

ELECTION COMMISSION OF INDIA

Election Commission of India No. 509/Disqln./97 - J.S.I Dated : 28th August, 1997

ORDER

Subject: Criminalisation of Politics - participation of criminals in the electoral process as candidates - disqualification on conviction for offences - effect of appeal and bail- regarding.

Whereas, the country is facing the serious problem of criminalisation of politics in which criminals, i.e., persons convicted by courts of law for certain offences, are entering into election fray and contesting as candidates; and

Whereas, section 8 of the Representation of the People Act, 1951, lays down the conditions under which a person would be disqualified on grounds of conviction for contesting elections to Parliament and Legislature of a State; and

Whereas, any person convicted of any offence listed under sub-section (1) of section 8 of the Representation of the People Act, 1951, shall be disqualified for a period of six years from the date of such conviction; and

Whereas a person convicted for the contravention of any of the laws listed under sub-section (2) of section 8 of the Representation of People Act, 1951, and sentenced to imprisonment for not less than 6 months shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of 6 years after his release; and

Whereas, under sub-section (3) of section 8 of the Representation of the People Act, 1951, a person convicted of any other offence and sentenced to imprisonment for not less than 2 years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of 6 years since his release; and

Whereas, sub-section(4) of section 8 of the Representation of the People Act, 1951, states that none of the above mentioned disqualifications will take effect in case of a person who on the date of the conviction is a Member of Parliament or the Legislature of a State, till 3 months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court; and

Whereas, it has been often observed that even those persons who are not the sitting members of Parliament or State Legislatures on the date of conviction, contest election if they have filed an appeal or application for revision and have been granted bail during pendency of such appeals/ revision; and

Whereas, the Commission has carefully examined and considered the question whether such persons who have been convicted of offences mentioned in the said section 8 of the Representation of the People Act, 1951, can contest elections during the period when they are released on bail, pending disposal of their appeals or applications for revision; and

Whereas, the Commission has observed that this very question has come to be considered by several Hon'ble High Courts and they have taken the view that the release on bail does not wipe off the disqualification under the said section 8 of the Representation of the People Act, 1951; and

Whereas, it has been observed that the Hon'ble Madhya Pradesh High Court, while dealing with the case of **Purshottamlal Kaushik Vs. Vidya Charan Skukla** (66 Election Law Reports-110) held in that case as follows:-

"It is obvious that the decision of the returning officer must depend on facts as they existed on the date of scrutiny since it is beyond human comprehension to visualise subsequent events and to base the decision of validity of nominations on the unknown future events. 'The improper rejection' of a nomination within the meaning of expression used in section 100(1) (c) and 'improper acceptance' in section 100(1) (d) (i) of the R.P.Act, 1951, must, therefore, mean whether the rejection of acceptance of the nomination by the returning officer was improper with reference to section 36(2) (a) on the basis of facts existing on the date of scrutiny which alone were available to him and were relevant for deciding the validity of the nomination.

The question now is of the effect of suspension of the sentence by the appellate Court. Section 389 Cr. P.C. which gives this power to the first court till filing of appeal and then to the appellate court enables suspension of execution of the sentence or order appealed from. It is only the execution which is suspended and nothing more with the result that the sentence awarded is not to be suffered during the pendency of the appeal even though it subsists and the appellant is released on bail. There is no indication in section 8(2) of the R.P.Act that the disqualification thereunder remains in abeyance during the pendency of appeal against conviction. On the other hand, section 8(3) gives the contrary indication by laying down an exception only in case of sitting members. Suspension of execution of the sentence or order and grant of bail under section 389 Cr. P.C. has the only effect of avoiding sufferance of sentence pending appeal, but then in order to attract the disqualification under section 8(2) it is not necessary to suffer any part of the sentence awarded. This has also been held by the Supreme Court in Sarat Chandra's case (Supra): This decision also indicates that suspension of sentence does not wipe out the conviction and sentence. It was held that a reprieve is a temporary suspension of the sentence which does not wipe it out; all that it does is to have an effect on the execution of the sentence. If suspension of sentence during pendency of an appeal does not have the effect of wiping it out, it is difficult to accept the contention that the disqualification under section 8(2) remains arrested or in abeyance during operation of the suspension order pending appeal against the conviction and sentence. This is more so, when in section 8(2) there is nothing to support this view and section 8(3) gives contrary indication."; and

Whereas, the Hon'ble High Court of Judicature at Allahabad also took a similar view in the case of **Shri Sachindra Nath Tripathi Vs. Doodnath** (84 Election Law Reports 46). And while declaring the election as void of Shri Doodnath, who stood convicted by the trial court for offences under sections 302 and 307 IPC, and who stood released on bail during the election period, held that:-

"The disqualification, which is an automatic effect of conviction, springs up right at the time of pronouncement of conviction, which finding is yet to be reversed or set aside. It is to be

seen as to what is the effect of bail, granted to the respondent before the date of filling the nomination paper. If no bail is granted and the execution of the sentence is not suspended by the stay orders, then the accused will remain in jail and the only effect of granting bail is that he is released from the confinement. Grant of bail does not interfere with the finding of conviction and that cannot render the disqualification, automatically emerging from conviction, inoperative": and

Whereas, the same question again came to be considered in a more recent case before the Hon'ble Himachal Pradesh Court in **Vikram Anand Vs. Rakesh Singha etc. etc.** (Election Petition Nos. 1, 4 and 5 of 1994), and the Hon'ble High Court, while declaring the election as void of the returned candidate (Shri Singha), who stood convicted in a criminal case under section 148, etc., of the IPC and sentenced to imprisonment for 5 years and who had been released on bail during the pendency of appeal to the Hon'ble Supreme Court, held in its judgement dated 13.09.1994 as follows:-

".....Despite suspension of sentence and release on bail, the order of conviction remains in operation holding the person guilty of such offence or offences for which he has been awarded sentence of imprisonment for not less than two years, as such the disqualification as provided under sub-section (3) of section 8 of the Act continues. In order to attract disqualification under subsection (3) of section 8 of the Act, the execution of the order of conviction and sentence of imprisonment or any part thereof is not required. What is necessary is the actual conviction and sentence imposed by the Court for not less than two year, which order remains in operation despite stop put to execution of the order of sentence during the pendency of appeal by releasing the convicted person on bail and suspending the sentence awarded to him.

...after examining the legal position, this court has come to the conclusion that when the appellate Court passes an order of suspension of sentence and/or release on bail on a convicted person, the order of his conviction still remains in existence and the disqualification, suffered by him as a result of conviction and sentence, for a period of not less than two years as envisaged under sub-section (3) of Section 8 of the Act, is not automatically suspended and it continues to be in operation.;" and

Whereas, it has also been observed that when the Hon'ble Supreme Court dismissed the criminal appeal filed by Shri Rakesh Singha, it also dismissed his election appeal holding that Shri Singha was disqualified **ab initio** for contesting election under section 8(3) of the Representation of the People Act, 1951;

Now, therefore, the Election Commission has, after taking due note and paying due regard to the above judicial pronouncements of the Hon'ble Supreme Court and the Hon'ble High Courts, come to the considered view that the disqualification under section 8 of the Representation of the People Act, 1951, for contesting elections to Parliament and State Legislatures, on conviction for offences mentioned therein, takes effect from the date of conviction by the trial court, irrespective of whether the convicted person is released on bail or not during the tendency of appeal [subject, of course, to the exception in the case of sitting members of Parliament and State Legislatures under sub-section (4) of the said section 8 of the Representation of the People Act, 1951].

Accordingly, the Election Commission, in exercise of its powers of superintendence, direction and control of election to Parliament and State Legislatures vested by Article 324 of the Constitution, hereby directs that all the Returning Officers, at the time of scrutiny of nominations, must take note of the above legal position and decide accordingly about the validity or otherwise of the candidature of contestants disqualified under the said section 8 of the Representation of the People Act, 1951.

Memo no..... Date.....

From:- Returning Officer for

To:

.....

(Name of the candidate)

Subject: Election tofromConstituency

You have made a declaration in your nomination paper that you are not disqualified for being chosen at the above election.

2. Your attention is invited to Section 8 of the Representation of the People Act, 1951, an extract whereof is enclosed for your ready reference.

3. In order to be satisfied that you are not suffering from disqualification mentioned under the said section 8 of the Representation of the People Act, 1951, you are required hereby to furnish the information as asked for in the enclosed proforma, which should be supported by an affidavit, duly sworn before a Magistrate of the first class or an Oath Commissioner or a Notary Public.

4.. It should be noted that furnishing of any wrong information by you will render you liable for action as per law.

5. It should also be noted that the required information must be furnished by you immediately and positively before.....hours on.....(Time and date fixed for scrutiny of nominations).

Proforma for furnishing information under Section 8 of the R.P. Act, 1951 by every candidate at an election to Parliament or State Legislative

(as revised vide letter no. 509/DisqIn./97/J.S.-I/Vol. II dated 6th January, 1998)

Election to the _____

From _____ Constituency

Name of the Candidate

Father / Mother / Husband's name

(1) Have you ever been convicted by a Court of law-

(i) in any case specified in sub-section (1) of Section 8 of the Representation of the People Act, 1951:

(ii) in any case specified in sub-section (2) of the said Section 8, and sentenced to imprisonment for not less than six months.

(iii) in any other case, and sentenced to imprisonment for not less than 2 years.

(2) If yes, give details (in each case separately) as below :-

(i) Name of the Court by which Convicted :

(ii) Date of Conviction :

(iii) Were you a sitting member of Parliament or of a State Legislature, on the date of such Conviction : Yes/No

(iv) if yes, give exact details of such status as MP/MLA/MLC :

(v) Nature of offence committed (with details of the relevant Act and Sections) :

(vi) Punishment imposed :

(vii) Period for which undergone imprisonment, if any :

(viii) Date of release from prison :

3. Was any appeal/application for revision : Yes/No filed against above Conviction.

(i) Reference No. of appeal/application for revision : filed, if any

(ii) Date of filing of such appeal/application for : revision

(iii) Name of the Court before which the appeal/ : application for revision filed

(iv) Whether the said appeal/application for : Disposed of/ revision has been disposed of or is pending Pending

(v) If disposed of-

(a) Date of disposal :

(b) Nature of order passed :

(vi) Whether any bail granted during the pendency of :
appeal/application for revision

(vii) If yes, period during which remained on bail :

Place : (Signature of candidate)

Date :

Before the Returning Officer
For Election to _____
From _____ Constituency.

AFFIDAVIT

I, _____ Son/daughter/wife of

aged _____ Years, residence of

_____ do hereby solemnly affirm and declare as follows :-

- (1) That I have filed my nomination paper(s) for the above election.
- (2) That, in connection with my candidature for the above election, I am submitting herewith the information, as asked for by the Returning Officer under section 8 of the Representation of the People Act, 1951, in the prescribed proforma.
- (3) That the information furnished in the enclosed proforma is true to the best of my knowledge and belief and that nothing material has been concealed therefrom.

Place :

Date :

Deponent

Verified before me
(Signature of verifying authority
with seal)