

ITEM NO.15 Court 2 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(Civil) No.699/2016

ASHWINI KUMAR UPADHYAY & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 73459/2019 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 107427/2018 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 39027/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 136819/2017 - CLARIFICATION/DIRECTION, IA No. 54637/2017 - CLARIFICATION/DIRECTION, IA No. 81287/2018 - CLARIFICATION/DIRECTION, IA No. 2029/2020 - CLARIFICATION/DIRECTION, IA No. 54552/2017 - DIRECTIONS, IA No. 146933/2018 - EXEMPTION FROM FILING O.T., IA No. 130543/2018 - EXEMPTION FROM FILING O.T., IA No. 103522/2019 - EXEMPTION FROM FILING O.T., IA No. 107431/2018 - EXEMPTION FROM FILING O.T., IA No. 61324/2017 - I/A FOR PERMISSION TO AMEND THE PRAYER ON BEHALF OF PETITIONER, IA No. 81286/2018 - INTERVENTION APPLICATION, IA No. 2027/2020 - INTERVENTION APPLICATION, IA No. 127368/2018 - INTERVENTION APPLICATION, IA No. 2083/2019 - INTERVENTION APPLICATION, IA No. 58124/2017 - INTERVENTION/IMPLEADMENT, IA No. 57812/2017 - INTERVENTION/IMPLEADMENT, IA No. 127023/2018 - INTERVENTION/IMPLEADMENT, IA No. 71929/2019 - INTERVENTION/IMPLEADMENT, IA No. 2085/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON, IA No. 98425/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 72938/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 130542/2018 - STAY APPLICATION)

Date : 10-09-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE HRISHIKESH ROY

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UPON hearing the counsel the Court made the following
 O R D E R

The Court is convened through Video Conferencing.

I.A. No. 61324 of 2017 in W.P. (C) No. 699 of 2016

The present application has been filed by the Petitioners seeking a declaration wherein the elected representatives convicted for crimes be barred for lifetime. Accordingly, the prayers in the present Writ Petition are sought to be amended as follows:

"a) direct and declare the words and shall continue to be disqualified for a further period of six years since his release" be severed from Sections 8(1)(ii), 8(2) and 8(3) of the Representation of the People Act, 1951 and the words "for a period of five years from the date of

such dismissal" be severed from Section 9(1) of the Representation of the People Act, 1951 as invalid and ultra-vires the Article 14 and basic structure of the Constitution of India;

b) direct the Respondent-1 to take appropriate steps to setup Special Courts to decide the cases related to people and representative and public servants within one year and implement the important electoral reforms, proposed by the National Commission to Review the Working of the Constitution, Law Commission of India in its 244th and 255th Report and Election Commission of India;

c) direct the Respondents to take appropriate steps to debar the person convicted for the offences specified in Sections 8(1), 8(2), 8(3), 9(1) of the Representation of the People Act 1951 from contesting MLA/MP election, forming a political party or becoming office bearer of a political party."

Heard Mr. Vikas Singh, learned Senior counsel appearing for the petitioners and Ms. V. Mohana, learned Senior counsel appearing for the Union of India.

Issue notice on Interlocutory Application No.61324 of 2017 seeking permission to amend the prayer in the Writ Petition.

Six weeks' time is granted to the Union of India to file counter affidavit on the said application.

W.P. (C) No. 699 of 2016

1. The present writ petition was filed by the Petitioners to reduce criminalization of politics and rationalize criminal prosecution of elected representatives with the following prayers:

"a) issue a direction or order or writ including writ in the nature of mandamus or an appropriate writ, order or direction as may be necessary, directing the Respondent-1 to provide adequate infrastructure to setup Special Courts to decide criminal cases related to People Representatives, Public Servants and Members of Judiciary within one year and to debar the convicted persons from Legislature, Executive and Judiciary for life uniformly in spirit of Article 14 read with Article 15 and 16 of the Constitution;

b) Issue a direction or order or writ including writ in the nature of mandamus or such other writ, order or direction as may be necessary; directing the Respondents to implement the "Important Electoral Reforms" proposed by Election Commission, Law Commission and National Commission to Review the Working of the Constitution to ensure free and fair election in spirit of the Article 324;

c) issue a direction or order or writ including writ in the nature of mandamus or such other writ, order or direction as may be necessary; directing the Respondents to set minimum qualification and maximum age limit for People Representatives and allow cost to Petitioner."

2. Notice was issued in this matter vide order dated 14.09.2016. Subsequent to the same, numerous directions have been passed by this Court.

3. When this matter came up for hearing on 05.03.2020, the learned *amicus curiae* indicated that he was unable to assist the Court due to insufficient information furnished by the High Courts regarding the pendency of cases against legislators. As such, this Court passed an order directed all the High Courts to furnish information to the learned *amicus* and this Court, as per an accepted format, within 2 weeks. Unfortunately, as on 31.08.2020, some of the High Courts had not furnished the aforesaid information, and were directed to furnish the same within four days and for the matter to be listed today.

4. All the High Courts have submitted their respective reports, in compliance of our orders dated 05.03.2020 and 31.08.2020. The learned *amicus* has also submitted a report regarding the information furnished and has taken us through the same in detail.

5. From the report of the learned *amicus*, it is revealed that, at present, there are around 4442 cases, which are currently pending against the MPs and MLAs (sitting and former). Nearly 413 of the above cases pertain to offences punishable with life imprisonment, out of which 174 cases are against sitting MPs and MLAs. He also pointed out that there were drastic delays in the disposal of the aforesaid cases. For example, in the States of Uttar Pradesh and

Bihar, there are pending cases relating to the year 1991. Shockingly, in the States of West Bengal and Punjab, there are pending cases pertaining to the years 1981 and 1983 respectively. Many of the pending cases are still at the appearance stage. Further, in 352 cases the trial has been stayed by either the High Court or this Court.

6. Taking into account the above, the learned *amicus* has made certain suggestions for expeditious disposal of pending cases against MPs/MLAs (sitting or former), which are reproduced below:

"E. SUBMISSIONS

In the aforesaid circumstances, the following submissions are made for ensuring expeditious trial of cases where MPs/MLAs are accused:

(i) Special Courts in every district for MPs/MLAs:-

a. Each High Court may be directed to assign/allocate criminal cases involving former and sitting legislators to as many Sessions Courts and Magisterial Courts as the respective High Courts may consider proper, fit and expedient having regard to the number and nature of pending cases. Such decisions may be taken by the High Courts within four weeks of the order.

b. The State Governments will issue necessary notification in terms of the recommendation of the High Court within two weeks from the receipt of the recommendation.

c. Case records to be transferred expeditiously to the Special Courts.

(ii) Practice Directions:-

a. Special Courts will give priority to the trial of cases in the following order:-

i. Offences punishable with death/life imprisonment;

ii. Offences punishable with imprisonment for 7 years or more;

iii. Other offences.

b. Cases involving sitting legislators to be given priority over former legislators.

c. Forensic laboratories will give priority in furnishing the report in respect of cases being tried by the Special Courts and will submit all pending reports within one month.

d. State Governments/UTs will appoint/designate at least two Special Public Prosecutors for prosecuting cases in the Special Courts in consultation with District and Sessions Judge in the concerned District.

e. No adjournment shall be granted except in rare and exceptional circumstances and for reasons to be recorded.

f. The Superintendent of Police of respective Districts shall be responsible to ensure production of accused persons before the respective courts on the dates fixed and the execution of NBWs issued by the Courts.

g. The SHO of the concerned police station shall be personally responsible for service of summons to the witnesses and their appearance and deposition in the court.

h. Courts will use technology of video conferencing for examination of witnesses and appearance of the accused persons, to the extent possible.

(iii) Cases under stay:-

a. This Hon'ble Court in Asian Resurfacing of Road Agency Pvt. Ltd vs. CBI, 2018 (16) SCC 299, held as under:-

"If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should

be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years."

In view of the law laid down in the aforesaid case, trial courts to proceed with the trial notwithstanding any stay granted by the High Court unless fresh order is passed extending the stay by recording reasons.

- b. In the alternative, Registrar Generals may be directed to place the matters involving MPs and MLAs before Hon'ble the Chief Justice for appropriate orders for urgent listing of such cases.

(iv) Witness Protection:-

- a. Witness protection in all such cases is essential having regard to vulnerability of the witnesses and the influence exercised by the legislators facing criminal trials. This Hon'ble Court in the case of Mahender Chawla vs Union of India, 2018 (16) SCC 299 has framed "Witness Protection Scheme, 2018" and made it applicable to all the States till the enactment of suitable legislation by the Parliament or State legislatures.
- b. Trial courts shall consider granting of protection under the aforesaid scheme to all the witnesses, without any application by the respective witnesses.

(v) Monitoring by High Courts

- a. Each High Court shall register a Suo Moto case with the title "In Re: Special Courts for MPs/MLAs" to monitor the progress of cases pending in the

State and ensure compliance of directions of this Hon'ble Court.

- b. The writ petition, so registered shall be heard by a Division Bench of the High Court to be constituted by the Chief Justice.
 - c. A Senior Advocate shall be appointed as Amicus Curie.
 - d. The State shall be represented by the Advocate General or an Additional Advocate General.
 - e. A senior Police officer of the rank not below Inspector General of Police shall be present in the Court in each hearing to furnish requisite information, as and when required.
 - f. Each Special Court will send a monthly status report to the High Court and the High Court, on examination of the same, will issue necessary directions to ensure speedy disposal of cases.
 - g. The case shall be heard by the High Court at such interval as may be necessary; however, at least once three months."
7. With respect to the above submissions, we will consider and pass appropriate orders on the suggestions made by the learned *amicus curiae* subsequently.
8. Lastly, the learned *amicus curiae* submitted that it appears that complete information regarding pending cases against legislators (sitting or former) relating to special legislations such as the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act, 2002, Excise Act, 1944, Customs Act, 1962, Central Goods and Service Tax Act, 2017 and Companies Act, 2013 have not been placed on record.
9. Taking into consideration the relief sought, the pleadings and the orders passed by this Court in this matter, it is clear that all the criminal cases even under special legislations, where MPs/MLAs (sitting or former) are involved are the subject matter of the present proceedings. Even though we have granted time to all the High Courts to furnish the requisite information, only the High

Courts of Karnataka, Madhya Pradesh, Tamil Nadu, Delhi, Jharkhand and Guwahati have done so. The remaining High Courts have not yet furnished the requisite information regarding cases pending against legislators (sitting or former) under the above-mentioned special legislations, in compliance of our earlier orders.

10. In view of the above, we grant two days' time to all the remaining High Courts to provide the requisite details of the pending cases and their stages, in the format already approved vide order dated 05.03.2020, to the learned *amicus curiae* by way of e-mail to enable him to make submissions in the matter on the next date of hearing. A copy of the same be also sent to the Secretary General of this Court.

11. Let the matter be listed on Wednesday, the 16th September, 2020.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

