

CASE NO.:
Appeal (civil) 8213 of 2001

PETITIONER:
K. Prabhakaran

RESPONDENT:
P. Jayarajan

DATE OF JUDGMENT: 11/01/2005

BENCH:
K.G.Balakrishnan]

JUDGMENT:
J U D G M E N T

WITH

CIVIL APPEAL NO. 6691 OF 2002

Ramesh Singh Dalal

\005. Appellant

Versus

Nafe Singh & Ors.

\005. Respondents

K.G. BALAKRISHNAN, J.

I had the advantage of reading the Judgment in draft prepared by noble and learned Brother, Lahoti, CJ, and I regret that I am unable to agree with the interpretation placed on Section 8(3) of the Representation of People's Act, 1951. On all other points, I respectfully agree with the decision.

Under Section 8(3) of the Representation of the People's Act, 1951, a person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-Section (1) or sub-Section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. If at the time of the scrutiny of the nomination papers, a person concerned was found disqualified, his nomination paper will be rejected and he would be unable to contest the election. Under Section 100 of the Representation of People's Act, 1951, any improper acceptance of nomination is a valid ground for declaring the election void, if the result of the election, insofar as it concerns the returned candidate, has been materially affected.

The question for consideration is whether in a case where the accused person has been convicted on various counts and the total period of the sentence of imprisonment is two years or more and the Magistrate orders the sentence of imprisonment for various periods to run consecutively, and if the total period of such imprisonment to which the person convicted will have to undergo is two years or more, whether he could be disqualified under Section 8(3) of the Representation of People's Act. In other words, even if the sentence of imprisonment does not exceed two years or more for any one of the offences for which he is convicted, whether still he could be disqualified under Section 8(3) of the Representation of the People's Act, 1951 based on the order of the Magistrate/Judge to the effect that the sentence on various counts shall run consecutively.

The argument of the learned counsel for the appellant in Civil Appeal No. 8213 of 2001 is that it is the total period of the sentence on various counts which is material and in the instant case, the respondent was found guilty of offences on six counts. For the offence under Section 143 read with Section 149 IPC, he was sentenced to undergo R.I. for a period of one year while for the offence under Section 3(2)(e) of the Prevention of the Damage of the Public Property Act, 1984, he was sentenced to undergo R.I. for a period of one year, and for various other offences he had been sentenced to imprisonment for a period ranging from one month to six months and as the Judicial Magistrate First Class directed that the sentences on various counts shall run consecutively. It is argued by the appellant's learned Counsel that the respondent is convicted and sentenced to imprisonment for a period of more than two years and therefore disqualified under Section 8(3) of the Representation of People's Act, 1951. The question for consideration is whether the respondent in Civil Appeal No. 8213 of 2001 had been convicted for any offence and sentenced to imprisonment for not less than two years. I am unable to subscribe to the contention advanced by the appellant's learned Counsel that the word "any" used in Section 8(3) of the Representation of the People's Act, 1951 should be construed so as to mean "more than one" or "all" or in a sense of plurality. It is also difficult to construe the words "not less than two years" used in Section 8(3) of the Representation of the People's Act by giving emphasis to the total period of imprisonment that a convict may undergo if all the periods of imprisonment for various offences are put together, when it is ordered to run consecutively.

From the words used in the first part of Section 8(3), viz. "a person convicted of any offence", it is clear that in order to incur disqualification, the person must have been convicted of any offence and sentenced to imprisonment for not less than two years. Out of the offences on six counts, for which the respondent had been found guilty, if all of them are taken individually, the respondent is not a person convicted of any offence, for which the sentence imposed on him is more than two years.

In the case of the respondent, the Magistrate ordered that the sentence on various counts shall run consecutively. That does not mean that the respondent had been convicted of any offence, for which the sentence of imprisonment is two years or more. The direction for the sentence to run concurrently or consecutively is a direction as to the mode in which the sentence is to be executed. That does not affect the nature of the sentence. It is also important to note that in the Code of Criminal Procedure, there are no guidelines or specific provisions to suggest under what circumstances the various sentences of imprisonment shall be directed to run concurrently or consecutively. There are no judicial decisions, to my knowledge, by superior courts laying down the guidelines as to what should be the criteria for directing the convict to undergo imprisonment on various counts concurrently or consecutively. In certain cases, if the person convicted is a habitual offender and he had been found guilty of offences on various counts and it is suspected that he would be a menace if he is let loose on the society, then the Court would direct that such person shall undergo the imprisonment consecutively. Merely because the Magistrate ordered that the sentence shall run consecutively, and the aggregate period exceeds two years or more, a person convicted would not incur the disqualification under Section 8(3) of the Representation of the People's Act, 1951. If that be so, a Magistrate may order the sentence on various counts to run concurrently in one case and for the same type of offences, if another Magistrate directs the sentence on various counts to run consecutively, the person in the latter case would incur the disqualification whereas the former will not have any such disqualification under Section 8(3) of the Representation of the People's Act, 1951. The disqualification under Section 8(3) of the Representation of the People's Act, 1951 shall not be solely dependent on the direction as to the mode in which the sentence is to be executed, especially when there are no statutory or judicial guidelines in this regard.

Moreover, if the argument of the appellant's learned Counsel is to be accepted, the words used in Section 8(3) of the Representation of People's

Act, 1951 are inadequate and the Legislature would have expressed its intention by stating that the total period of the sentence on various counts shall be taken into consideration to consider whether the imprisonment is for two years or more.

Section 8(3) of the Representation of People's Act, 1951 is a provision by which a person is disqualified from contesting the election. These words are to be strictly interpreted and if only the person squarely comes within the four corners of the ordinary meaning of the words used in the section, the disqualification could be used against him. If he has not been convicted for any offence, for not less than two years, he is not liable to be disqualified from contesting the election. Of course, the criminalization of politics has become a serious problem to be tackled and nobody would dispute that it affects the very foundation of our democratic institutions, but that by itself is not sufficient to interpret the words in a very expansive manner so as to include within its ambit the persons who are strictly not coming within its purview, especially when the disqualification is not only from contesting the election and the disqualification would continue for a further period of six years since the release.

It is the gravity of the offence that matters and not the conviction for various minor offences and the total period of two years or more to be calculated by not putting together all sentences for various minor offences. "Any offence" used in Section 8(3) of the Representation of People's Act, 1951 is to be taken as "out of many offences" and the respondent in Civil Appeal No. 8213 of 2001 has not been convicted for any offence, for which the imprisonment is for a period of not less than two years and he was not disqualified and, in my opinion, the High Court rightly decided the question in his favour. The Election Petition filed by the appellant in Civil Appeal No. 8213 of 2001 was rightly rejected. Civil Appeal No. 8213 of 2001 is liable to be dismissed.