from the date of conviction. Therefore, catering to the need to create a safeguard under the challenged provision.

JUDGMENT

The judgment came in support of petitioners where the SC held that the provision to protect the sitting members of the House or the Assembly was beyond the authority of the Parliament and that Section 8 of the RPA, 1951 was deemed to be ultra-vires to the constitutional provisions and stated that the Parliament has exceeded in its powers. It also agreed that the grounds for disqualification for the chosen member and the member to be should be the same. The court observed that once a member has been disqualified by law or under any law made by Parliament under Articles 102(1)(e) and 191(1)(e) of the Constitution, the seat falls vacant by the nature of the same provision. Also, it prohibited the disqualification of the members who had already benefited from sub-section 4 of Section 8 of the act, such that the effect of the judgment may occur from the date after the judgment has been passed.

CONCLUSION

In brief, Lily Thomas Vs UOI is an influential landmark case in the history of the political system of India. The judgment continues to be a touchstone for electoral reforms and judicial oversight. In addition to this case, The SC passed a judgment in the case of Rambabu Singh Thakur v Sunil Arora & others, 2020¹⁷ where all candidates had to issue their criminal records and databases for contesting in the elections both at the state and central levels. Also, the SC's decision in the case of Public Interest Foundation v. Union of India to require the public sharing of criminal records and pending cases before contesting elections is a positive and constructive step forward in promoting transparency and accountability in the electoral. Thus, the Supreme Court reinforced equality, clean governance, and the impermissibility of criminality in politics through this judgment.

¹⁶ Code of Criminal Procedure 1973, § 389

¹⁷ Rambabu Singh Thakur v. Sunil Arora & Others, (2020) 3 SCC 733 (India)